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EXTENSION OF THE VOTING RIGHTS ACT

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON
CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501

EXTENSION OF THE VOTING RIGHTS ACT

FEBRUARY 25, 26, MARCH 3, 4, 5, 6, 13, 14, 17, 20, 21, 24, AND 25, 1975

Serial No. 1

Part 2



Printed for the use of the Committee on the Judiciary

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U.S. Commission on Civil Rights,
Washington, D.C., March 12, 1975.

Hon. Don Edwards,
Chairman, Subcommittee on Civil Rights and Constitutional Rights, Committee on the Judiciary, Washington, D.C.

Dear Mr. Chairman: The Commission on Civil Rights is happy to provide you with a part of the information and materials promised as a result of Chairman Flemming's testimony of February 25, 1975. Several items are not yet completed, although we expect to have some of them to you by Friday of this week.

As you are probably aware the Commission's organic statute contains a prohibition against publication of any material which tends to defame, degrade or incriminate any person. In the event it does then the report " . . . shall be delivered to such person thirty days before the report shall be made public in order that such person may make a timely answer to the report." Since our analysis of the interviews and material gathered in uncovered jurisdictions requested by the Subcommittee does involve defamatory material, the Commission feels it must follow the requirements of our statute, prior to providing our analysis to you. We will move as expeditiously as possible to complete the defame and degrade procedures.

I am enclosing the following items: (1) Staff Memorandum analyzing HR 3247 (Ms. Jordan) and HR 3501 (Mr. Roybal and Mr. Badillo); (2) Opinion of Counsel with respect to whether the terms "test or device" as defined in the Voting Rights Act includes use of English-only voting materials for persons whose only language is not English; and (3) a memorandum referencing in *The Voting Rights Act: Ten Years After* documentation for the statement in our testimony that "Minority voters have been denied their rights in all of these ways in recent years in some jurisdictions covered by the Voting Rights Act." (page 16 of the prepared testimony)

In addition to the above we will have prepared on Friday a revised legal opinion regarding the constitutionality of a permanent ban on literacy tests and the opinion of counsel on whether the use of the terms "race or color" in the 15th Amendment includes national origin minorities and whether coverage of national origin minorities under the Voting Rights Act should be based on the Fourteenth or Fifteenth Amendment.

We will also forward at that time a copy of our letters to Chairman Al Ullman implementing Recommendation 16, regarding repeal of those sections of the Tax Reform Act of 1969 which limit the ability of foundations to fund non-partisan voter registration campaigns.

The staff is presently preparing for review by the Commissioners, a proposal which may assist you in resolving the current debate over a separate title vs. integrated amendment approach to extending the protections of Act to language minorities, particularly persons of Spanish origin. I am sharing copies of our response to the Subcommittee and with Representatives Jordan and Roybal.

The corrected transcript of Chairman Flemming's testimony is enclosed. If you have any questions, please have Mr. Parker and Ms. McNair call Bud Blakey (254–6626).

Sincerely,

John A. Buggs, *Staff Director.*

Enclosure.

STAFF MEMORANDUM

ANALYSIS OF H.R. 3247 AND H.R. 3501, BILLS TO EXPAND THE COVERAGE OF THE VOTING RIGHTS ACT OF 1965

This memorandum analyzes H.R. 3247 and H.R. 3501 (94th Cong. 1st Sess.). These bills are designed to expand the coverage of the special provisions of the Voting Rights Act of 1965 (42 U.S.C. §§ 1973–1973p, as amended, 42 U.S.C. §§ 1973aa to bb–4 (1970)) to areas of the Southwest having significant Mexican American populations. Both bills also extend the special provisions of the Voting Rights Act for 10 years and make permanent the national ban on the use of literacy tests enacted in 1970 for a five year period.

H.R. 3247

H.R. 3247, introduced by Rep. Barbara Jordan of Texas, is a substitute for H.R. 939. Thus it combines in one bill the extension of the present temporary provisions of the Voting Rights Act with new coverage for other jurisdictions. Specifically, the bill extends the temporary provisions of the act for 10 years (Section 1) and makes the literacy test ban permanent (Section 6). In these respects it is identical to H.R. 939.

In addition, the bill provides Voting Rights Act coverage for jurisdictions in which 5 percent or more of the voting age residents have a mother tongue other than English, in which election materials are in English only, and in which the voting rate in 1972 was less than 50 percent (Sections 2–5). The bill would bring Texas under the Voting Rights Act as well as some other areas scattered around the country. This is accomplished by the amendment of several sections of the Voting Rights Act.

Section 2 of the bill modifies Section 4(b) of the Voting Rights Act by adding a 1972 trigger to the 1964 and 1968 triggers already in the act and applies the expanded definition of "test or device" contained in Section 3 of the bill.

Section 3 of the bill amends Section 4(c) of the Voting Rights Act to add as a test or device:

> any practice or requirement by which any State or political subdivision provided election or registration materials printed only in the English language.

This definition applies: (a) when more than 5 percent of the voting age residents of the jurisdiction are of any single mother tongue other than English and (b) with respect to the November 1972 presidential election or subsequent elections.

Section 4 of the bill amends Section 4(d) of the Voting Rights Act to make a bail-out suit more difficult for a jurisdiction covered under the proposed trigger than it is for a jurisdiction previously covered.

Section 5 of the bill freezes the electoral laws and procedures of the newly covered jurisdictions as they were on November 1, 1972 and applies the pre-clearance procedures of Section 5 of the Voting Rights Act to any change since then.

Purpose

The apparent purpose of H.R. 3247 as drafted is to provide the protection of the temporary provisions of the Voting Rights Act to language groups. This is done by providing coverage of States or counties 5 percent or more of whose voting age population is of a single mother tongue group other than English if the jurisdiction satisfies certain other criteria. The bill, incidentally, would protect blacks and other racial minorities in jurisdictions which satisfy the bill's criteria.

The sponsor of the bill, Rep. Jordan of Texas, has indicated that the purpose of the bill is to provide Voting Rights Act protection for Mexican Americans in the Southwest, especially in Texas. (See Extension of Remarks of Rep. Barbara Jordan, Cong. Rec. E569, Feb. 19, 1975, Daily Ed., and Testimony of Rep. Barbara Jordan before the Subcom. on Civil and Constitutional Rights of the House Judiciary Comm., Feb. 26, 1975.)

As is discussed more fully below, although the bill appears to protect any non-English mother tongue group, it is intentionally written to give protection only to a mother tongue group that is also a group defined by race or color and protected under the 15th amendment.

Covered jurisdictions

The exact geographical coverage of the bill is unclear. Appended to the prepared testimony of Rep. Jordan is a list of jurisdictions which would be covered by the bill. It includes one State, Texas, covered because of Spanish mother tongue,

and 35 counties in 10 other States. Of the 35 counties, 14 are covered because of Spanish mother tongue, 14 because of French mother tongue, and 7 because of German mother tongue.[1] Because the Census Bureau only publishes mother tongue data by county for French, German, and Spanish, information is readily available only for these three groups. The Census, however, asks a 15 percent sample of the population its mother tongue. (For States information is also published on the number of people with Polish, Russian, Yiddish, and Italian mother tongues.) The Census Bureau data would make it possible to determine what other counties would be covered because of other mother tongue groups. There are probably some counties with more than 5 percent of another mother tongue that also meet the other criteria. These may include some counties with more than 5 percent of a particular Native American or Asian American language group that meet the other criteria.

The bill refers to 5 percent of the voting age population of a jurisdiction. The list appended to the Jordan statement, however, uses total population. Because the average age of persons of Spanish origin is less than the average age for the population as a whole, using total rather than voting age population will overstate the number of affected jurisdictions. For example, 5.01 percent of the total population of Solano County, California, according to the Jordan list, is of Spanish mother tongue. It is probable that less than 5 percent of the voting age population is of Spanish mother tongue.

Implications of coverage

While the bill speaks only of mother tongue groups it is necessary for the purposes of analysis to distinguish three kinds of groups. These are (1) mother tongue groups that are also racial groups, (2) mother tongue groups that are not racial groups, and (3) racial groups that are not mother tongue groups. These distinctions are important because the 15th amendment and the Voting Rights Act of 1965 only protect groups defined by race or color. H.R. 3247 does not change the Voting Rights Act in this respect; thus it would not protect a mother tongue group that is not also considered a racial group.

Mother tongue groups that are also racial groups include various Asian American and Native American groups and persons of Spanish origin.[2] If one of these groups constituted 5 percent or more of a county's (or State's) voting age population and the other criteria of the bill were met, then that county would under H.R. 3247 be fully covered by the Voting Rights Act. The county would be required to print election materials in the language of the mother tongue group. It would be required to submit changes in election laws and practices to the Attorney General for Section 5 preclearance for a determination that the new laws or practices do not discriminate against the mother tongue group (or any other racial group). The Attorney General would be authorized to send examiners and observers to the county to protect the voting rights of the mother tongue group (or of any other racial group).

To remove itself from coverage the county would have to show that during the preceding 20 years English-only elections had not been used with the purpose and had not had the effect of discriminating against the mother tongue group. There would be three ways of showing this. First, the county could show that in fact all citizens of voting age of the mother tongue group knew English during the 20 year period and therefore the use of English did not discriminate against them.

Secondly, the county might argue that, although either its registration or its election materials (or both) were printed only in English, its oral assistance was so adequate that there was no discrimination. For example, in some States a person registering to vote does not have to read or write anything but only provides the necessary information by answering questions from the registrar. If in a covered county in such a State all registrars were fluent in the language of the mother tongue group then the lack of printed registration materials in the language of that group would not be discriminatory.

---

[1] However, the list of jurisdictions attached to the Jordan statement may contain some having bilingual electoral processes, which would not be covered under the criteria of the bill. (See Statement of J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, before the Subcommittee on Civil and Constitution Rights of the House Judiciary Committee, Mar. 5, 1975.)

[2] H.R. 3247 assumes that Mexican Americans are a racial group for the purposes of the 15th amendment and the Voting Rights Act.

Third, the county could use bilingual election materials for 20 years and remove itself from coverage in 1995.

Mother tongue groups that are not also racial groups include such groups as Franco-Americans, German-Americans, and Italian-Americans. Because Sections 4, 5, and 6 of the Voting Rights Act only provide protection against discrimination based on race or color these groups would receive no protection from the bill. Even if the English-only election system discriminated against the mother tongue group the county could successfully bring a Section 4(a) bail-out suit because the discrimination would not be based on race or color.

A complication arises if, in addition to the mother tongue group that is not a racial group, there is present in the county a racial group that is not a mother tongue group. Blacks in the county, for example, would receive the protection of the Voting Rights Act. Section 5 preclearance would be required, but the issue would be discrimination on account of race or color, i.e., discrimination against blacks, rather than discrimination against the mother tongue group. The Attorney General could also send examiners and observers to the county if needed to protect the voting rights of blacks. Thus blacks (or other racial groups) would be protected because of the presence of, for example, German-Americans who would not themselves be protected.

This anomalous protection would usually be shortlived. The jurisdiction could immediately bring a bail-out suit under Section 4(a) alleging that the use of English-only elections did not discriminate on the basis of race or color. Since the mother tongue group would not have been discriminated against on the basis of race or color, the Department of Justice would have no ground on which to oppose the suit.

There are two circumstances that could lead to the retention of coverage in this situation. First, if there were in the jurisdiction a second mother tongue group that was, unlike the first, also a racial minority but constituted less than 5 percent of the population, a court might hold, if the group were numerous and concentrated enough, that the English-only election discriminated against it. Secondly, if at any time during the past 20 years the jurisdiction enforced a literacy requirement, it would not be allowed to remove itself if that test had the effect of discriminating against blacks (or other racial groups) under the theory of *Gaston County* v. *United States*, 395 U.S. 285 (1969).[3]

Language discrimination

If a Native American is discriminated against because he or she is a Native American, that is an example of discrimination on account of race or color. If, however, a Native American is discriminated against because an election worker cannot speak, for example, the Navajo language, this might be discrimination on account of language rather than discrimination on account of race or color. Which it is would depend on the facts of the particular instance. If, for example, there were in the jurisdiction numerous Polish- and Italian-Americans who did not know English and no provision was made for their assistance at the polls either, and if generally Native Americans participated freely in the electoral process and were frequently elected to office, then one might conclude that the only discrimination was on account of language and not on account of race or color.

H.R. 3247 assumes that any discrimination against a mother tongue group that is also a racial group is discrimination on account of race or color. While this may be the case it is not true by definition and needs to be shown for each group. This has implications for the effectiveness of H.R. 3247. If discrimination on account of mother tongue is not, for racial groups, discrimination on account of race or color, then persons of Spanish origin, Asian Americans, and Native Americans get no more protection from the bill than do Franco-Americans and German-Americans.

Evidence of discrimination

The Census uses "mother tongue" to refer to the language that a person used at home as a child. The fact that one's mother tongue is other than English does not mean that one does not now normally speak English or that one cannot speak and understand English adequately. Thus there is no guarantee that the bill would identify groups that are actually harmed by English-only elections.

Moreover, the intent of H.R. 3247 is to do far more than remedy any language barriers that exist in the electoral process. The bill would authorize the Attorney General to send examiners and observers to the jurisdictions covered by it and

[3] Either of these situations could prevent bail-out in the situation discussed above where the mother tongue group was also a racial group but was not discriminated against because members of the group knew English.

would require these jurisdictions to follow Section 5 preclearance procedures whenever a change affecting the electoral process is made. Congress can be expected to pass this legislation, therefore, only if it concludes that there is a need, either actual or potential, for the Voting Rights Act remedies.

Twenty years

H.R. 3247 would provide coverage for the States and counties affected for 20 years. Under the original Voting Rights Act Congress provided coverage for 5 years. When Congress saw that 5 years were not enough, coverage for an additional 5 years was provided. This year bills are before Congress to extend the Voting Rights Act for either 5 or 10 more years. Instead of applying the requirements and procedures of the Voting Rights Act to the newly covered areas initially for a 5 year period and reviewing progress after 5 years to see if an extension is necessary, Congress would under H.R. 3247 make the determination at the outset that 20 years of the Voting Rights Act are necessary.

Definition of test or device

Section 3 of H.R. 3247 adds to the definition of test or device contained in Section 4(c) of the Voting Rights Act a State or political subdivision's providing "election or registration materials printed only in English language. . . ." A test or device is present under this definition if either registration or election materials were provided only in English. However, if *some* registration materials and *some* election materials were provided in another language the jurisdiction would apparently not be covered by this definition, even if the materials were inadequate and the system remained discriminatory against the non-English-speaking. Furthermore, the bill does not specify that the language other than English in which the materials are to be printed must be the language of the mother tongue group that constitutes 5 percent or more of the voting age population. Thus if a county were 10 percent Japanese-American and printed its materials in Tagalog it would not be covered. It follows that if the county were 10 percent Mexican-American and 10 percent Japanese-American it would not be covered if it printed materials in either Spanish or Japanese but not in both.

When Congress banned the use of tests or devices anywhere in the Nation in 1970 for 5 years is used the same definition of tests or devices that was already contained in Section 4(c) of the Voting Rights Act. This definition is contained in Section 201(b) of the act. H.R. 3247 changes the definition of tests or devices contained in Section 4(c) (but only for elections occurring in November 1972 or thereafter) but does not change the definition contained in Section 201(b). Given the difference in definitions it would be reasonable, if H.R. 3247 were enacted, to interpret Section 201 not to prohibit inadequate bilingual election materials or assistance. This could reduce the protection that courts might provide for non-English speaking voters.

Section 4(d) escape

Section 4 of H.R. 3247 amends Section 4(d) of the Voting Rights Act to deny to jurisdictions covered because of the bill's trigger the opportunity to bail out if there have been few incidents of the discriminatory use of tests, these incidents have been promptly corrected and have no continuing effects, and there is no reasonable probability of their recurrence in the future. Jurisdictions covered by H.R. 3247 are excluded from this escape provision "to make clear that the mere printing of Spanish election materials is not sufficient grounds for the jurisdiction to escape coverage." (Testimony of Rep. Jordan) Rep. Jordan further states: "Without this amendment a large loophole would be created." Her view appears to be based on a misinterpretation of what Section 4(d) allows. She states:

> "Section 4(d) of the Act provides that if a jurisdiction ceases to employ a test or device, and if the jurisdiction can prove the continuing effect of a test or device has been mitigated, the jurisdiction may be relieved from coverage by the District Court." Id.

But under Section 4(d) it is not sufficient that a jurisdiction cease to employ a test or device; rather, incidents of the discriminatory use of tests or devices must have been "few in number and have been promptly and effectively corrected by State and local action. . . ." Any jurisdiction which regularly provided its election materials only in English in the 20 year period could not satisfy Section 4(d).

H.R. 3501, introduced by Reps. Edward Roybal of California and Herman Badillo of New York, is a substitute for H.R. 939. Thus, like H.R. 3247, it combines in one bill the extension of the present temporary provisions of the Voting Rights Act (with some modification) with new coverage for other jurisdictions. Specifically, the bill extends the temporary provisions of the act for 10 years (Section 5) and makes the literacy test ban permanent (Section 7). Unlike H.R. 939 or H.R. 3247, the bill also provides judicial review of a decision by the Attorney General not to send examiners to a county under Section 6 of the Voting Rights Act if he has received 20 complaints (Section 6).

In addition, the bill provides Voting Rights Act coverage for jurisdictions in which 5 percent or more of the citizens of voting age are of Spanish origin, in which the voting rate in the 1964 or the 1968 presidential election was less than the national average, and in which, in one of those years, elections were held in English only. These jurisdictions are to be covered by the Voting Rights Act for 10 years, from 1975 to 1985.

The principal provisions of H.R. 3501 are contained in Section 1. That section contains a congressional finding that the conduct of elections only in English is a practice which discriminates against persons of Spanish origin under the 14th and 15th amendments.

The bill therefore applies the temporary provisions of the Voting Rights Act (Section 5 preclearance, examiners, and observers) for a 10 year period (August 6, 1975 to August 6, 1985) to States or political subdivisions of States that meet all three of the following criteria:

1. Five percent or more of the citizens of voting age of the State or political subdivision are of Spanish origin.

2. Printed election or registration materials of the State or political subdivision for the 1964 or the 1968 presidential election were only prepared in English or registration and election procedures were otherwise conducted only in English.

3. In either 1964 or 1968 less than the "national percentage" of citizens of voting age in the jurisdiction voted in the presidential election.

The jurisdiction can escape coverage before 1985 only if it can prove in court that during the preceding 10 years it has not had any voting rights violations under the 14th or 15th amendments.

The remaining sections of the bill (Sections 2, 3, and 4) make necessary adjustments in Sections 5, 6, and 13 of the Voting Rights Act.

While a jurisdiction would become covered under H.R. 3501 because of the presence of persons of Spanish origin, any racial group in a covered jurisdiction would then be protected under the Voting Rights Act.

Covered jurisdictions

The exact geographical coverage of H.R. 3501 is unclear. According to a member of the staff of Rep. Roybal, a sponsor of the bill, the States of Arizona, California, and Texas would be covered. There are probably also scattered counties elsewhere in the Southwest and possibly in Florida and in the Northeast that would be covered. The determination of what jurisdictions would be covered is difficult for three principal reasons.

First, one criterion is that 5 percent or more of the jurisdiction's citizens of voting age are of Spanish origin. While the Census gathers data on citizenship, Spanish origin, and age, these data are not published in a way that allows a convenient determination of a jurisdiction's Spanish origin, citizen, voting age population.

Secondly, the bill does not tell the Director of the Bureau of the Census whether a determination with respect to the 5 percent criterion should be as of 1975, as of the 1970 Census, as of the date used for the other parts of the trigger, i.e., 1964 or 1968, or as of the 1960 Census. The use of any of these dates could be justified, but some are obviously more convenient than others. Moreover, there have been significant changes in the Spanish origin population during the last 15 years as well as changes in Bureau of the Census methodology in counting persons of Spanish origin.[4]

Third, another criterion contained in the bill is whether registration and voting materials were available in Spanish in 1964 or 1968. This is difficult to determine because the bill does not specify exactly what would satisfy the criteria, because the elections in question are so far in the past and therefore difficult to obtain definite information for, and because so many different jurisdictions will have to be considered.

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[4] According to a member of Mr. Roybal's staff, 1960 data are being used.

Rationality of the trigger

Coverage under H.R. 3501 is based, in addition to the population criterion, on voter turnout and the language of elections in 1964 or 1968. Thus, to the extent that the criteria of the bill are tied to the existence of discrimination, it is discrimination that occurred in 1964 or 1968. It would appear to be more acceptable to base coverage on present conditions or on conditions at the time of the most recent presidential election. Neither the Voting Rights Act of 1965 nor the Voting Rights Act Amendments of 1970 went back beyond the most recent presidential election.

A jurisdiction is covered under H.R. 3501 if voter turnout in the 1964 or 1968 presidential election was less than the national rate of turnout. This was 61.8 percent in 1964 and 60.7 percent in 1968. This is a much more stringent test than the 50 percent test used by the 1965 or 1970 acts.[5] While Congress might reasonably determine that voter turnout below the 50 percent level is unacceptably low, it is more difficult to fault a turnout rate because it is below the national rate. For unless turnout in each State or county in the Nation is equal, there will always be some jurisdictions above the national rate and some below.

Termination of coverage

The bill provides two ways for coverage to be terminated. First, a covered jurisdiction can file suit in the United States District Court for the District of Columbia and show that—

> during the ten years preceding the filing of the action such State or subdivision has not enacted or sought to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting which had the purpose or effect of denying or abridging the right to vote as guaranteed under the fourteenth and fifteenth amendments.

While coverage is based on the presumed discriminatory effect of registration and election procedures conducted only in English, this bail-out provision does not give the jurisdiction an opportunity to prove that its procedures are not in fact discriminatory. It could not escape, for example, by proving that all of its citizens of Spanish origin and of voting age speak English or by showing that it has adequate oral assistance in Spanish. A jurisdiction cannot even escape if it proves that there has been no discrimination in voting of any kind against persons of Spanish origin during the preceding 10 years. Any abridgment of the right to vote under the 14th or 15th amendments would be sufficient to keep the jurisdiction covered. Thus if a court found that the State's redistricting plan in 1971 violated one person, one vote criteria the State would not be able to remove itself, though the case did not involve discrimination against persons of Spanish origin at all. Finally, the bill does not contain a provision like Section 4(d) of the Voting Rights Act of 1965, allowing escape if incidents of discrimination have been few in number and quickly corrected.

Although the first method of bail-out is almost impossible to use successfully, the second method is automatic. Coverage ends on August 6, 1985, even if discrimination against persons of Spanish origin has not ended, and coverage cannot be reapplied under the bill if discrimination is resumed after August 6, 1985. Under the Voting Rights Act of 1965, on the other hand, a jurisdiction cannot remove itself except by proving to the District of Columbia District Court that it has not, for the required number of years, used tests or devices with the purpose or the effect of discriminating. Even if the jurisdiction obtains a judgment from the court, the Department of Justice can reopen the case at any time up to 5 years after the judgment.

Evidence of discrimination

That persons are of Spanish origin does not mean that they do not in fact speak English. H.R. 3501, moreover, is not primarily concerned with remedying language problems. It applies the principal tools of the Voting Rights Act—Section 5 preclearance, examiners, and observers—to the jurisdictions that it would cover. Congress can be expected to pass this legislation, therefore, only if it concludes that there is a need, actual or at least potential, for the Voting Rights Act remedies.

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[5] With this test the entire State of North Carolina would also have been covered in 1965 and the entire States of California and New York would also have ben covered in 1970. In addition, a number of other countries in States not covered as a whole would have been covered.

Examiners

Section 6 of H.R. 3501 allows judicial review of a decision of the Attorney General not to send examiners to a county after he has received 20 complaints from that county of denials of the right to vote on account of race or color. While the U.S. Commission on Civil Rights has disagreed with the Attorney General concerning his policy for the use of examiners, no evidence has been cited that the Attorney General has ever failed to send examiners to a county after 20 complaints had been received.

It would be difficult, moreover, to justify judicial review of this one aspect of enforcement of the Voting Rights Act while continuing to deny it with respect to other aspects. If judicial review were allowed at every stage of the act's enforcement, the effectiveness of the act could be seriously compromised.

Drafting

H.R. 3501 has a number of problems that probably relate to drafting.

The criteria for coverage contained in the bill are open to more than one interpretation. One criterion is that the jurisdiction "printed its election or registration materials or otherwise conducted its registration or electoral procedures only in the English language. . . ." This appears to mean that if the jurisdiction printed some of registration materials and some of its election materials in Spanish and otherwise conducted some of its registration and election procedures in Spanish it would not be covered by the bill, even if the use of Spanish was so slight and inadequate that Spanish speaking persons were discriminated against.

Moreover, if the jurisdiction conducted registration and elections both in English and French (or any other language), it would not be covered by this bill, even though the Spanish speaking minority would still be discriminated against.

The way the bill is drafted, if elections were in English only in 1964 but not in 1968 and if turnout was below the national rate in 1968 but not in 1964 (or vice versa) the jurisdiction would be covered. While this might have been intended, it makes the link between English-only elections and low turnout extremely tenuous.

The bill does not contain a definition of "Spanish origin." It should either provide an explicit definition or refer to a definition of the Bureau of the Census.

Section 4(a) of the Voting Rights Act specifies that "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. . . ." H.R. 3501 contains no comparable provision. Thus it does not explicitly state that a citizen shall not be denied the right to vote because of the use of English-only elections.

In a number of places the bill uses the terminology "denying or abridging the right to vote as guaranteed under the fourteenth and fifteenth amendments." The Voting Rights Act, in analogous provisions, uses the terminology "denying or abridging the right to vote on account of race or color." (Section 4(a)) This indicates that the sponsors of the bill doubt that a 15th amendment basis for the bill (discrimination on account of race or color) is sufficient to protect persons of Spanish origin and therefore seek to protect rights under the 14th amendment as well. However, Sections 5 and 6 of the Voting Rights Act, which use the "race or color" terminology, are not modified by H.R. 3501. Thus either the bill fails in its attempt to apply Sections 5 and 6 (preclearance and examiners) to protect persons of Spanish origin in areas covered by the bill, or the use of "14th or 15th amendment" terminology in the bill is unnecessary.

If "14th or 15th amendment" terminology is necessary but is not used, then Sections 5 and 6 would protect blacks, Asian Americans, and Native Americans in jurisdictions covered by H.R. 3501 but would not protect persons of Spanish origin. If "14th or 15th amendment" terminology were used in Sections 5 and 6, preclearance could only be received if a change violated no 14th or 15th amendment right. Thus the Attorney General would be enforcing one person, one vote rules, for example.

Section 4 of H.R. 3501 amends Section 13 of the Voting Rights Act to allow terminatiou of Federal listing when 50 percent of the Spanish origin voting age population is registered. Unlike Section 1 of the bill, Section 4 does not refer only to citizens of Spanish origin. Thus in jurisdictions with a high percentage of Spanish origin residents who are not citizens the 50 percent level might be impossible or nearly impossible to reach.

CONCLUSION

Both H.R. 3247 and H.R. 3501 have serious problems, both in substance and in drafting. H.R. 3247 gives the appearance of protecting mother tongue groups when in fact it is designed to protect persons of Spanish origin. H.R. 3501 bases coverage on the situation existing 7 or 11 years ago rather than on the existence of discrimination now. Even if these basic problems and the many other problems described in this memorandum were taken care of, the fundamental question would remain whether a factual basis exists for Congress to impose the extraordinary measures of the Voting Rights Act on the jurisdictions that would be covered by either of the bills.

STAFF MEMORANDUM

U.S. COMMISSION ON CIVIL RIGHTS OFFICE OF GENERAL COUNSEL

Issue.—Is an English-only electoral process, in a jurisdiction with significant numbers* of citizens who are not literate in English, a "test or device" as defined by 4(c) of the Voting Rights Act?

The phrase "test or device" is used thirteen times in the Voting Rights Act and defined twice:

> 4. (c) The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

The courts have not specifically addressed the issue of definition in relation to English-only elections. It is clear, however, that all matters affecting voting or political participation are not cognizable as "tests or devices." [1] Some of the specific practices held not to be included are: property qualifications,[2] documentation of residency,[3] and a requirement that a candidate designate a financial committee.[4]

"ENGLISH-ONLY" ELECTIONS

The issue of "English-only" elections has been subject to substantial litigation in the context of whether such elections are violations of the right to vote.[5]

The leading cases, which have held such elections to be impermissible, concern Puerto Ricans. Under Section 4(e) of the Voting Rights Act, States are prohibited "from conditioning the right to vote on the ability . . . to read, write, understand or interpret any matter in the English language" of persons educated in an "American flag school" where the predominant classroom language was other than English.

In *Torres* v. *Sachs*,[6] the Federal District Court held that the electoral process in New York City, conducted exclusively in English, constituted a "condition" on Puerto Rican plaintiffs' right to vote. The court based its decision both on Section 4(e) and on Section 201 of the 1970 amendments. As the Section 201 definition of "test or device" [7] is identical to that contained in Section 4(c), the Court inferentially held English-only elections to be "tests or devices."

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*This memorandum assumes that the presence of a significant population of non-English speaking persons is required, as 4(d) of the Civil Rights Act excludes occasional incidents. In addition, those cases providing a remedy for monolingual elections have utilized a 5 percent non-English speaking population requirement.

[1] South Carolina v. Katzenbach, 383 U.S. 301 (1966).

[2] 30 Fed. Reg. 14045, 14046.

[3] Davis v. Gallinghouse, 246 F. Supp. 208 (E.D. La. 1965).

[4] Hadnott v. Amos, 295 F. Supp. 1003 (M.D. Ala. 1968).

[5] The issue of whether an English language literacy requirement can be a valid exercise of State power in non-Voting Rights Act situations has been addressed in a number of cases: in Castro v. California, 2 Cal. 3d 223 (1970), the California Supreme Court found that although the English language requirement is unconstitutional, it did not order a bilingual election, and stated that the State did have a valid interest in a single language system; in Mexican American Federation-Washington State v. Naff, 299 F. Supp. 587 (E.D. Wash. 1969) *jur. vac. rem'd. sub. nom.* Jimmez v. Naff, 400 U.S. 986 (1971), the Washington State Supreme Court held an English language literacy test to be a valid exercise of the State power to regulate suffrage; in Cardona v. Power, 16 N.Y. 2d 639 (1965), the New York Court of Appeals, prior to passage of the 1965 Act with its Section 4(e) special "Puerto Rican" provision, would not invalidate English literacy requirements.

[6] 381 F. Supp. 309 (1974).

[7] *Id.* at 312.

In reaching its conclusion the court pointed out that Congress had by § 4(e) recognized a situation created by governmental action. Many Puerto Ricans residing in New York City were born and educated in the Commonwealth of Puerto Rico, where—by governmental action—they were educated exclusively in Spanish. Since all persons born in the Commonwealth of Puerto Rico are U.S. citizens by virtue of congressional action [8] there was no "citizenship based" reason for becoming English language literate as there is for non-citizen immigrants who must be literate in English in order to attain citizenship status.[9] Although not mentioned, another factor that has systematically kept Puerto Rican migrants in the U.S. mainland from acquiring English language literacy has been the overwhelming failure of local school systems to provide equal educational opportunity to Puerto Rican migrants.[10]

The court in *Torres* felt that the right to vote was meaningless unless the voter was cognizant of what he or she was doing. It relied on early decisions relating to black Chicano illiterates, which required jurisdictions to provide illiterates with assistance.[11] The *Torres* court also focused on the definition of voting contained in Section 14(c)(1) of the Voting Rights Act which states that:

> The terms "vote" or "voting" shall include all action necessary to make a vote effective . . .

Another New York case makes clear that voting means more than the specific act of casting a ballot. In *Coalition for Education in District One* v. *Board of Elections* [12] concerning a court ordered multilingual school board election [13] the district court considered the entire electoral process including information, ballots, voter assistance, etc., to be essential parts of voting.

It is significant to note that neither the court in *Torres*, nor the courts in any of the similar cases decided in Illinois,[14] Pennsylvania,[15] or New Jersey,[16] have required a substantial showing of other voting discrimination or education discrimination against Commonwealth born Puerto Ricans.

APPLICATION OF TORRES PRINCIPLES TO OTHER LANGUAGE MINORITIES

The theory behind Section 4(e) of the Voting Rights Act is equally although somewhat differently applicable to at least three "racial" groups which contain significant numbers of persons not literate in English. These groups are: Mexican Americans, Native Americans and Asian Americans.[17]

Section 4(e), as noted earlier, contains congressional recognition of two significant factors relating to voting rights: (1) governmentally supported education exclusively in Spanish which had permitted citizens to be illiterate in English; and (2) citizenship by birth rather than based on a requirement of being literate in English. All three groups have been located in this country for generations; the presence of Native Americans and Mexican Americans preceded the establishment of the constitution. Their citizenship therefore is by birth. The inability to be literate in English for significant portions of these populations is due in large part to Federal, State, and local government inaction and all too frequently to deliberate unconstitutional denials of equal educational opportunity. This Commission has documented much discrimination in education against Chicanos in the Southwest [18] and the courts have recognized the existence of this educa-

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[8] 8 U.S.C. §1402.
[9] 8 U.S.C. §1423.
[10] *See* Hearing, U.S. Commission on Civil Rights, New York, February 1972; and *Bilingual/Bicultural Education/Un Privilegio o Un Derecho?* a report of the Illinois Advisory Commission to the U.S. Commission on Civil Rights, 1974.
[11] United States v. Louisiana, 265 F. Supp. 703 (E.D. La. 1966) aff'd per curiam 386 U.S. 270 (1967); United States v. Mississippi, 256 F. Supp. 344 (S.D. Miss. 1966); and Garza v. Smith, 320 F. Supp. 131 (W.D. Tex. 1970), *vacated and remanded*, 401 U.S. 1006 (1971), *appeal dismissed for lack of juris.*, 450 F. 2d 790 (5th Cir. 1971).
[12] 370 F. Supp. 42 (S.D. N.Y. 1972).
[13] Lopez v. Dunkins, 73 Civ. 695 (S.D. N.Y. 1973).
[14] PROPA v. Kusper, 350 F. Supp. 606 (N.D. Ill. 1972) *aff'd.* 490 F. 2d 575 (7th Cir. 1973).
[15] Arroyo v. Tucker, 372 F. Supp. 764 (E.D. Pa. 1974).
[16] Marquez v. Falcey, 73 Civ. No. 1447 (D. N.J. 1973).
[17] The phrase "race or color" as used in this memorandum includes language minority groups, such as Asian Americans, Native Americans, Mexican Americans, and Puerto Ricans. *See* separate USCCR staff memorandum: *The Phrase "race or color" as Used in the Voting Rights Act of 1965, as Amended, Includes Minority Groups Other than Blacks*, 1975.
[18] U.S. Commission on Civil Rights, the "Mexican American Educational Series". *Rept. I: Ethnic Isolation of Mexican Americans in the Public Schools of the Southwest* (1971); *Rept. II: The Unfinished Education* (1971); *Rept. III: The Excluded Student* (1972); *Rept. IV: Mexican American Education in Texas: A function of Wealth* (1972); *Rept. V: Teachers and Students* (1973); *Rept. VI. Toward Quality Education for Mexican Americans* (1974).

tional deprivation.[19] The tragic story of the educational neglect and abuse the Native American population has suffered has all too frequently been documented.[20] In addition, the U.S. Department of Health, Education, and Welfare has determined that monolingual education practices of the San Francisco schools discriminate against Asian Americans; this determination was upheld by the U.S. Supreme Court in *Lau* v. *Nichols*.[21]

Moreover, the Supreme Court has made clear that where the government bears responsibility for illiteracy, literacy cannot be used as a condition upon the right to vote.[22]

Although many of the factual bases which underly Section 4(e) are present for other language minority groups, the court cases concerning these groups do not establish clearly that monolingual elections violate their rights. The California Supreme Court [23] found an English language literacy requirement unconstitutional but did not order the same broad bilingual relief that the *Torres* court did. California does, however, now have a limited bilingual election process. In the State of Washington,[24] Chicano litigants were unable to convince the court that English-only elections were unconstitutional. The decision, however, was given prior to nationwide ban on literacy contained in the 1970 amendments to the Voting Rights Act.

Two cases arising out of Texas do support, indirectly, a thesis that English-only elections are part of a pattern of discrimination against non-English speaking citizens. In *Garza* v. *Smith* [25] Mexican Americans successfully challenged a Texas statue which allowed aid in voting to physically handicapped citizens but did not provide such aid to "Chicano" illiterates. The case, brought on an "equal protection" theory, did not specifically reach the issue of monolingual elections as a *per se* denial of voting rights. In *Graves* v. *Barnes* [26] the U.S. District Court held a redistricting in Bexar County, Texas (San Antonio) which provided for multi-member districts to violate the "one person, one vote" mandate of *Reynolds* v. *Sims* [27] in relation to the Chicano population. The U.S. Supreme Court in sustaining the holding in relation to Bexar County, in *White* v. *Regester* [28] noted that the District Court had based its decision on its survey that the "Chicano" population had differed from and continues to suffer from the effects of invidious discrimination in education, employment, economics, health and politics.

Utilizing Torres as the Basis of Holding That English-only Elections Are "Tests or Devices"

The Department of Justice has taken the position that the decision of U.S. District Court in *Torres* means that the utilization of English-only elections by New York is a test or device within the meaning of 4(b) of the Voting Rights Act. This position has been litigated and to the degree it was in fact before the court, sustained.[29]

The history of the New York litigation is important in determining the import of the current decision. In the 1968 Presidential elections, three counties in New York State, which has a literacy test, had less than 50 percent of voting age population voting. The counties, Kings, Bronx, and New York—all in New York City—by operation of the "trigger" in Section 4(b) are automatically subject to the special provisions of the Voting Rights Act, primarily Section 5. New York sought to remove itself from Voting Rights Act coverage, under the "escape clause" provision of Section 4(a) of the Voting Rights Act. The U.S. Attorney General consented to New York's removal.[30] After the decision in *Torres*, the

[19] *See*, e.g., Keyes v. School District No. 1, 413 U.S. 189 (1973) and Cisneros v. Corpus Christi Independent School District, 324 F. Supp. 599 (S.D. Tex. 1970) *modified* (as to remedy), 467 F. 2d 142 (5th Cir. 1972) *cert. denied*, 413 U.S. 922 *reh. denied*, 414 U.S. 881 (1973).

[20] *See*, e.g., U.S. Commission on Civil Rights, The Southwest Indian Report, 1973; NAACP, Legal Defense and Education Fund, Inc., *An Even Chance* (1971); Special Subcommittee of Indian Education of the Senate Committee on Labor and Public Welfare, Indian Education: A National Tragedy—A National Challenge, Nov. 1969, 91st Cong., 1st Sess.

[21] 414 U.S. 563 (1974).

[22] Gaston County v. United States, 395 U.S. 285 (1966). The court refused to allow Gaston County to be removed from the coverage of Section 4(b) which would have allowed it to reinstitute literacy testing, because the County had a long history of denying equal educational opportunity to its black citizens.

[23] Castro v. California, 2 Cal. 3d 223 (1970).

[24] Mexican American Federation-Washington State v. Naff, 299 F. Supp. 587 (E.D. Wash. 1969) *jud. vac. and rem'd. sub. nom.*, Jimmez v. Naff, 400 U.S. 986 (1971).

[25] 320 F. Supp. 137 (W.D. Tex. 1970) *vacated and remanded*, 401 U.S. 1006 (1971) *appeal dismissed for lack of juris.*, 450 F. 2d 790 (5th Cir. 1971). Subsequent history exclusively concerns remedy sought by plaintiffs.

[26] 343 F. Supp. 704 (W.D. Tex. 1972).

[27] 377 U.S. 533 (1964).

[28] 412 U.S. 755 (1973).

[29] New York v. United States, 95 S. Ct. 166 (1974).

[30] These decisions are readily appealable by third parties even though third parties may be subject to the operation of the "test or device." *See* NAACP v. New York, 413 U.S. 345 (1972) for a history of this litigation. *See also*, Apache County v. United States, 256 F. Supp. 903 (D.C. D.C. 1966) as to reviewability.

Department of Justice went back to the U.S. District Court and withdrew its previous consent and filed a motion to reopen. The District Court granted the motion to reopen. Several months later the District Court granted a motion[31] to deny New York's request for a declaratory judgment. The net effect is that the New York counties remained covered under Section 5 and New York's request to be removed was denied. New York appealed both District Court orders. The Supreme Court summarily affirmed. As the District Court did not enter a written opinion on either issue, it is unclear what import to give the Supreme Court's affirmation. The Department of Justice does not explain in detail its view that *Torres* found a "test or device" rather it simply alleges in its brief that it did:

> The practical consequence of the Board's practices is that the *Torres* plaintiffs and others similarly situated are unable to vote because they cannot adequately comprehend the English language. Thus, the Board has, in effect, imposed a "requirement that a person as a prerequisite for voting . . . demonstrate the ability to read, . . . understand, or interpret" the election materials (42 U.S.C. 1973b(c)). The printing, distribution, and use of election materials solely in the English language and the failure adequately to provide bilingual materials constitute a "test or device" within the meaning of Section 4(c).[32]

Although the *Torres* decision implies, by inference, that an English-only election is a "test or device" it does not clearly state that conclusion. *Torres* refers to the language of 4(e) "conditioning the right to vote . . . on the ability to read, write, understand, or interpret any matter in the English language." The definition of "test or device" in Section 4(c) however refers to "any requirement that a person as a prerequisite for voting . . . demonstrate the ability to read . . . ." A key issue therefore is whether there is any substantive or legal distinction to be drawn between the meaning of the two sections.

The Supreme Court has adopted a policy of broadly interpreting the provisions of the Voting Rights Act.[33] In *South Carolina* v. *Katzenbach* [34] the court consistently referred to "literacy tests and similar devices" as mechanisms instituted for the purpose of disenfranchisement, framed in a way to facilitate such disenfranchisement and administered in a discriminatory fashion.[35]

English-only elections would seem to meet this standard. There is substantial evidence that English literacy requirements were designed to exclude non-English speaking immigrants.[36] The discriminatory effect of the English-only election is evidenced by the significant underrepresentation of Mexican Americans and other language minority persons in the political process. The administration of the device of such monolingual elections impacts only on persons not literate in English. The Department of Justice's position in *New York* v. *United States* is therefore a reasonable interpretation of the statutory language.[37]

As other language minority persons are similarly situated to the Puerto Rican paintiffs in *Torres* v. *Sachs*, a similar case can be constructed so that English language elections are definable under Section 4(c) as "tests or devices."

CONSEQUENCE

A determination that English language elections are "tests or devices" does not necessarily subject the jurisdiction conducting the elections to the provisions of the Voting Rights Act.[38]

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[31] Civ. No. 73-1740, April 30, 1974. The motion for summary judgment was made by the intervenor NAACP on additional grounds to the holding in Torres.

[32] Motion to Affirm at 10.

[33] *See*, e.g., Allen v. State Board of Elections, 393 U.S. 544 (1969) and Perkins v. Matthews, 400 U.S. 379 (1971).

[34] 383 U.S. 301 (1966).

[35] *Id.* at 333-334.

[36] *See*, USCCR Staff Memorandum, The Constitutionality of Legislation by Congress Permanently Prohibiting the Use of Literacy Tests as a Prerequisite to Voter Registration, 1970, found in Hearings on Amendments to the Voting Rights Act of 1965 before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee, 91st Cong., 1st and 2d Sess., 413-14 (1970).

[37] The courts have been prone to give Justice significant leeway in making 4(b) determinations. *See*, e.g., Apache County v. United States, 256 F. Supp. 903 (D.C. D.C. 1966).

[38] Section 5, often labeled "the heart of the Act" provides that wherever a covered jurisdiction undertakes to change any matter affecting voting, the change must be submitted to the U.S. Attorney General or the District Court for the District of Columbia. The change is evaluated against the standard that it not have the purpose or effect of "denying or abridging the right to vote on account of race or color. . . ." Congress created Section 5 because it determined that traditional means had to date failed to eliminate voting discrimination. The long and expensive piecemeal process of litigating in relation to specific State legislation or practices had not been effective. Jurisdictions which historically had been flagrant violators of voting and other rights would under Section 5 bear the burden of justifying any action they take.

Section 4(b) of the Act is the "triggering mechanism" which determines Section 5 coverage. The use of a "test or device" is only one part of the formula. In order for coverage to exist, it is also necessary that during the 1964 or 1968 Presidential election, less than 50 percent of the persons eligible to vote were registered or less than 50 percent of the registered voters voted. Under this formula, of those jurisdictions containing significant numbers of language minority persons, probably Texas would be subject to Section 5 coverage.

Even if a jurisdiction could not be covered by Section 5 because it did not meet either the "test or device" or low voting requirement of the trigger, English-only elections would not be free from attack under The Voting Rights Act.

Jurisdictions not subject to Section 5 do not have free license to discriminate in voting. They are covered by the permanent sections of the Voting Rights Act of 1965, as well as prior Voting Rights legislation.[39] Any action or practice in a jurisdiction which is believed to discriminate in voting on the basis of "race or color" may therefore be challenged by court action.

THE ADMINISTRATIVE APPROACH IN IMPLEMENTING A DETERMINATION THAT ENGLISH-ONLY ELECTIONS ARE "TESTS OR DEVICES"

The Department of Justice, to date, has been willing to take the legal position that English-only elections are "tests or devices" only where a court has invalidated the "English-only election." [40] There does not appear to be any legal obstacle to the Department of Justice taking the same position without a judicial determination. In other Section 4(b) decisions Justice has not waited upon judicial determinations.

Justice's position seems to be based on several factors: the fact that the Act has been in existence ten years and such a position had not previously been taken; the lack of clear legislative history to support the position it took in *New York* v. *United States* and the possibility that the position could lose in a fully litigated setting.[41]

CONCLUSION

The argument that "English-only" elections are prohibited as "tests or devices" under the Voting Rights Act is applicable to Puerto Ricans and other language minorities other than Puerto Ricans. The reasonableness of the argument, however, does not preclude it from being rejected by the courts. Therefore, if it wishes to be certain that other language minorities are covered by the Voting Rights Act, it would be appropriate for Congress to legislatively achieve this result. The existence of substantial educational deprivation and its logical relationship to the electoral process should provide ample basis for such congressional action.

STAFF MEMORANDUM

EXAMPLES OF METHODS USED TO DENY MINORITIES THEIR VOTING RIGHTS

Dr. Arthur S. Flemming, Chairman of the U.S. Commission on Civil Rights, in his testimony of February 25, 1975, before the Subcommittee on Civil Rights and Constitutional Rights of the Committee on the Judiciary of the House of Representatives noted that minority voters continue to encounter barriers to the full exercise of their voting rights in jurisdictions covered by the Voting Rights Act. On pages 15 and 16 of that statement he summarized how these rights are denied at every stage of the political process. This memorandum lists, under each of the 19 summary areas he cited, cases taken from the Commisssion report, *The Voting Rights Act: Ten Years After*, published in January 1975. Page references are to the text of that report.

Included among examples that follow are materials which may tend to defame, degrade, or incriminate individuals. The Commission, in accordance with its statute, rules, and regulations, afforded these individuals an oppoftunity to reply in writing to such material. The responses are included in Appendix 7 of the published report.

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[39] 42 U.S.C. §1971(a); and 28 U.S.C. §1983.

[40] Statement of J. Stanley Pottinger, Assistant Attorney General for Civil Rights, before Civil Rights Oversight Subcommittee of House Judiciary Committee, March 6, 1975.

[41] In *Garza* the District Court in dicta did express the view that English-only elections were not "tests or devices."

(1) *Burdensome, inadequate, and inconvenient registration procedures*

Minority persons reported various kinds of registration hindrances including problems of time and location. For example:

(a) In Charleston County, South Carolina, which is over 100 miles long and 20 miles wide, most registration is conducted in Charleston, the county seat. Although mobile units have been sent into rural areas, it is alleged that despite requests they have not been sent to areas where blacks are concentrated. (p. 75)

(b) Registration personnel in one Alabama County have not posted notice of their schedules for precinct visits. The only way blacks are informed of the time and place of such registration is through notices sent out by the NAACP and other black organizations. (p. 76)

(c) Although hours of registration are prescribed by law, a Commission interviewer in one Alabama county was told that the registrar's office literally followed no set hours. The office reportedly opens late and closes early, especially when a number of blacks come in to register. (pp. 72–73)

(d) Blacks in Bertie County, North Carolina, reported that they were not informed of the need to register separately for municipal and county elections. (p. 77–78)

(2) *Hostile and uncooperative registration officials*

In a number of jurisdictions visited by the Commission staff the registrar was a white, unsympathetic with minority persons' desire to register. The registrars in Madison Parish, Louisiana, and Humphreys County, Mississippi, have been characterized by county residents as particularly hostile. The Madison Parish registrar is said to be incompetent and uncooperative. In addition to charges that the registrar closes the office when it is supposed to be open, she allegedly harasses black registrants, particularly about identification, In Humphreys County, Mississippi, the registrar reportedly has steadfastly opposed the black franchise. Among charges made against him is that he behaves in such an arrogant manner that registrants "are thoroughly denigrated, embarrassed and intimidated." (pp. 79–82)

(3) *Election officials fail to find their [minority voters] names on polling lists*

Failure to find voters' names on polling lists was a frequent problem in the areas visited. Although verification of voter registration can often be obtained by a trip to the courthouse, the impact of this tactic is to frustrate minority voters and turn them against participation in the political process.

In Wilcox County, Alabama, the names of numerous blacks were left off voting lists provided to election officials during the 1972 general election. These individuals were not permitted to cast challenge ballots (p. 100). In Oktibbeha County, Mississippi, many blacks have been required to make time-consuming trips to the courthouse to verify their registration because election officials claimed they could not find black voters' names on the lists (p. 99). A Mexican American voter in Monterey County, California, whose name was not posted on the polling list was told that he could not vote in the 1974 general election because he had registered too late. In actuality, he had registered two days before the books closed. (p. 103)

(4) *Failure to inform voters of the right to cast challenge ballots*

Minority voters are also seldom told of their right to cast a challenge ballot or are not given the opportunity to exercise that right until their eligibility to vote can be verified. During the 1973 municipal election in Starkville, Mississippi, "Election officials refused to allow a woman to cast a challenge ballot when she came to vote about 20 minutes before the polls closed. They claimed that her name was not on the list, and it was impossible for her to verify her registration before the polls closed." (p. 99) Two blacks in Moss Point, Mississippi, were not allowed to vote in the municipal election because election officials could not locate their names on the voting list. The precinct manager refused to allow them to cast challenge ballots. (p. 100)

(5) *Failure to provide adequate polling facilities*

Minority voters are often required to use inadequate, overcrowded voting facilities which may deter them from returning the polls for future elections. In Apache and Coconino Counties, Arizona, a serious shortage of polling places on the Navajo Reservation caused hardships and curtailed the vote in the 1972 general election. (pp. 109–111) One Tucson, Arizona polling place in the 1974 general election was so crowded that the line of Mexican Americans waiting to vote was so close to the voting booths that they could observe the choices of persons voting. (p. 111)

(6) Failure to inform voters of changes in polling places

Minority voters in several jurisdictions including Southampton County, Virginia, and Monterey County, California, reported that they are not informed by election officials of changes in their polling places. In the Southampton County general election in 1972 black voters were not informed that their polling place had been changed. When they went to the old polling place they were turned away. Many were also turned away from the new polling place. In this election a black candidate lost by 16 votes. (pp. 102–103)

In the 1974 general election in Soledad, California, the polling place was moved from its previous site; however, no signs were posted indicating its new location. (p. 109)

(7) Failure to inform minority candidates of the legal requirements for candidacy

Politically active blacks in covered jurisdictions reported instances of difficulty in finding out how to qualify as candidates. One prospective candidate in Humphreys County, Mississippi, was unable to obtain information on candidacy from either the county circuit clerk or the chairman of the election commission. "Another prospective candidate in the same county got the necessary information only with the help of an attorney with the Lawyers' Committee on Civil Rights Under Law in Jackson." (p. 138)

A probate judge in an Alabama county gave inaccurate information to a black candidate who wished to run against him by telling him that the filing fee was higher than it actually was. (p. 139)

(8) Location of polling places in white-owned stores, homes, or clubs where minorities are usually not welcomed

A district court in Mississippi found that the location of a polling place in the all-white VFW Club inhibited black voters in the free exercise of the ballot. (p. 105) "In the 1971 election in Humphreys County, Mississippi, one polling place was in the same building as the white candidate's office. (p. 105)

(9) Residency and purging requirements applied unequally to minority and white registrants

Such tactics as discriminatory purges and unfair uses of residency requirements remove from voting rolls the names of large numbers of minority voters. Discriminatory purging, among other irregularities, led a Federal court to set aside the April 1970 Democratic primary in Tallulah, Madison Parish, Louisiana. According to the court, the registrar failed to provide adequate notification of the purge and reinstatement procedures to 141 persons purged for nonvoting. All but 11 of them were black. The purge was conducted during the 30-day period in which the books were closed and deprived the voters of a full 10-day period for reinstatement. Although the registrar extended the reinstatement period for 4 days, she failed to inform the public or the purged voters of that fact. (pp. 87–89)

Another discriminatory purge occurred in a small Georgia town after blacks won three of five city council seats in 1971. In litigation concerning this purge, it was alleged that a committee that had no criteria other than personal opinion purged the rolls of non-residents of the town. It was further alleged that the purge "was instituted for the purpose of removing black voters from the list of electors in order to insure that black candidates for office would be defeated in the December 5, 1973 general election." They were. (pp. 89–90)

(10) Failure to provide bilingual election materials

Language minority voters often have their voting rights limited because election materials are almost uniformly printed in English. Navajo voters in Apache County, Arizona, have expressed concern about the lack of voting materials in their native languages and have suggested that cassette recordings of instructions and propositions be placed at the polls. To date, Apache County has not made any provisions for making such translation available. (p. 121)

There is a lack of sufficient or adequate materials in Spanish in all covered jurisdictions where there are numbers of Spanish-speaking voters. Although there is a court order requiring translation of the ballot into Spanish in New York City, the translation for the September 10, 1974 primary was so inadequate it created "confusion and disillusionment" among Puerto Ricans. (pp. 119–120)

In Pima County, Arizona, the only official effort to provide election materials in Spanish was the translation of a small section of the sample ballot mailed to each voter listing three recent changes in election law. Neither the section on the use of the voting machine nor the propositions were translated. (pp. 120–121)

(11) Failure to provide adequate assistance at the polls for illiterates and non-English-speaking voters

Although most State statutes provide that assistance be given to voters requiring it, such assistance is sometimes neither available nor adequate. Two illiterate voters requested assistance in Macon County, Georgia, in the September 1974 primary. The poll worker told the first illiterate to help the second after he had finished voting. (p. 124)

In Madison Parish, Louisiana, and Surry County, Virginia, poll workers reportedly do not assist black illiterate voters in hopes that they will make disqualifying mistakes on their ballots. (p. 123)

Since many Navajos neither speak or read English, they require assistance in the use of voting machines and in the translation of propositions on the ballot. In the November 1974 general election at the Tuba City precinct on the Navajo Reservation, there were 13 voting booths and only one interpreter. Unavailability of assistance and the 3-hour wait caused many people to leave without voting. (p. 117)

(12) Questionable increase in the number of absentee ballots cast for white candidates

Absentee ballot problems were reported in many jurisdictions. They included both the casting of an inordinately large number of absentee votes for white candidates and its corollary, the denial of absentee ballots to black voters. The 1972 municipal election in Fort Valley, Georgia saw the defeat of three black candidates by whites in a runoff on the strength of absentee votes. The election was subsequently overturned because absentee ballots had been issued to nonresidents. (p. 127)

The general election in Wilcox County, Alabama, in 1972 was decided by absentee ballots. The white candidate received 178 of 180 absentee votes. The black candidate would have won by more than 100 votes but for the absentee ballots. Subsequent investigation showed that blacks had great difficulty obtaining absentee ballots. (p. 128)

(13) Failure of voting machines in minority precincts to record votes

Inaccurate counting of votes from black precincts is often a problem when paper ballots are used but, as found in *Brown* v. *Post*, a Madison Parish, Louisiana, case, it can also occur with voting machines. (p. 88) The report cites an example of discriminatory vote counting from Noxubee County, Mississippi as reported by a poll watcher:

> When a ballot cast for a black was examined, white vote counters would often remark, "Here's another one of *these*." Many ballots cast for black candidates were disqualified because the checkmark was on the boundaries of the parenthesis or box next to the candidate's name. Ballots cast for white candidates were much less frequently disqualified for similar technicalities. (p. 154)

(14) Threats or acts of economic or even physical reprisal for political activity

Although incidents of actual violence occur much less frequently than ten years ago, a black "key campaign worker" was murdered in August 1970 in West Point, Mississippi. The victim, a supporter of the black mayoral candidate, was shot five times as he sat in a campaign van. A white man disarmed at the scene was acquitted by an all-white jury. (p. 175)

In February 1974 an assault and subsequent altercation between the registrar and a prospective registrant and her husband occurred in Madison Parish, Louisiana. (pp. 183–184)

A candidate for a State house seat in South Carolina charged that economic pressure from her opponent contributed to her defeat. The opponent, whose family owned the gas company patronized by 75 percent of the district's voters, reportedly threatened to cut off service to black voters who opposed him in the 1974 primary runoff. (p. 199)

(15) Election officials refuse to permit campaign workers for minority candidates access to voters near the polls

Minority candidates and campaign workers frequently reported that electioneering distance limits from the polls were enforced more stringently against them than against their white opponents. In Stewart County, Georgia, for instance, a "check-off worker" for a black school board candidate in the August 1974 primary was not allowed to sit outside a polling place checking off the names of persons who entered to vote. In addition, the white opponent was allowed

to enter the polling place frequently during the day to check the new voting machines while the black candidate was not. (p. 148)

A second such incident occurred in a Louisiana town where a polling place official, who happened to be the relative of one of the white candidates, vigorously enforced the 300-foot rule. The one black candidate sat most of the day behind a post on a porch across the street from the poll. She was prevented from communicating with her poll watchers unless they came out to see her. The official, however, was observed to have frequent conferences with his relative throughout the day. (p. 147)

(16) Refusal to permit effective pollwatching for minority candidates

Minority candidates in several jurisdictions reported that their poll watchers were sometimes refused admission to polls or impeded in the performance of their duties once inside the polling place. One example of an attempt to exclude a poll watcher for a black candidate from a polling place altogether comes from a special election in 1974 in Adams County, Mississippi. The white poll manager of one polling place would not let in the poll watcher for the black candidate for county supervisor until after 10:00 a.m., 3 hours after the polls opened. (pp. 149–150)

"A black who was defeated in a race for county board of supervisors in Virginia in 1972 reported that his watcher at the election was not permitted behind the tables where the voter's names were checked off. He was thus unable to verify that the persons who voted were actually on the voters' list. He could only observe who went in and out of the voting booth. He was also not allowed to observe the counting of the ballots." (pp. 151–152)

(17) Refusal to seat successful minority candidates

Minority persons in several jurisdictions reported that defeated whites and their supporters sometimes went to great lengths to make assuming office difficult for minority candidates who managed to win elections. In one case a Navajo who was elected to the three-member county board of supervisors in Apache County, Arizona, with a clear majority was denied his seat. He was unable to assume office until the State Supreme Court ruled for him in a lawsuit. The defeated candidate argued that because the Navajo winner was immune from civil process while on the Navajo Reservation and because he did not own any taxable property he could not be seated. (p. 166)

On two occasions defeated whites in Bolton, Mississippi challenged the results of municipal elections either in court or before the Bolton Democratic Executive Committee. (pp. 166–167)

(18) Racial gerrymandering

There are numerous examples of racial gerrymandering in the nine States covered by the 1975 Report. The following two should give an idea of the nature of the problem:

The 1971 districting plan for the Arizona State legislature created 30 single-member senate districts, each of which served as a two-member house district. As originally introduced in the legislature the plan placed the Navajo reservation entirely within a single legislative district. "Thereafter, and at the insistance of an incumbent House member who resides in the district as proposed, the bill was so amended that the reservation was divided among three legislative districts.

The court found that the division of the reservation "was made in order to destroy the possibility that the Navajos, if kept within a single legislative district might be successful in electing one or more of their own choice to the legislature." The court adopted a revision of the plan which restored the reservation to a single district." (pp. 246–247)

Louisiana adopted a new legislative districting plan in 1971 which was objected to by the Attorney General. "The plan placed as many blacks as possible into—and, indeed, overpopulated—the district of the State's only black legislator to prevent the formation of another majority black district. It split up three majority black rural parishes that together could have formed a house district that was majority black. It used multi-member districts to dilute the political effectiveness of concentrations of black population, and it also submerged black voters by creating noncontiguous districts." (pp. 234–235)

(19) Imposition of voting rules such as at-large elections and anti-single-shot laws that minimize if not eliminate the chance for minority political success

Discriminatory rules of some type have been applied in all the jurisdictions discussed in the report. The following examples give some indication of the impact of such rules:

In 1962 the Mississippi legislature adopted a law requiring at-large voting. Because of the renewed black interest in voting and because of the continuing shift of the black population in Mississippi from farm to city, there was concern that wards in many cities would become predominantly black and that these blacks would be able to elect their own aldermen. Therefore the bill's sponsor argued that the change was needed in order "to maintain our southern way of life."

"The effect of the law is as clear as its purpose. In the 1973 municipal elections, considering those of the affected cities whose populations are less than ⅔ black, only ⅓ of 1 percent of the aldermen elected were black in a State that is 37 percent black." There is now pending a statewide class suit challenging the at-large voting system of nine Mississippi cities. Its outcome will affect at least 29 cities and possibly as many as 200.

A suit has been filed challenging the at-large method of election in Birmingham, Alabama. "While Birmingham is 42 percent black, only two of the nine council members or 22 percent, are black. The use of numbered posts was eliminated by the Justice Department in 1971, but an anti-single-shot requirement continues to reduce the effectiveness of the black vote. In the 1971 election 16,000 ballots were voided because fewer candidates were voted for than there were positions available on the city council. Some 97 percent of the voided ballots were from black areas, a Commission staff member was told." (pp. 317–318)

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C., March 20, 1975.

HON. DON EDWARDS,
Chairman, Subcommittee on Civil Rights and Constitutional Rights, Committee on the Judiciary, Washington, D.C.

DEAR MR. CHAIRMAN: The Commission on Civil Rights is transmitting at this time two staff memoranda of legal opinion which Chairman Flemming promised to provide during his testimony on extension of the Voting Rights Act on February 25, 1975. The first memorandum concerns the constitutionality of a permanent legislative ban on the use of literacy tests as a prerequisite to voter registration. The second memorandum pertains to the question of whether the terms "race or color" in the 15th Amendment include national origin minorities and whether coverage of national origin minorities under the Voting Rights Act should be based on the Fourteenth or Fifteenth Amendment.

As indicated in our letter of March 13th, we hoped to also transmit to you today a copy of our letter to Chairman Al Ullman regarding the Commission's recommendations for the repeal of those sections of the Tax Reform Act of 1969 which limit the ability of foundations to fund non-partisan voter registration campaigns. Staff are still preparing our recommendations on this matter, and they will be transmitted to you at the same time they are sent to Chairman Ullman.

If you have any questions, please have Mr. Parker and Ms. McNair call Bud Blakey (254–6626).

Sincerely,

JOHN A. BUGGS, *Staff Director.*

Enclosure.

STAFF MEMORANDUM

THE CONSTITUTIONALITY OF LEGISLATION BY CONGRESS PERMANENTLY PROHIBITING THE USE OF LITERACY TESTS AS A PREREQUISITE TO VOTER REGISTRATION

I. THE PROPOSED LEGISLATION

The Commission on Civil Rights in its report *The Voting Rights Act: Ten Years After* (1975) recommends that the Voting Rights Act (42 U.S.C. § 1973 et seq.) be extended for 10 years and that the national ban on literacy tests be extended for the same number of years. While its report and its testimony to Congress [1] did not call for a permanent national ban on literacy tests, the Commission is

[1] Testimony of Arthur S. Flemming, Hearing of the Civil Rights and Constitutional Rights Subcommittee of the Committee on the Judiciary, U.S. House of Representatives, February 25, 1975.

of the opinion and supports the view that *a permanent national ban on literacy tests is constitutional.*[2] This memorandum considers the constitutionality of proposed legislation which would ban permanently the use, anywhere in the nation, of literacy tests as a prerequisite to voter registration.

Congress is currently considering a number of proposals designed to extend and expand the current Voting Rights Act (42 U.S.C. § 1973 et seq.). Section 2 of H.R. 939 introduced on January 14, 1975, Section 6 of H.R. 3247 introduced on February 19, 1975, and Section 7 of H.R. 3501 introduced on February 20, 1975, (94th Cong., 1st Sess.), provide for a national permanent ban on literacy tests. An alternate proposal would extend the present national ban contained in the law (42 U.S.C. § 1973aa) for 5 years (H.R. 2148). It is clear from prior legislation and the sections of existing law which these proposals amend that literacy tests are the major discriminatory voting "test or device," [3] and that a ban on literacy tests would require States to assure that illiterates are able to vote effectively.[4]

The Voting Rights Act defines the phrase "test or device" to mean

> any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.[5]

It defines the terms "vote" or "voting" broadly to include

> all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.[6]

The extension of the literacy test ban would primarily affect the 15 States [7] that currently retain provisions for such tests or devices within the meaning of the Act in their constitutions or statutes. It is uncertain to what degree these States would enforce literacy requirements, and which States might reenact them if the suspension were not continued or made permanent. Research by the Commission prior to the national suspension in 1970 showed 21 States [8] had tests then, although several States appeared not to enforce them or to enforce them irregularly.[9]

II. PRIOR LEGISLATION RELATING TO LITERACY TESTS

Earlier civil rights legislation regulated and restricted the use of literacy tests to eliminate the particular evils that Congress found associated with such tests.

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[2] Commissioner Frankie M. Freeman's view favoring a permanent national ban on literacy tests is included in the report (p. 357), and this view is shared by Chairman Flemming, Commissioner Murray Saltzman (news conference, Jan. 23, 1975) and Commissioner Manuel Ruiz, Jr. Support for a temporary ban on literacy tests is stated by Commissioners Stephen Horn (at p. 360, 5 year extension) and Robert Rankin (at p. 363, 10 year extension) in the report.

[3] This memorandum only discusses the issue of congressional authority to ban literacy tests, the questions involved with other tests or devices may be similar. *See* also U.S.C.C.R. Staff Memorandum "Is an English only electoral process, in a jurisdiction with significant numbers of citizens who are not literate in English, a 'test or device' as defined by Section 4(c) of the Voting Rights Act?" March, 1975.

[4] Assistance to illiterate voters has been held to be required under the Voting Rights Act: United States v. Louisiana 235 F. Supp. 703, 708 (E.D. La. 1966), aff'd per curiam, 386 U.S. 270 (1967); United States v. Mississippi. 256 F. Supp. 344, 348 (S.D. Miss. 1966); Morris v. Fortson, 261 F. Supp. 538 (N.D. Ga. 1966).

[5] Section 4(c), 42 U.S.C. § 1973b(c).

[6] Section 14(c)(1), 42 U.S.C. § 1973 (c)(1).

[7] Alabama, Ala. Const., amend 223, § 1, Ala. Code, Tit. 17, §31 (Cumm. Supp. 1973); Connecticut, Conn. Const., Art. 6, § 1; (1967); Delaware, Del. Const., Art. 5 § 2 (Supp. ——); Georgia, Ga. Code Ann. § 2-704 (1973); Louisiana, LSA Const. Art. 8, § 1(c)(d) (Supp. 1974), LSA-R.S. § 18:31 (1969); Maine, Me. Const., Art. 2, § 1 (1964); Mississippi, Miss. Const., Art. 12, § 244 (1972), Miss. Code Ann. §§ 23-5-19 (1972); New Hampshire, N.H. Const. Pt. 1, Art. 11 (1970), N.H. Rev. Stats. § 55.16, 55. 12 (1970); New York, McKinney's Const., Art. 2, § 1 (1969); North Carolina, N.C. Const. VI, § 4 (1970), N.C. Gen. Stats. § 163-58 (1972); South Carolina, S.C. Const., Art. 2, § 6 (1971), S.C. Code Ann. § 23-62(4) (Supp. 1973); Washington, Wash. Const., Art. 6, § 1, Amend. 5 (1964); Wyoming, Wyo. Const., Art 6, § 9 (1957); Oregon, Oreg. (1964), Const. Art. 8 § 6 (1974); Oregon (School board elections). Idaho Const., Art 6, § 3 disqualifies on the basis of teaching, advising, counseling, or encouraging persons into bigamy or polygamy (a good character test).

[8] These States were: Alabama, Alaska, Arizona, California, Connecticut, Delaware, Georgia, Hawaii, Idaho, Louisiana, Maine, Massachusetts, Mississippi, New Hampshire, New York, North Carolina, Oregon, South Carolina, Virginia, Washington and Wyoming.

[9] U.S. Commission on Civil Rights, Memorandum, Current Status of Literacy Tests or Devices for the Qualification of Prospective Voters, Printed in Hearings on Amendments to the Voting Rights Act Before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee, 91st Cong., 1st and 2nd Sess., at 407 (1969-1970).

The Civil Rights Act of 1957,[10] provides the Attorney General of the United States with specific statutory authority to institute suit on behalf of persons deprived of voting rights by reason of race or color. The civil rights legislation passed in 1960 [11] and in 1964 [12] had the effect of strengthening the 1957 Act. The Civil Rights Act of 1964 required that any literacy test must be entirely in writing [13] and created a presumption that a person with a sixth grade education is literate.[14] The Voting Rights Act of 1965 extended this presumption to persons educated in American flag schools in which the language of instruction is other than English [15] and it temporarily banned the use of literacy tests for 5 years in areas in which presumptively they had been used for improper purposes.[16] In 1970 the Voting Rights Act was extended to suspend all literacy tests nationally until August 6, 1975.[17]

III. POWER TO ESTABLISH VOTING QUALIFICATIONS

The Constitution of the United States does not spell out precisely what level of government, Federal or State, is authorized to establish general qualifications for voting. There is express language within the Constitution that deals with voting, and that indicates that the States and the Federal Government have responsibilities in this area.

Article I, Section 2 provides that members of the House of Representatives are to be chosen by the people of the several States and "the Electors in each State shall have the qualifications requisite for Electors of the most numerous Branch of the State Legislature." Article II, Section 1 provides *inter alia* that States may appoint, in such a manner as their legislature may direct, a certain number of Electors to serve in selecting the President and Vice-President as set out within the Constitution. A subsequent amendment to the Constitution (Amendment XVII, April 8, 1913) provides that senators are to be chosen by the people and that voters for senators have the same qualifications as voters for representatives. This language plus the Tenth Amendment's general States' rights provision [18] has been traditionally interpreted by the Supreme Court to be the source of the States' power to regulate elections.[19]

Section 4 of Article I provides that the times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by its legislature, but that Congress may alter such regulations, except as to places of choosing Senators. This language plus the general power of Congress "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers" (enumeration of Federal government functions) (U.S. Const. art. I, § 8 cl. 18) has also been interpreted to give Congress ultimate power to supervise national elections.[20]

The Civil War Amendments to the Constitution clearly provide the following: (1) abolition of slavery and its vestiges (U.S. Const. amend. XIII); (2) statement of citizenship and establishment of basic rights which States are forbidden to infringe, including due process of law, equal protection of the law, and privileges and immunities (U.S. Const. amend XIV): and (3) that voting rights shall not be denied or abridged on account of race, color or previous condition of servitude (U.S. Const. amend. XV). The plain reading of these amendments places limitations on the power of the States and Congress to establish voter qualifications which discriminate against persons on account of their race.

There is also support for the position that the powers granted Congress by § 5 of the Fourteenth Amendment to "enforce" the Equal Protection Clause are the "same broad powers expressed in the Necessary and Proper Clause, Art. 1, § 8, cl. 18. Thus the positive grant of legislative power in § 5 authorizes Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment." [21]

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[10] Pub. Law 85-315, 71 Stat. 647, 42 U.S.C. § 1971(a) (1970).
[11] Pub. Law 88-352, 74 Stat. 90, 42 U.S.C. § 1971 et seq. (1970).
[12] Pub. Law 89-110, 78 Stat. 241, 42 U.S.C. § 1971 et seq. (1970). These statutes are codified in 42 U.S.C. § 1971.
[13] 42 U.S.C. § 1971(a)(2)(C)(i) (1970).
[14] 42 U.S.C. § 1971(c) (1970).
[15] Section 4(e), 42 U.S.C. § 1973b(e) (1970).
[16] Section 4(a), 42 U.S.C. § 1973(a) (1970).
[17] 42 U.S.C. § 1973aa (1970).
[18] "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X.
[19] *See*, Lassiter v. Northampton Election Board, 360 U.S. 45 (1959); Carrington v. Rash, 380 U.S. 89 (1965); *See also* discussion of this issue in the various opinions in Oregon v. Mitchell, 400 U.S. 112 (1970). This memorandum will discuss this issue in greater detail in Section V *infra*.
[20] Mr. Justice Black was of this opinion in Oregon v. Mitchell, *supra*, (at 124), citing the following Court decisions: Ex parte Siebold, 100 U.S. 371 (1880); Ex parte Yarbrough, 110 U.S. 651 (1884); United States v. Mosley, 238 U.S. 383 (1915); and United States v. Classic, 313 U.S. 299 (1941).
[21] Katzenbach v. Morgan, 384 U.S. 641, 650-51 (1966).

The Voting Rights Act of 1965 and the 1970 Amendments to the Act have been sustained as constitutional exercises of congressional power to enforce the Fourteenth and Fifteenth Amendments.[22] The breadth of the Civil War Amendments (especially, Amendments XIV and XV) in the voting rights context is an issue which will be discussed throughout this memorandum.

Although other amendments to the Constitution (Amendments XIX, XXIV and XXVI) effect voting rights, their impact on resolution of the issue of congressional power to permanently ban literacy tests is limited. It is generally recognized from legislative practice and case law that voter qualifications is an area where States and Congress have legitimate regulatory interest. Both have legislated as to National, State and local elections. The constitutionality of congressional legislation barring States' use of literacy tests depends on two factors: (1) whether such tests are unconstitutionally discriminatory and (2) the breadth of congressional power to establish or prohibit certain voter qualifications. The Constitution itself is the ultimate arbiter where Congress and the States purport to legislate pursuant to the authority of the Constitution. The Supremacy clause of the Constitution provides that "Laws of the United States" shall be supreme.[23] Thus, a constitutionally valid congressional enactment can nullify or supersede State laws.

IV. CONGRESS HAS THE AUTHORITY UNDER THE FOURTEENTH AND FIFTEENTH AMENDMENTS TO ENACT LEGISLATION PERMANENTLY BANNING LITERACY TESTS

Case law in the voting rights area amply supports the conclusion that Congress has the power under the Fourteenth and Fifteenth Amendments to ban literacy tests permanently. In a long line of cases beginning with *Schnell* v. *Davis*, 336 U.S. 933 (1949) and continuing to the present, the Supreme Court has only once upheld the constitutionality of literacy tests. See *Lassiter* v. *Northampton County Board of Elections*, 360 U.S. 45 (1959). Furthermore, the Court's decision in *Lassiter* rested on narrow grounds. The Court held that literacy tests per se were constitutional. The Court did not consider whether literacy tests would be valid in the face of countervailing considerations. It reserved judgment with respect to the issue raised by the racially discriminatory administration of racially neutral voter qualification tests. The Court pointedly mentioned that:

* * * a literacy test fair on its face may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot. No such influence is charged here."[24]

Several years after Lassiter was decided Congress passed the Voting Rights Act of 1965. The Act, among other things, banned the use of literacy tests for a five year period in covered jurisdictions.[25] Another section of the Act provided that persons receiving a sixth grade education in American Flag schools were presumed to be literate and could not be denied the right to vote because of an inability to read or write English.[26]

Shortly after the passage of the Act, two cases came before the Supreme Court challenging the Act's provisions regarding literacy tests. The issue before the Court in *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966) was whether or not Congress had the power under the Fifteenth Amendment to ban literacy tests in the absence of a judicial determination that the test had a discriminatory effect.

The Court maintained that Section 2 of the Fifteenth Amendment was a broad grant of legislative power equivalent to the power granted Congress under the Necessary and Proper Clause, U.S. Const. Art. I, § 8, cl. 18.[27] The Court proceeded to define the appropriate standard for judicial review in Fifteenth Amendment cases:

The basic test to be applied in a case involving § 2 of the Fifteenth Amendment is the same as in all cases concerning the express powers of Congress with relation to the reserved powers of the States. Chief Justice Marshall laid down the classic formulation, 50 years before the Fifteenth Amendment was ratified:

"Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional." *McCulloch* v. *Maryland*, 4 Wheat. 316, 421.[28]

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[22] *See* discussion in Sections V–VI *infra*.
[23] U.S. Const. art. VI, cl. 2.
[24] Lassiter v. Northampton County Board of Elections, 360 U.S. 45, 53 (1959).
[25] 42 U.S.C. 1973b(a) (1970).
[26] 42 U.S.C. §1973b(e) (1970).
[27] South Carolina v. Katzenbach, 383 U.S. 301, 327 (1966).
[28] *Id.* at 236.

Applying this standard, the Court held that the congressional determination that literacy tests are discriminatory barriers to voting was appropriate.[29] The Court also held that the legislative remedy of a five year ban on literacy tests in covered jurisdictions was a legitimate response to the problem.[30]

In *Katzenbach* v. *Morgan*,[31] the Court addressed the issue of whether Section 4(e) of the Voting Rights Act of 1965 was a valid exercise of congressional power under the Fourteenth Amendment. Section 4(e) provides that persons who have obtained a sixth grade education at any American flag school cannot be prevented from voting by a State imposed English literacy requirement. The Court held that under Section 5 of the Fourteenth Amendment Congress has the authority to determine what constitutes a denial of equal protection and can design legislation to remedy the problem.[32]

Congressional legislation, the Court explained, need only meet the test of *McCulloch* v. *Maryland*, 4 Wheat. 316, 421 (1819)[33]—the same test laid down by the Court in *South Carolina* v. *Katzenbach* for Congressional action under the Fifteenth Amendment. Applying this test the Court found that the basis for Congressional action was clear:

Here again, it is enough that we perceive a basis upon which Congress might predict a judgment that the application of New York's English literacy requirement to deny the right to vote to a person with a sixth grade education in Puerto Rican schools in which the language of instruction was other than English constituted an invidious discrimination in violation of the Equal Protection Clause.[34]

Thus, under the holding in *Kazenbach* v. *Morgan*, Congress has the power both to identify a constitutional injury violating the equal protection of the laws and to choose the means to remedy that injury. Furthermore, judicial review stops once the Court determines that Congress is not acting arbitrarily leaving to Congress the discretionary exercise of its legislative function.

Three years after the *Katzenbach* cases the Court had yet another occasion [35] to review the validity of literacy tests. Pursuant to Section 4(a) of the Voting Rights Act of 1965, Gaston County brought suit to reinstate its literacy test.[36] The North Carolina County maintained that it had administered the test in a fair and impartial manner. The United States, in opposing the granting of relief, maintained that the literacy test had the effect of denying the vote on account of race because the County had, at one time, operated a segregated school system thereby depriving black persons of an equal chance to pass the test.

In rejecting the County's argument the Supreme Court noted that: "(t)he legislative history of the Voting Rights Act of 1965 discloses that Congress was fully cognizant of the potential effect of unequal educational opportunities upon the exercise of the franchise. This casual relationship was, indeed, one of the principal arguments made in support of the Act's test-suspension provisions." [37]

The court held that it is proper to consider whether literacy tests have "the "the effect of denying * * * the right to vote on account of color" where the State has maintained a *de jure* discriminatory school system.[38] The Court stated that the test is not limited to the maintenance of a *de jure* segregated school system but must look to the effect of such segregated system to determine whether "the county deprives its black residents of equal educational opportunities, which in turn deprives them of an equal chance to pass the literacy tests.[39] Gaston County holds, therefore, that whenever a State has deprived its citizens of equal educational opportunities on account of race or color, the State cannot add insult to injury by conditioning the right to vote on any prerequisite which presumes a level of educational proficiency *e.g.*, a literacy test.

In the 1970 Amendments to the Voting Rights Act, Congress extended its ban on the use of literacy tests anywhere in the United States for another 5 year period.[40] The constitutionality of the 1970 national literacy test ban was unanimously sustained in *Oregon* v. *Mitchell*, 400 U.S. 112 (1970). While the Justices

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[29] *Id.* at 328.
[30] *Id.* at 328.
[31] 384 U.S. 641.
[32] Katzenbach v. Morgan, 384 U.S. 641, 651 (1966).
[33] *Id.* at 650.
[34] *Id.* at 654-56.
[35] Gaston County v. United States 395 U.S. 285 (1969).
[36] Section 4a of the Voting Rights Act of 1965 provides that a State or subdivision in a covered jurisdiction may bring an action against the United States for declaratory relief that it has not employed a test during the five years preceding the filing of the action "for the purpose or with the effect of denying or abridging the right to vote on account of race or color."
[37] Gaston County v. United States, 395 U.S. 285, 289 (1969).
[38] *Id* at 293.
[39] *Id.* at 291.
[40] 42 U.S.C. §1973aa (1970).

based the source of congressional power to impose the ban on Fourteenth and Fifteenth Amendment grounds, they unanimously agreed that Congress had the authority to enact such legislation to remedy invidious discrimination in the denial of the right to vote.

Mr. Justice Black, announcing the judgment of the Court in an opinion expressing his own view, spoke approvingly of the Court's prior decisions in *South Carolina* v. *Katzenbach*, *Katzenbach* v. *Morgan* and *Gaston County* v. *United States*. He noted that "Congress had before it a long history of the discriminatory use of literacy tests to disenfranchise voters on account of their races"[41] as well as "this country's history of discriminatory educational opportunities in both the North and South" [42] He concluded:

"Faced with this and other evidence that literacy tests reduce voter participation in a discriminatory manner not only in the South but throughout the Nation, Congress was supported by substantial evidence in concluding that a nationwide ban on literacy tests was appropriate to enforce the Civil War amendments." [43]

In a separate opinion, Mr. Justice Douglas found that the national ban on literacy tests could be sustained as a valid exercise of Congressional power under the Fourteenth Amendment. Relying on the Court's decisions in *Katzenbach* v. *Morgan* and *Gaston County* v. *United States*, Douglas stated:

"* * * Congress in the present legislation need not make findings as to the incidence of literacy. It can rely on the fact that most States do not have literacy tests; that the tests have been used at times as a discriminatory weapon against some minorities, not only Negroes but Americans of Mexican ancestry, and American Indians; that radio and television have made it possible for a person to be well informed even though he may not be able to read and write. We know from the legislative history that these and other desiderata influenced Congress in the choice it made in the present legislation; and we certainly cannot say that the means used were inappropriate." [44]

Also in a separate opinion, Mr. Justice Harlan, while regretting Congress' sweeping approach to the problem, *i.e.*, the national scope of the ban, concluded that Congress' choice of remedies "was within the range of the reasonable." [45] He concluded that: "(d)espite the lack of evidence of specific instances of discriminatory application or effect, Congress could have determined that racial prejudice is prevalent throughout the Nation, and that literacy tests unduly lend themselves to discriminatory application, either conscious or unconscious. This danger of violation of Section 1 of the Fifteenth Amendment was sufficient to authorize the exercise of Congressional power under Section 2." [46]

The remaining six Justices spoke approvingly of the Court's decision in *South Carolina* v. *Katzenbach* and *Gaston County* v. *United States*. As a basis for sustaining the national ban on literacy tests, the Justices relied on the nexus between unequal educational opportunity and the resulting discriminatory effect of literacy tests. The opinion of Mr. Justice Stewart (concurred in by Chief Justice Burger in Mr. Justice Blackmun) noted with particular satisfaction that Congress adopted a national remedy:

* * * Finally, nationwide application may be reasonably thought appropriate when Congress acts against an evil such as racial discrimination which in varying degrees manifests itself in every part of the country. A remedy for racial discrimination which applies in all the States underlines an awareness that the problem is a national one and reflects a national committment to its solution.[47]

It is clear therefore that Congress has the authority to impose a permanent ban on literacy tests and that the constitutionality of such an enactment can rest on one of several grounds: (1) the lack of a compelling State interest sufficient to overcome the denial of the right to vote; (2) the nexus between unequal educational opportunities and the resulting discriminatory effect of literacy tests; and (3) the pervasive discrimination which still exists in this country and which gives rise to the presumption that literacy tests which were discriminatorily applied in the past will continue to be so applied in the future.

The Court has repeatedly affirmed Congress' broad power under the Civil War Amendments to remedy the discriminatory denial of the right to vote. A permanent national ban on literacy tests is well within the range of reasonable solutions to enforce the prohibitions contained in these amendments. A permanent

[41] Oregon v. Mitchell 400 U.S. 112, 132, (1970).
[42] *Id.* at 133.
[43] *Id.* at 133.
[44] *Id.* at 147.
[45] *Id.* at 217.
[46] *Id.* at 216.
[47] *Id.* at 283, 284.

ban meets the standards of the test enunciated by Chief Justice Marshall long ago and reaffirmed by the Court in *Katzenbach* v. *Morgan* and *South Carolina* v. *Katzenbach:*

Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional. *McCulloch* v. *Maryland.*[48]

V. FACTUAL SUPPORT FOR A PERMANENT NATIONAL BAN ON LITERACY TESTS

Having established the power of Congress to enforce the Civil War Amendments and its authority to act independently in determining proper remedies pursuant to these amendments, it is appropriate now to consider the factual grounds on which Congress might base a decision to permanently ban the use of literacy tests.

It has generally been stated that literacy tests per se are used to exclude illiterates, and such discrimination has been justified as a reasonable way to provide a more informed or intelligent electorate.[49] The weight of factual evidence indicates that the use of literacy tests in this country has an invidiously discriminatory history, that they have little or no value in insuring an informed electorate, that they have been used for racially discriminatory purposes and that their use could have a discriminatory effect (now and in the future), and that reinstating them as a voter qualification would achieve no meaningful purpose.

While literacy tests have been primarily thought of as having disfranchising effects on black people in the South, their actual effects have not been limited to the South or to blacks. The history of literacy requirements for voting (as well as in other areas) shows that a primary motivation behind these requirements has been to render various racial, ethnic, religious, and national origin groups politically impotent.[50] Diverse groups have been the victims of literacy tests in this nation's history—blacks, Jews, Irish, Finns, Chinese, Japanese, American Indians, Eskimos, and the Spanish-speaking or Spanish surnamed.[51]

In 1970, prior to enactment of the Voting Rights Act amendments, there were 31 States and the District of Columbia which did not have literacy tests.[52] In addition, the use of literacy tests was suspended by the Voting Rights Act in six States, and in at least four other States the test was not applied.[53] Thus in 1970 a literacy requirement was seriously enforced in only about nine States. We urged then that, given the total absence of any evidence that the quality of government or of elected officials was any higher in these literacy States than in any others, Congress could reasonably conclude that literacy tests were not accomplishing the purpose for which they were designed.

A study by the U.S. Commission on Civil Rights, prior to enactment of the national ban on literacy tests, concluded that, "in general, States with literacy tests have lower registration and turnout rates than those without literacy requirements." [54] In the 12 non-literacy test States covered by the study, 83 percent of the voting age population was registered; for all States maintaining literacy tests, registration was 78 percent. Furthermore, two of the three highest voter registration States with literacy tests appeared not to enforce the test.[55] At that time, the lowest percentage reported for a non-literacy test State was higher than that for four of the literacy test States. As noted in *Oregon* v. *Mitchell*, this report and other information presented by the Commission during the 1970 congressional hearings concluded that in the States surveyed literacy tests have a negative impact upon voter registration which "falls most heavily on blacks and persons of Spanish surname." [56]

There is a basic inconsistency between the principles of a democratic government and the use of literacy tests as a precondition of the right to vote.

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[48] McCulloch v. Maryland, 4 Wheat. 316, 421 (1819).

[49] Lassiter v. Northampton County Board of Education, *supra.*

[50] *See* generally Leibowitz, *English Literacy: Legal Sanctions for Discrimination*, 45 Notre Dame Law. 7 (1969). Garcia, *Language Barriers to Voting: Literacy Tests and the Bilingual Ballot*, 6 Col. Hum. Rights L. Rev. 83 (1974).

[51] *Id.*

[52] *See* note 9 *infra.*

[53] *Id.*

[54] U.S. Commission on Civil Rights, The Impact of Voter Literacy Tests Upon Voter Participation in States of the North and West: November, 1968, at 2 (Jan. 19, 1970). Printed in Senate Hearings on Amendments to the Voting Rights Act at 185.

[55] *Id.* Those States were Delaware and Washington.

[56] 400 U.S. 112, 235 (Brennan, J.).

The theory of a democratic government is that political power should be distributed equally throughout society. Government is for the people, by the people and of the people. The laws and actions of local, State and Federal governments have equal effect on literates and illiterates.[57] Certainly illiterates should not be excluded from a voice in their government if they are otherwise qualified to vote.

The simple expedient of using literacy tests to determine qualified voters should not serve as a substitute for regulations using less drastic means where fundamental rights going to the heart of a democratic form of government are at stake.

Moreover, Congress could reasonably find that literacy tests do not sufficiently disqualify "unintelligent" voters or assure the qualification of "intelligent voters." Today the written word is less significant as a means of acquiring information than it was historically—even in recent history. Radio and television are for many people primary sources of information.[58] In a special ten year study of public attitudes toward television and other media, Roper Research Associates reported that in the studied years from 1959–1968 television became the chief source of information for adults in this country.[59] "In 1963 television took over the lead from newspapers as a source of most news" for persons over 21 years of age. Thus, as Justice Douglas stated in *Oregon* v. *Mitchell*, it is "possible for a person to be well informed even though he may not be able to read and write." [60]

A 1970 study by the U.S. Commission on Civil Rights [61] documents the discriminatory impact of literacy requirements. In literacy test States less than 55 percent of the black population having an educational attainment of eight years or less was registered, whereas, in States without literacy tests over 75 percent of the black population having less than eight years of education was registered.

Because of their generally lower educational level, blacks are affected more by literacy tests than are whites. For the same reason, literacy tests have an equally discriminatory effect on persons of Spanish surname and on American Indians.

Statistics show that blacks, Native Americans and Spanish origin minorities are handicapped by both lower educational attainment levels and lower performance levels than other population groups.

The most recent census statistics, for example, reveal that 56.3 percent of persons of Mexican origin, twenty-five years of age or older, have only 8 years or less schooling; the same is true of 47.8 percent of persons of Spanish origin in general, and 36.6 percent of blacks. Only 21.4 percent of whites over 25 have had as little education.[62] This 1974 survey did not include Native Americans, but the 1970 census showed that 43.2 percent of American Indians of at least 25 years of age had completed eight years or less in school.[63]

In terms of median levels of attainment, whites lead with 12.1 years, while American Indians trail at 9.9, Spanish origin (native born) at 9.9, blacks at 9.7, and Spanish origin (foreign born) at 8.3.[64]

Performance levels are also pertinent. The widely quoted Coleman Report comparison of the academic achievement of various racial and ethnic groups within grades 3, 6, 9 and 12 revealed that black ninth graders in the metropolitan

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[57] In a letter to President Nixon (March 28, 1969) Father Theodore M. Hesburgh, then Chairman of the U.S. Commission on Civil Rights, advocated a ban on the use of literacy tests. He stated:

"There is much to be said for the view that it is unfair to deny a voice in their own government to those who cannot read or write. The lives and fortunes of illiterates are no less affected by the actions of local, State and Federal governments than those of their more fortunate brethren. Most States, perhaps for this reason, do not impose a literacy test as a prerequisite to voting."

Father Hesburgh in testimony before the Subcommittee on civil and constitutional rights of the House Committee on the Judiciary on March 6, 1975, reiterated his support for a national permanent ban and pointed out additional supportive facts.

[58] The President's Commission on Registration and Voting Participation in its November 1963 *Report* recommended that literacy tests should not be a requisite for voting. The Commission explained:

"Many media are available other than the printed word to supply information to potential voters. The Commission is not impressed by the argument that only those who can read and write or have a sixth grade education should have a voice in determining their future. This is the right of every citizen no matter what his formal education or possession of material wealth. The Commission recommends that no literacy test interfere with the basic right to suffrage." *Id.* at 40.

[59] Roper Research Associates, "A Ten-Year View of Public Attitudes Toward Television and Other Media 1959–1968," at 2 (1969). The study also showed that for the same age group, television was a primary source of news for 59% by 1968, for 29% television was the exclusive source of news; 44% considered television to be the most believable medium compared with 21% who felt newspapers were most believable.

[60] Oregon v. Mitchell, 400 U.S. 112, 147 (1970).

[61] *See* note 54, *infra*.

[62] P–20, No. 274 (Dec. 1974), Table 2 at 33–45.

[63] Census, *Educational Attainment*, (1970) PC(2)-5B, Table 1 at 1. *See also*, U.S. Commission on Civil Rights, *The Southwest Indian Report* 24–25 (May 1973) (hereinafter cited as *Southwest Indian Report*).

[64] PC(2)-5B, Table 1 at 1. This disparity has changed some since 1970: in 1974 the median for whites is 12.4, blacks 11.1, Spanish origin 9.4 and Mexican origin 8.3. P–20, No. 274 (Dec. 1974) Table 1 at 16–21. These same data discloses great disparity for persons 55 to 65 years old (median for whites 12.1 years, blacks 8.4 years and 6.2 for Mexican origin persons). This disparity increases as the age groups increase. *Id.*

Northeast were 2.6 grade levels behind their white counterparts in reading comprehension.[65] Mexican American ninth graders were 1.9 grade levels behind Anglos in the metropolitan Southwest. Puerto Rican ninth graders were 3.3 grade levels behind whites in the metropolitan Northeast. And American Indians were 2.0 grade levels behind whites in the non-metropolitan North.[66]

Discriminatory State action has been shown to be a significant factor in creating and perpetuating this educational gap between the quality of public education afforded to white students and that available to blacks, Americans of Spanish origin, and Native Americans.

Studies such as the Coleman Report and the U.S. Commission on Civil Rights' study of *Racial Isolation in Public Schools* (1967) show the educationally harmful effects upon black students of attending—as they do across the nation [67]—schools isolated by race and social class. In its report on school financing, this Commission noted that:

"Discrimination against minority students in the Nation's public schools is rapidly giving cause for real alarm among all those concerned with equal opportunity and with the entire future of this country. Inequality in school financing is increasingly recognized as a major factor in perpetuating this educational and social dilemma." [68]

In great measure, the functional illiteracy prevalent among Mexican Americans in the Southwest [69] is the result of a failure on the part of local governments to provide adequate education opportunities. Numerous studies by the U.S. Commission on Civil Rights and other groups have documented the proposition that Mexican Americans receive education inferior to that afforded Anglos.[70] Federal courts have also found widespread isolation and segregation of Mexican Americans in the public schools of the Southwest, resulting in inferior education for Chicano children. In *Cisneros* v. *Corpus Christi Independent School District*, 324 F. Supp. 599 (S.D. Tex. 1970), *modified* 467 F. 2d (5th Cir. 1972); *cert. denied*, 413 U.S. 922 (1973); it was said:

"The Court is of the firm opinion that administrative decisions by the school board in drawing boundaries, locating new schools, building new schools and renovating old schools in the predominantly Negro and Mexican parts of town, in providing an elastic and flexible subject, transfer system that resulted in some Anglo children being allowed to avoid the ghetto, or 'corridor' schools, * * * (by) not allowing Mexican Americans or Negroes the option of going to Anglo schools, by spending extraordinarily large sums of money which resulted in intensifying and perpetuating a segregated, dual school system, * * * were, regardless of all explanations and regardless of all expressions of good intentions, calculated to, and did, maintain and promote a dual school system." [*Id.* at 617–620.]

Similarly, in the *United States* v. *Texas*, 342 F. Supp. 24 (E.D. Tex. 1971), the court found that Mexican American students in the Del Rio area of Texas "have been subjected, over the years, to unequal treatment with respect to the educational opportunities afforded them and are, thus, part of a so-called *de jure* dual school system based upon separation of students of different ethnic origins." [*Id.* at 24.]

The Court ordered wide-ranging relief designed to meet the linguistic needs of Spanish-speaking students.

Moreover, in Texas, the Civil Rights Commission has found a direct correlation between the wealth of a school district and the quality of education:

The Texas school finance system results in discrimination against Mexican American school children. Predominantly Mexican American districts are less wealthy in terms of property values than Anglo districts and the average income of Chicanos is below that of Anglos. These circumstances existing, the State of Texas has devised an educational finance system by which the amount spent on the schooling of students is a function of district and personal wealth. The end

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[65] J. Coleman, et al., Equality of Educational Opportunity (U.S. Office of Education 1966).

[66] *Id.* at 274, Table 3.121.2. *See also, Southwest Indian Report* at 24.

[67] *See also*, U.S.C.C.R., *Equal Opportunity in Suburbia* (1974); U.S.C.C.R., *Twenty Years After Brown* (1974).

[68] U.S. Commission on Civil Rights, *Inequity in School Financing; The Role of the Law* at 1 (August 1972).

[69] More than a quarter of Mexican Americans (26.5 percent) over the age of 25 completed less than 5 years of school. *Persons of Spanish Origin in the United States;* March 1974. Series P-20, No. 267, Bureau of the Census.

[70] The United States Commission on Civil Rights has issued a series of reports on the quality of education in the Southwest entitled, "Mexican American Educational Series". *Rept. I: Ethnic Isolation of Mexican Americans in the Public Schools of the Southwest*", (1971); *Rept. II: The Unfinished Education* (1971); *Rept. III: The Excluded Student* (1972); *Rept. IV: Mexican American Education in Texas: A Function of Wealth* (1972); *Rept. V: Teachers and Students* (1973); *Rept. VI: Toward Quality Education for Mexican Americans* (1974).

result is that the poor stay poor and those receiving inferior education continue to receive inferior education.[71]

The result, throughout the Southwest, is a pattern of under-achievement by Mexican American students. The Commission concluded:

"The basic finding of this report is that minority students in the Southwest—Mexican Americans, blacks, American Indians—do not obtain the benefits of public education at a rate equal to that of their Anglo classmates * * * Without exception, minority students achieve at a lower rate than Anglos: their school holding power is lower; their reading achievement is poorer; their repetition of grades is more frequent; their overageness is more prevalent; and they participate in extracurricular activities to a lesser degree than their Anglo counterparts." [72]

For the State to provide inferior education in the use of basic English skills and then to force upon voters the obstacle of a literacy test as a prerequisite for voting would result in no less than the disfranchisement of a major portion of the country's minorities. While a State may manifest some interest in a literate electorate, this interest cannot justify a State's use of a disability created in part by its own dereliction, or that of another State, in violation of the Fourteenth Amendment, as the basis for disfranchisement.

The Supreme Court, in *Gaston* v. *United States*,[73] recognized the casual relationship between unequal educational opportunities and the discriminatory effect of literacy requirements:

The legislative history of the Voting Rights Act of 1965 discloses that Congress was fully cognizant of the potential effect of unequal educational opportunities upon exercise of the franchise. This causal relationship was, indeed, one of the principal arguments in support of the Act's test suspension provisions.[74]

It should be clear, that, the only satisfactory solution to the problem of unequal education and its continuing effects is the extension of a total ban on literacy tests.

It should also be clear that limiting a total ban on literacy tests only to those jurisdictions shown to have violated the Fourteenth Amendment requirements in their public education systems would be insufficient for it to protect a nationally mobile population [75] and to remedy a problem which is national in scope.[76]

Congress could conclude that the ban on literacy tests should be permanent

In the aftermath of *Oregon* v. *Mitchell* (discussed at Section V *supra*), proponents of States rights have asserted that the unanimity of the Supreme Court's decision to uphold the national suspension of literacy tests turned on the fact that it was a temporary rather than a permanent ban. They rely on Mr. Justice Harlan's opinion to support their argument since he found comfort in the fact that the suspension was temporary.[77] However, even Justice Harlan recognized that:

"While a less sweeping approach in this delicate area might well have been appropriate, *the choice which Congress made was within the range of the reasonable.*" (emphasis added, citations omitted) [78]

It is equally reasonable to infer from this statement by Mr. Justice Harlan, and statements of other members of the Court in unanimously upholding the national ban on literacy tests [79] that Congress could proscribe such tests for 5 years, 10 years or indefinitely. Once the Court has determined that Congress has the power to legislatively proscribe the use of such tests, it will not substitute its judgment as to how broad the proscription should be and for what length of time.[80]

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[71] U.S. Commission on Civil Rights, *Mexican American Education in Texas: A Function of Wealth* 28 (1972).
[72] U.S. Commission on Civil Rights, *The Unfinished Education* 41 (1971).
[73] 395 U.S. 285 (1968).
[74] *Id.* at 289.
[75] *See generally*, Census, Population Characteristics, *Mobility of the Population of the United States March 1970 to March 1974*, Series P-20, No. 273 (Dec. 1974); *see also*, Supplementary Report: *Characteristics of Negro Immigrants to Selected Metropolitan Areas: 1970*, Series PC(S1)-47 (June 1973).
[76] Oregon v. Mitchell, *supra*.
[77] 400 U.S. 112, 216.
[78] *Id.* at 217.
[79] Id. at 118, 129, 133 (Black, J.); *id.* at 147 (Douglas, J.); *id.* at 235-236 (Brennan with White and Marshall, J. J. concurring); and *id.* at 283-284 (Stewart, J. with whom Blackmun, J. and Burger, C. J. concurred).
[80] Much of the Civil Rights legislation enacted by Congress over the last 10-15 years has been permanent rather than temporary, particularly where Congress has recognized the need to forcefully legislate to deal with a national problem and where invidious discrimination is found. *See* for example, Title VII of Civil Rights Act as amended, 42 U.S.C. § 2000e et seq. Nor is Congress reluctant to nullify State laws and regulate areas previously believed to be exclusively within the province of sovereign States (i.e. the 1972 Amendments to Title VII cover State and local governments and employees of educational institutions).

In the instant matter, Congress could conclude from evidence presented to it in 1970 and in 1975 of the discriminatory history, use and effect of literacy tests and the widespread nature of the problem, such tests have no place in a modern democratic society. Further, the overwhelming evidence of unequal educational opportunity and the present slow pace of changes in the disparities between white and minority citizens could lead Congress to conclude that there is no reasonable expectation of parity or successfully overcoming the effects of this discrimination in the near future. Thus, Congress could enact a national permanent ban on literacy tests. When, and if parity is reached, then Congress can in its wisdom legislate appropriately.

CONCLUSION

Giving consideration to the present suspect status of literacy tests under the Fourteenth and Fifteenth Amendments, the power and appropriateness of congressional action to implement these Amendments, and the factual basis to support a determination by Congress that the use of literacy tests should be terminated, one must conclude that there is no obstacle under the Constitution to a permanent national ban on the use of literacy tests.

STAFF MEMORANDUM

U.S. COMMISSION ON CIVIL RIGHTS, OFFICE OF GENERAL COUNSEL

The Phrase "Race or Color" as Used in the Voting Rights Act of 1965, as Amended, Includes Persons of Spanish Origin.

The phrase "race or color", as used in the Voting Rights Act of 1965, as amended, is taken directly from the 15th amendment. Its interpretation, therefore, should be based upon a consideration of that phrase as it was used originally in the 15th amendment, and as it is used in relation to the broad purposes of the Voting Rights Act.[1]

This memorandum will discuss what population groups may be included within the "race or color" classification based on 15th and 14th amendment constructions, and on the sociological/anthropological definition of such classification.

A. THE PHRASE "RACE OR COLOR", AS USED IN THE 15TH AMENDMENT, IS NOT LIMITED TO BLACKS

Section 1 of the 15th amendment provides that:

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

Both from its language and from a reading of the Congressional debates preceding the amendment's adoption it is clear that Congress specifically intended to guarantee all black citizens the right to vote. The "previous condition of servitude" language refers primarily to blacks; the addition of the words race or color suggests the intention to cover groups other than blacks. It can therefore be concluded that on its face the 15th amendment's race or color language is not limited to blacks alone.

In the absence of cases which deal expressly with the protection of groups other than blacks under the 15th amendment, the legislative history is a useful guide to the scope of that amendment's race or color language. Opinions expressed during Congressional debates on the amendment give strong indication that its protection was never intended to be limited to black citizens but, arguably, was intended to extend to all male citizens of any race or color.

Opponents of the amendment attempted to broaden the amendment's protection by prohibiting any denial of the right to vote based on such criteria as sex, creed, property or education, in addition to race or color. Although these efforts failed, the focus on such other categories of coverage suggests that the legislators saw no need to further define race or color because of their conviction that all men would be protected under that description.

This position is supported by Senator Abbott of North Carolina, who spoke in support of the 15th amendment, "* * * we are bound to conduct this Government on the basis of permitting the ballot to every male citizen." [2] Speaking in

[1] By its terms, the Voting Rights Act was enacted to "enforce the 15th amendment *and for other purposes*" (42 U.S.C. § 1971—emphasis added) including the 14th amendment guarantee of equal protection in the exercise of voting.

[2] Cong. Globe, 40th Cong., 3d Sess. (1869) at 981.

favor of extending the vote to women, Senator Pomeroy of Kansas expressed a similar view, "Manhood suffrage is now held to be the native and the inherent right of every male citizen of a prescribed age * * *" [3]

In opposition to a proposal which would specifically prohibit the use of any educational requirement as a voting qualification, Senator Patterson of New Hampshire supported a limited form of Intelligence test which could "* * * be easily reached by our foreign population or by any of our native population who may lack the means of education." [4]

Senator Corbett of Oregon, clearly believing that the 15th amendment, as adopted, would include races other than blacks, introduced additional language to specifically deny citizenship, and thus the right to vote, to "Chinamen" and Indians.[5] The California delegation shared Oregon's concern, fearing that the amendment's adoption would allow the Chinese to be enfranchised.

It seems clear that the members of Congress understood the words "race or color" to include at least those groups referred to during the debates: Negroes, Chinese and Indians.

Although the right to vote was guaranteed to citizens of any race or color from 1870 forward, case law under the 15th amendment saw little development for the next hundred years. By the time the Voting Rights Act was passed in 1965, minority groups other than blacks were seeking protection of their voting rights; most prominent among these have been the Spanish origin groups. In 1970, the Supreme Court referred specifically to persons of Spanish origin in an opinion holding the 1970 ban on literacy tests constitutional on 15th amendment grounds. Four Justices found that persons of Spanish surname, as well as blacks, were adversely affected by such tests, and were appropriate subjects for protection under the 15th amendment.[6]

B. THE PHRASE "RACE OR COLOR", FOR PURPOSES OF EQUAL PROTECTION UNDER THE 14TH AMENDMENT, INCLUDING SPANISH ORIGIN MINORITY GROUPS

The Voting Rights Act of 1965, as amended, protects the right of all citizens to vote, by prohibiting the denial of that right on the basis of race or color. The 14th amendment has also been held to protect the right to vote [7] under Section 1, which states in pertinent part:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; * * * nor deny to any person within its jurisdiction the equal protection of the laws."

Population groups which can be characterized by race or color are clearly cognizable under the Equal Protection Clause of the 14th amendment and have been held by the Supreme Court to be protected from discrimination in several voting rights cases.[8] In one of these cases the Court invalidated multi-member districts in two Texas counties, as having unconstitutionally diluted the votes of Negroes and Mexican Americans, respectively.[9] The Court recognized no difference between blacks and Mexican-Americans for purposes of granting relief from discriminatory voting procedures in this case. Such a finding suggests that for purposes of protecting voting rights the courts will consider Spanish origin minorities to be racially identifiable.

Although voting discrimination cases brought on 15th amendment groups have begun to define the Spanish origin population as an identifiable class, equal protection cases in analogous subject areas have gone far toward expanding the race or color classification to include Spanish origin population groups.[10]

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[3] *Id.* at 709.
[4] *Id.* at 1037.
[5] *Id.* at 828.
[6] Oregon *v.* Mitchell, 400 U.S., 112, 235 (1970); opinion of Mr. Justice Black, and joint opinion of Justices Brennan, White and Marshall.
[7] Ex parte Yarborough, 110 U.S. 651 (1881); United States *v.* Classic, 313 U.S. 299 (1941); Katzenbach *v.* Morgan, 384 U.S. 641 (1966); White *v.* Regester, 412 U.S. 755 (1973); Oregon *v.* Mitchell, 400 U.S. 112 (1970).
[8] Katzenbach *v.* Morgan, 384 U.S. 641 (1966); Gaston County *v.* United States, 395 U.S. 285 (1969); Nixon *v.* Herndon, 273 U.S. 536 (1927); White *v.* Regester, 412 U.S. 755 (1973).
[9] White *v.* Regester.
[10] *Jury selection* Hernandez *v.* Texas, 347 U.S. 475 (1954); *Education*; Keyes *v.* School District No. 1, Denver Colorado, 413 U.S. 189 (1973); Cisneros *v.* Corpus Christi Independent School District, 324 F. Supp. 599 (S.D. Texas 1970), *modified* (as to remedy), 467 F. 2d 142 (5th Cir. 1972), *cert. denied*, 413 U.S. 922; United States *v.* State of Texas, 342 F. Supp. 24 (E. D. Texas 1971), *aff'd* 466 F. 2d 518 (5th. Cir. 1972); United States *v.* Texas Education Agency, 467 F. 2d 848 (5th Cir. 1972). *Voting* White *v.* Regester, 412 U.S. 755 (1973); Garza *v.* Smith 320 F. Supp. 131 (W. D. Texas 1970), *vacated* (on jurisdictional grounds), 401 U.S. 1006 (1971), *appeal dismissed* (on jurisdictional grounds), 450 F. 2d 790 (5th Cir. 1971). *Housing* Ranjel *v.* City of Lansing, 293 F. Supp. 301 (W. D. Mich. 1969), *rev'd on other grounds*, 417 F. 2d 321 (6th Cir. 1969), *cert denied*, 397 U.S. 980 (1970).

In a 1954 case, the Supreme Court held unconstitutional the systematic exclusion of Mexican Americans from jury duty, rejecting the contention of the State of Texas that constitutional protection against discrimination is limited to blacks. The Court stated:

"Throughout our history differences in race and color have defined easily identifiable groups which have at times required the aid of the courts in securing equal treatment under the laws. But community prejudices are not static, and from time to time other differences from the community norm may define other groups which need the same protection. Whether such a group exists within a community is a question of fact. When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated. The Fourteenth Amendment is not directed solely against discrimination due to a 'two-class theory'—that is, based upon differences between white and Negro." [11]

Significantly, the court maintained that whether or not a group of peoples is entitled as a class to 14th amendment protection is a question of fact and that skin or color alone is not dispositive.[12] In a Colorado school desegregation case [13] the Supreme Court maintained that the "District Court erred in separating Negroes and Hispanos for purposes of defining a 'segregated' school."[14] The Court maintained that Negroes and Hispanos in Denver suffer identical discrimination in treatment as compared to the treatment afforded Anglo students, and concluded that "Hispanos constitute an identifiable class for the purposes of the 14th amendment." [15] *Hernandez*, *Keyes*, and *Regester* all support the conclusion that the Supreme Court has rejected a narrow two class theory of equal protection in favor of a more expansive view. Thus the Court, in defining racial-minority groups for equal protection purposes, will consider skin color as a factor but will give greater weight to the historical and factual predicate on which discrimination against a particular group is based.

The Supreme Court in *Keyes* cited a lower court case, *Cisneros v. Corpus Christi Independent School District*,[16] in concluding that Hispanos were a protected class under the 14th amendment. In *Cisneros*, the State of Texas asserted that the use of the terms race or color had been limited by the *Brown* case and could apply only to blacks. In rejecting that assertion the *Cisneros* court pointed out that since *Brown* dealt only with discrimination against blacks its definition of "race or color" was necessarily limited and therefore was not binding.[17] Finding that Mexican Americans were a protected minority the court noted:

"[W]e can notice and identify their physical characteristics, their language, their predominant religion, their distinct culture, and, of course, their Spanish surnames.[18]

In a similar case [19] another District Court in Texas noted that it could justify its holding that Mexican Americans are a protected minority on the basis of the fact that Mexican American students:

"React to or are affected by a given stimulus—the Anglo-oriented educational program such as that maintained in the former Del Rio Independent School District—in a similar and predictable manner and, in the opinion of a recognized expert, this reaction is based almost entirely on common characteristics which, incidentially may be traced to their common and distinct ancestry." [20]

In all of these cases the Court has determined that Spanish origin population groups are an identifiable group for purposes of equal protection under the 14th amendment. Although any determination of the need for equal protection must be based on discriminatory treatment of the identifiable class, the Spanish origin minorities are also and obviously definable by factors in addition to the discrimina-

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[11] Hernandez v. Texas, 347 U.S. 475, 478 (1954).
[12] *See also*, White v. Regester, 412 U.S. 755 (1973).
[13] Keyes v. School District No. 1, Denver, Colorado, 413 U.S. 189 (1973).
[14] *Id.* at 197.
[15] *Id.* at 197.
[16] Cisneros v. Corpus Christi Independent School District, 324 F. Supp. 599 (S. D. Texas 1970), *modified* (as to remedy), 467 F. 2d 142 (5th Cir. 1972), *cert. denied*, 413 U.S. 922. The District Court record in Cisneros, a Texas school desegregation case, cited in a footnote the testimony of an expert witness on the definition of Spanish-speaking Americans as a racial minority group. Looking at it culturally, they are an identifiably different group with adherence to the Spanish language, certain physical characteristics that are more or less Indian or mistisaje or the blending of the Spanish and the Mexican. So, no matter how you cut it, you are going to come out as a minority, both from social-science and from the legal point of view, and from the cultural point of view and the racial point of view. *Id* at 607.
[17] *Id.* at 605.
[18] *Id.* at 608.
[19] United States v. State of Texas, 342 F. Supp. 24 (E. D. Texas 1971), *aff'd.* 466 F. 2d 518 (5th Cir. 1972).
[20] *Id.* at 26.

tion they have suffered. They are a population group identifiable by their physical characteristics, their culture and their language. Such common factors are determinative in defining a population group as a race for anthropological purposes.[21] It is therefore arguable that in defining the Spanish origin population by such factors, the courts have recognized that Spanish origin and other similarly identifiable minority groups constitute a "race" for purposes of the 15th amendment.

C. 1. The Anthropological/Sociological Definition of Race or Color

The fields of anthropology and sociology treat the term race, which includes color, as an abstract concept, susceptible of various definitions. Webster's dictionary defines "race" as:

(1) The descendants of a common ancestor; a family, tribe, people or nation belonging to common stock.

(2) A class or kind of individuals with common characteristics, interests, appearance or habits as if derived from a common ancestor.[22]

Black's Law Dictionary defines race as: An ethnical stock; a great division of mankind having in common certain distinguishing physical peculiarities constituting a comprehensive class appearing to be derived from a distinct primitive source. A tribal or national stock, a division or subdivision of one of the great racial stocks of mankind distinguished by minor peculiarities.[23]

Under either of these broadly phrased definitions Spanish-speaking peoples could be easily categorized as a "race".

Race has been used in the literature of sociology and anthropology to describe groups of people sharing common language.[24] Based on such assertion, all Spanish origin peoples, including Mexican Americans, Puerto Ricans and Latin Americans can be defined as a race.

The various meanings attributed to the term race stem from the fact that the word attempts to define a flexible concept,[25] connoting a social value rather than an empirical fact. Thus, scientists do agree among themselves on what physical characteristics should be used to determine race (e.g., skin color, hair texture, blood-type or cranial size). Since none of these factors is considered to be dispositive [26] of what constitutes a race, it is clear that any attempt to classify peoples into racial groupings is discretionary and can be considered in no way exact nor immutable.

CONCLUSION

Population groups distinguished by, and discriminated against on the basis of, their language, their common cultural heritage, and their physical characteristics meet the anthropological/sociological definition of race. In using such racial characteristics to identify a class for 14th amendment purposes, the courts have gone far in supporting the definition of such groups as "races" for purposes of 15th amendment protection. Based on such reasoning, Spanish origin minority groups should be defined as a race for purposes of protection under the Voting Rights Act.

in their election laws and procedures when they recognize that these changes must obtain federal approval. In Bessemer, Alabama, for example, the city rescinded an increase in filing fees rather than submit it for preclearance.

SECTION 6–7

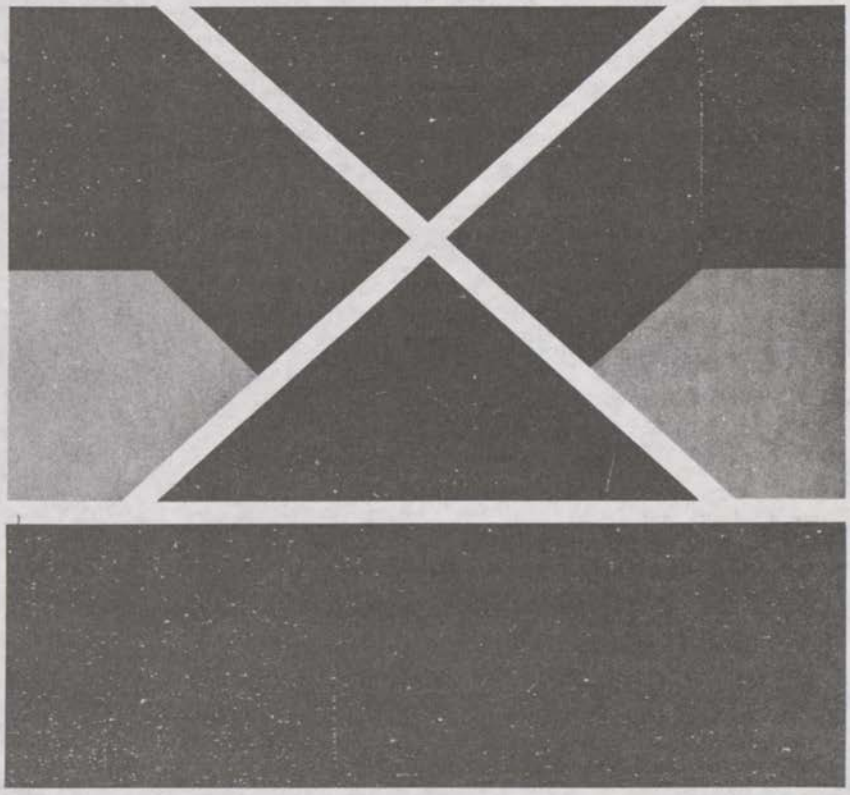
Sections 6 through 9 of the Voting Rights Act allow the Attorney General, in his discretion, to assign Federal examiners to "list" eligible persons for registration by State officials in the covered jurisdictions and to appoint Federal observers to report on the conduct of elections in covered jurisdictions. These provisions, though utilized rather sparingly during the life of the Voting Rights Act, provide additional useful tools in the arsenal of weapons which strengthen efforts to prevent discrimination in registration and voting procedures. As with section 5, the deterrent effect of these sections is a major argument for their continuation. Also, if these important provisions of the Voting Rights Act were allowed to expire, litigation would be the only remedy available, and resort to court action on a case by case basis has historically proven a highly ineffective way to enforce voting rights.

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[21] *See*, Section C, below.
[22] Webster's Third New International Dictionary, 1870 (1965).
[23] Black's Law Dictionary 1423 (4th ed. 1951).
[24] 15 Encyclopedia Britannica 348 (15th ed. 1975).
[25] Erlich and Holm, "A Biological View of Race" in *The Concept of Race* 171–173 (A. Montague ed. 1964) The authors state: "The evolution of man is an interaction between classical 'biological' evolution and psychosocial or cultural evolution."
[26] *Id.* at 167–71.

APPENDIX 2

THE VOTING RIGHTS ACT: TEN YEARS AFTER



A Report of the United States
Commission on Civil Rights
January 1975

U.S. Commission on Civil Rights

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 to:

Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;

Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;

Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and

Submit reports, findings, and recommendations to the President and the Congress.

Members of the Commission:

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Robert S. Rankin
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, Staff Director

LETTER OF TRANSMITTAL

THE U.S. COMMISSION ON CIVIL RIGHTS
Washington, D.C.
January 1975

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

Sirs:

The Commission on Civil Rights presents this report to you pursuant to Public Law 85-315, as amended.

This document presents the Commission's evaluation of the current status of minority voting rights in jurisdictions covered under the Voting Rights Act of 1965, as amended in 1970. The information on which this report is based was obtained by the Commission primarily from staff interviews in these jurisdictions and from court decisions and analysis of the files of the U.S. Department of Justice.

The Voting Rights Act has contributed substantially to the marked increase in all forms of minority political participation in the last 10 years. The very existence of the act as well as the specific remedies that it provides give support to minority citizens as they exercise their constitutional right to vote. Nevertheless, though the Voting Rights Act has been effective, detailed examination of recent events reveals that discrimination persists in the political process. The promise of the 15th amendment and the potential of the Voting Rights Act have not been fully realized. We, therefore, conclude that the protections of the Voting Rights Act should not be allowed to expire in August 1975.

We urge your consideration of the facts presented and the Commission's recommendations for corrective action.

Respectfully,

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Robert S. Rankin
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, Staff Director

THE VOTING RIGHTS ACT: TEN YEARS AFTER

A Report of the United States
Commission on Civil Rights
January 1975

PREFACE

The 1965 Voting Rights Act is one of the most significant pieces of civil rights legislation ever enacted. Its passage and enforcement have been responsible for substantial increases in the number of blacks registered, voting, and elected to office in the seven Southern States covered by the act. This study has a twofold purpose: (1) to determine whether the conditions which led to the act's original passage have been eradicated; and (2) to determine whether the promise of full participation has been fulfilled for blacks, Puerto Ricans, Mexican Americans, and Native Americans in jurisdictions covered by the act's special provisions.

In the course of the study, Commission staff members visited 54 jurisdictions in 10 States (Alabama, Arizona, California, Georgia, Louisiana, Mississippi, New York, North Carolina, South Carolina, and Virginia) between July and November 1974. Within these States, counties and cities were chosen on the basis of preliminary research that indicated that there were problems of minority participation in the political process. The selected counties represent a wide geographical range as well as rural and urban areas.

The staff conducted over 200 interviews with persons knowledgeable about the political process in these States. These persons included

county clerks, county registrars, and other city and county officials; minority officeholders; minority candidates for office; public officials at the State and national level; and other persons active in civil rights activities. Observations by Commission staff were made during the 1974 primaries in Louisiana, Georgia, and South Carolina, and during the 1974 general elections in Arizona and California.

Other sources of information included the Department of Justice, the Lawyers' Committee for Civil Rights Under Law, the Voter Education Project, and the Joint Center for Political Studies. Commission staff also reviewed State election codes for the 10 States, as well as trial and appellate court decisions and pleadings.

This report deals primarily with events that occurred since 1971. Previous reports of the Commission and others have discussed earlier years of the Voting Rights Act. The report treats examples of problems that continue to affect the enfranchisement of minority voters.[1] It is, therefore, not a complete review of all political activity in the jurisdictions covered by the act.

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1. Throughout this report, the terms black, Native American, Puerto Rican, and Mexican American (or Chicano) are used to refer to the predominant minority groups in the jurisdictions covered by the Voting Rights Act. The term white is used to refer to the nonminority population of these jurisdictions.

Prior to the publication of a report, the Commission, in accordance with its statute, rules, and regulations, affords any individuals or organizations that may be defamed, degraded, or incriminated by any material contained in the report an opportunity to respond in writing to such material. All responses received in a timely fashion are incorporated or reflected in the body of the report, or included in Appendix 7.

ACKNOWLEDGMENTS

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Appreciation is also extended to the following staff members and former staff members who provided support and assistance in the production of the report:

Mary Baltimore, Lucille Boston, Claudette C. Brown, Rodney J. Cash, Doris O. Chambers, Antoinette Foster, Joann Harris, Gwen Morris, Michael P. O'Connell, Gail Ross, Roberta Sanders, Patsy Washington, and Mary Watson.

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The report was prepared under the overall supervision of John Hope III, Assistant Staff Director, Office of Program and Policy Review.

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1. INTRODUCTION

On March 25, 1965, 10 days after President Lyndon Johnson's dramatic appeal to Congress for effective voting rights legislation,[1] 25,000 black and white citizens assembled on the steps of the State Capitol in Montgomery, Alabama. They had marched from Selma under the protection of federalized National Guard troops to petition for the most basic of rights--the right to vote. In January 1975, 15 blacks took their seats in the same State Capitol as members of the Alabama legislature, duly elected under a court-ordered apportionment plan fashioned on principles developed in 10 years of implementing the Voting Rights Act of 1965.[2]

Clearly, substantial progress has been made toward full enjoyment of political rights. Because the headlines and front-page pictures of blacks marching to registrars' offices have faded, it is fitting to review the status of voting rights 10 years after passage of the Voting Rights Act. The very real gains that have been made, however, must not be allowed to obscure the persistence of racial discrimination in the electoral process.

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1. Reprinted in U.S., Congress, House of Representatives, Right to Vote, House Doc. No. 117, 89th Cong., 1st Sess. (1965).

2. 42 U.S.C. §§ 1973-1973p, as amended, 42 U.S.C. 1973aa-bb-4 (1970) (hereafter only specific provisions of the act will be cited). The text of the act, as amended, is reproduced in appendix 6.

The story of the progress in voting rights and of the persistence of some old discriminatory practices and development of new ones is more than the story of the Voting Rights Act.[3] But the Voting Rights Act is central to developments of the last 10 years and understanding its provisions and implementation is essential in assessing the current status of minority participation in the political process.

The Voting Rights Act is a complex piece of legislation that was developed in response to the failure of earlier legislation to remedy discrimination in voting.[4] There is no need to belabor the history

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3. In particular, it should be stressed that this report focuses on voting rights only in jurisdictions covered by the Voting Rights Act. It, therefore, excludes consideration of progress and problems elsewhere in the United States. There is reason to believe that minority citizens in other areas encounter difficulties in exercising their political rights. See, e.g., reports of Voter Education Project Field Representatives covering Arkansas, Florida, and Texas during 1973-74 in the files of the Voter Education Project, Inc., Atlanta, Ga.; Arkansas State Advisory Committee Report to the U.S. Commission on Civil Rights, Blacks in The Arkansas Delta (1974); California State Advisory Committee Reports to the U.S. Commission on Civil Rights, Political Participation of Mexican Americans in California (1971) and Reapportionment of Los Angeles' 15 City Councilmanic Districts (1973). In addition, litigation in jurisdictions not discussed in this report raises many of the issues that are treated. See, e.g., White v. Regester, 412 U.S. 755 (1973) on the discriminatory aspects of multimember legislative districts in Texas. There is also extensive litigation attacking the use of at-large elections for local governmental bodies as racially discriminatory. The Commission will investigate such problems in a subsequent report.

4. See U.S., Congress, House, Judiciary Committee, House Report No. 439, reported in U.S. Code, Congressional and Administrative News (89th Cong., 1st Sess., 1965), vol. 2, pp. 2441-2508, and Joint Views of 12 members of the Judiciary Committee Relating to the Voting Rights Act of 1965, attached to Senate Report No. 162, reported ibid., pp. 2540-70.

of minority disfranchisement here. Earlier reports of the U.S. Commission on Civil Rights and others have told that story.[5] It is important to recall, however, that the frustration of Federal efforts to ensure free exercise of 15th amendment rights led directly to the enforcement mechanisms of the Voting Rights Act. Voting rights provisions of the Civil Rights Acts of 1957,[6] 1960,[7] and 1964[8] focused on streamlining the traditional remedies of the judicial process to enforce the 15th amendment. By contrast, the Voting Rights Act not only further strengthened judicial remedies, but also provided for direct Federal action through a variety of administrative remedies to counter immediate and potential barriers to full and effective minority political participation.[9]

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5. See Report of the U.S. Commission on Civil Rights, 1959; 1961 U.S. Commission on Civil Rights Report, Book 1: Voting; Report of the U.S. Commission on Civil Rights, 1963; U.S. Commission on Civil Rights, Freedom to the Free (1963); U.S. Commission on Civil Rights, Voting in Mississippi (1965); U.S. Commission on Civil Rights, The Voting Rights Act...The First Months (1965); and U.S. Commission on Civil Rights, Political Participation (1968). See also Washington Research Project, The Shameful Blight: The Survival of Racial Discrimination in Voting in the South (Washington, D.C., 1972).

6. Pub. L. 85-315, 71 Stat. 637.

7. Pub. L. 86-449, 74 Stat. 90.

8. Pub. L. 88-352, 78 Stat. 241. The three civil rights acts, as well as some amendments from the Voting Rights Act of 1965 (Pub. L. 89-110, 79 Stat. 445) are codified as 42 U.S.C. § 1971 (1970).

9. For comparison of Federal enforcement strategies, see Armand Derfner, "Racial Discrimination and the Right to Vote," Vanderbilt Law Review, vol. 26 (1973), pp. 523 ff., and Note, "Federal Protection of Negro Voting Rights," Virginia Law Review, vol. 51 (1965), pp. 1050 ff.

Some provisions of the Voting Rights Act are permanent legislation of general application. Others are temporary, with special application. The temporary provisions were initially established for 5 years and were extended in 1970 for 5 more years.[10] The Supreme Court of the United States has upheld the constitutionality of the major provisions of the act.[11] This report is primarily concerned with the effect of the special provisions of the Voting Rights Act, but brief mention of its general provisions sets a context for understanding the potential of the act.

Among the general provisions, section 2 prohibits the imposition or application of any racially discriminatory "voting qualification or prerequisite to voting, standard, practice, or procedure."[12] Section 3 authorizes courts to apply the remedies established in the special provisions in suits brought by the Attorney General to enforce the 15th amendment.[13] Section 10 contains a congressional finding that the poll tax violated the 15th amendment and instructs the Justice Department to bring suit against its use.[14] Other sections establish civil and criminal penalities for violations of the act.[15]

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10. See p. 7 below.

11. South Carolina v. Katzenbach, 383 U.S. 301 (1966).

12. 42 U.S.C. § 1973 (1970).

13. 42 U.S.C. § 1973a (1970). The special provisions are summarized on pp. 5-6 and discussed in detail in chapter 2.

14. 42 U.S.C. § 1973h (1970). Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966) and the 24th amendment ban payment of poll taxes as a requirement for voting.

15. 42 U.S.C. § 1973i-1.

One permanent provision, section 4(e), is discussed in detail in later chapters of this report. That provision defines Puerto Ricans educated in Spanish as literate if they have completed the sixth grade, regardless of their ability to speak, read, or write English.[16]

The heart of the Voting Rights Act is in its special provisions, sections 4 through 9. Essentially, section 4 provides a nondiscretionary, automatic formula, or "trigger," by which States or their political subdivisions (collectively called "jurisdictions") are covered, or made subject to the act's remedies.[17] Section 4 prohibits the use of "tests or devices"[18] as a prerequisite to registering or voting in any jurisdiction that maintained such tests or devices on November 1, 1964, and whose voter registration or turnout in the 1964 Presidential election was less than 50 percent of the voting age population. Section 5 freezes the electoral laws and procedures of such jurisdictions as of November 1, 1964, and prohibits enforcement of any changes in them until certification by the Attorney General or

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16. 42 U.S.C. § 1973b(e) (1970). Section 4(e) was upheld by the Supreme Court in Katzenbach v. Morgan, 384 U.S. 641 (1966).

17. 42 U.S.C. § 1973b (1970). Section 4 also establishes procedures for exemption of jurisdictions which come under the formula but can prove they have not discriminated against minority voters. See chapter 2, p. 13.

18. The act defines as a "test or device" a requirement that a person "(1) demonstrate the ability to read, write, or understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class." 42 U.S.C. § 1973b(c) (1970).

the District Court for the District of Columbia that the changes are not discriminatory in purpose or effect.[19] This process is often called "preclearance." Sections 6 through 9 provide for, but do not require, the assignment of Federal examiners to "list" eligible persons for registration by State officials in the covered jurisdictions and observers to report on the conduct of elections in some of the jurisdictions designated by the Attorney General for Federal examiners.[20]

The Voting Rights Act is a set of interacting mechanisms of varying application designed for both immediate and long-run impact. The act served the immediate goal of increasing registration by suspending literacy tests and other tests or devices in covered jurisdictions and providing for Federal examiners to speed the registration process. It also looked to the future by providing in section 5 a mechanism for preventing jurisdictions from thwarting the purposes of the act by changing their electoral laws and procedures. That the latter was not an idle fear is clear: as Congress debated the Voting Rights Act, the State of Mississippi repealed provisions of its laws that allowed illiterate persons to be assisted at the polls,[21] thereby attempting to disfranchise prospectively many persons whom the Voting Rights Act was about to enfranchise.

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19. 42 U.S.C. § 1973c (1970).

20. 42 U.S.C. §§ 1973d-g (1970). Section 13 (42 U.S.C. § 1973k (1970)) provides for termination of listing.

21. See United States v. Mississippi, 256 F. Supp. 344, 346 (S.D. Miss. 1966).

Thus, the act is aimed at facilitating registration but also at ensuring that increased registration will be meaningful. The act is designed to foster full minority participation in the process of self-government.

Congress found in 1970 that more time was necessary to guarantee that the purposes of the act were fulfilled.[22] In addition to extending the temporary provisions for 5 years, Congress amended the coverage formula of section 4 to include jurisdictions that had maintained a test or device on November 1, 1968, and had less than 50 percent turnout in the Presidential election of that year.[23] In doing this, Congress continued the special coverage of some jurisdictions for a total of 10 years (that is, their coverage would expire in 1975) and added jurisdictions whose 10-year coverage would expire in 1980 (or later, depending on exactly when they were first covered).[24] Also in 1970, Congress decided to suspend for 5 years all literacy tests

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22. See U.S., Congress, House, Judiciary Committee, Hearings on Voting Rights Act Extension Before Subcommittee No. 5, 91st Cong., 1st Sess. (1969) and U.S., Congress, Senate, Judiciary Committee, Hearings on Amendments to the Voting Rights Act of 1965 Before the Subcommittee on Constitutional Rights, 91st Cong., 1st and 2d Sess. (1969-70).

23. Voting Rights Act Amendments of 1970, Pub. L. 91-285, 84 Stat. 315, now codified in 42 U.S.C. §§ 1973b,c (1970).

24. See chapter 2 for explanation of when different jurisdictions were covered.

everywhere in the United States.[25]

If the temporary provisions of the Voting Rights Act (sections 4 through 9 and the national literacy test suspension) expire in August 1975, the authority for section 5 preclearance and for the use of examiners and observers will end. Jurisdictions covered by the act in 1965 would be permitted to resume the use of tests and devices. Jurisdictions covered later than 1965 would remain covered and could not impose their tests and devices until their 10-year coverage period had passed.

* * * *

The Voting Rights Act was designed to enable minority citizens to gain access to the political process and to gain the influence that participation brings. Before passage of the act, minorities had largely been excluded from politics. The remainder of this report details the recent experience of minority citizens as they have begun to participate in the political process in the jurisdictions covered by the Voting Rights Act.

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25. 42 U.S.C. § 1973aa (1970). The 1970 amendments also abolished durational residency requirements for Presidential elections and lowered the voting age to 18. Voting Rights Act Amendments of 1970, Pub. L. 91-285, 84 Stat. 316 and 84 Stat. 318, now codified in 42 U.S.C. § 1973bb (1970). In Oregon v. Mitchell, 400 U.S. 112 (1972) the Supreme Court upheld the 1970 amendments except for the provision lowering the voting age to 18 for State and local elections. That was subsequently accomplished by the 26th amendment.

Chapter 2 provides information about the coverage of the act and its enforcement mechanisms, and Chapter 3 discusses the impact of the act in terms of data on registration, voting, and the election of minorities to office in the covered jurisdictions. Chapters 4, 5, and 6 describe persistent barriers to full participation of minorities both as voters and as candidates. Chapter 7 deals with the continuing problems of fear, violence, and economic dependence that inhibit free exercise of minority voting rights. Chapters 8 and 9 focus on problems of political structure--the manipulation of electoral rules and representation formulas to minimize the impact of minority political participation.

2. IMPLEMENTATION OF THE VOTING RIGHTS ACT

The Voting Rights Act establishes a complex of interacting means for combating different kinds of discriminatory techniques.[1] Some features of the act are permanent (e.g., the litigation authority of section 3) and some are temporary (e.g., the suspension of all literacy tests). Some are automatic (e.g., the "trigger" of section 4) and some are discretionary (e.g., the use of examiners and observers). Some provisions had immediate effect (e.g., suspension of literacy tests in covered jurisdictions) and some were designed for prospective effect (e.g., the section 5 requirement of preclearance of changes in voting laws and practices). The Voting Rights Act was designed to provide new procedures and remedies that would allow a flexible response to changing circumstances instead of focusing on strengthening judicial remedies as previous civil rights acts had done.

Given the design of the act, it is difficult to consider one section or provision in isolation from others. The success and impact of the act results from the interaction of its provisions rather than the implementation of any single provision. In the discussion that follows, the major procedures and enforcement mechanisms of the act are presented basically in the order in which they appear in the sections

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1. The text of the act, as amended in 1970, is reproduced in appendix 6.

of the act. The order of discussion, however, does not reflect the importance of the provisions, and the interactive nature of the provisions will become evident only by reading through each section of the chapter.

The Civil Rights Division of the Department of Justice is primarily responsible for enforcement of the Voting Rights Act. Each section of the chapter gives some indication of the manner in which the Department has implemented the provisions discussed.[2]

LITIGATION

The Voting Rights Act strengthened the Attorney General's authority to bring suits to enforce the 15th amendment. Though other provisions of the act have made litigation less necessary and less frequent, it is still an important weapon in the enforcement arsenal. The authority to sue is particularly important for protecting voting rights in jurisdictions that are not specially covered[3] and for challenging

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2. For evaulation of the Justice Department's enforcement performance up to 1972, see U.S. Commission on Civil Rights, Political Participation (1968), pp. 162-70; Washington Research Project, The Shameful Blight: The Survival of Racial Discrimination in Voting in the South (Washington, D.C., 1972), pp. 145-57, 159-64 (hereafter cited as Shameful Blight); U.S., Congress, House, Judiciary Committee, Hearings on Enforcement of the Voting Rights Act before the Civil Rights Oversight Subcommittee, 92d Cong., 1st. Sess. (1971), pp. 253-74 (testimony of Armand Derfner, Lawyers' Committee for Civil Rights Under Law, Washington, D.C.) and the subsequent Report on Enforcement of the Voting Rights Act of 1965 in Mississippi 92d Cong., 2d Sess. (1972).

3. No court has yet used the authority of section 3, however, to impose the special coverage remedies on jurisdictions not covered by the act.

discriminatory laws and practices in force before jurisdictions were covered and, thus, not subject to section 5 review.

The Justice Department has initiated 45 suits under the act and has participated in private suits.[4] The purpose of the litigation has been to enforce section 5[5] and other provisions of the act.[6] The department has also sued to correct abuses in the conduct of elections which are not covered by the act.[7]

Private litigation under the act has had similar purposes.[8] Additionally, private suits have sought to clarify the Department's policies, to require it to enforce the act, and to force covered jurisdictions to comply with the act.[9]

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4. Gerald W. Jones, Chief, Voting Section, Civil Rights Division, Department of Justice, letters to David H. Hunter, U.S. Commission on Civil Rights, July 1, 1974, Attachment 5 and Dec. 6, 1974, Attachment 5.

5. See e.g., Georgia v. United States, 411 U.S. 526 (1973).

6. See e.g., United States v. Mississippi, 256 F. Supp. 344 (S.D. Miss. 1966).

7. See e.g., United States v. Anthone, Civil No. 2872 (M.D. Ga. Feb. 5, 1974).

8. See e.g., Allen v. State Board of Elections, 393 U.S. 544 (1969); Hadnott v. Amos, 394 U.S. 358 (1969); Perkins v. Matthews, 400 U.S. 379 (1971); Connor v. Johnson, 402 U.S. 690 (1971).

9. See Common Cause v. Mitchell, Civil No. 2348-71 (D.D.C. March 30, 1972); Harper v. Kleindienst, 362 F. Supp. 742 (D.D.C. 1973), appeal docketed, No. 73-1766, D.C. Cir. July 17, 1973.

COVERED JURISDICTIONS

A covered jurisdiction is a State--or a county, parish, or town (in New England) within a State that is not covered as a whole--that used a test or device and had less than 50 percent turnout in the 1964 or 1968 Presidential election.[10] Jurisdictions covered in 1965 and early 1966 were: the entire States of Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, and Virginia; 40 of the 100 counties in North Carolina and 4 of the 14 counties in Arizona. Honolulu County, Hawaii, and Elmore County, Idaho, also met the conditions of the trigger and were covered by the act.[11]

Section 4(a) of the Voting Rights Act provides that a jurisdiction may exempt itself from special coverage if it can persuade the District Court for the District of Columbia that it has not used a test or device in a discriminatory manner for 5 (since 1970, 10) years.[12]

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10. 42 U.S.C. § 1973 b(b) (1970).

11. Coverage of the seven States, Apache County, Ariz., and 26 North Carolina counties (Anson, Bertie, Caswell, Chowan, Craven, Cumberland, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Hertford, Hoke, Lenoir, Nash, Northampton, Onslow, Pasquotank, Person, Pitt, Robeson, Scotland, Vance, Wayne, and Wilson) was published in 30 Fed. Reg. 9897 (Aug. 7, 1965). Subsequently, other counties were added: Coconino and Navajo Counties, Ariz., Honolulu County, Hawaii, and Elmore County, Idaho, 30 Fed. Reg. 14505 (Nov. 19, 1965); Martin and Washington Counties, N.C., 31 Fed. Reg. 19 (Jan. 4, 1966); Yuma County, Ariz., 31 Fed. Reg. 982 (Jan. 25, 1966); Camden and Perquimans Counties, N.C., 31 Fed. Reg. 3317 (March 2, 1966), and Beaufort, Bladen, Cleveland, Gaston, Guilford, Harnett, Lee, Rockingham, Union, and Wake Counties, N.C., 31 Fed. Reg. 5081 (March 29, 1966).

12. 42 U.S.C. § 1973 b(a) (1970). Although some of the covered jurisdictions perhaps could make the necessary showing, most jurisdictions have not filed suit to exempt themselves.

Between 1965 and 1970 the State of Alaska; Wake County, North Carolina; Elmore County, Idaho; and Apache, Navajo, and Coconino Counties, Arizona, successfully sued to exempt themselves.[13] Gaston County, North Carolina, was unsuccessful in its exemption suit.[14]

The Voting Rights Act Amendments of 1970 continued the special coverage of the jurisdictions listed above that had not been exempted. By amending the trigger to refer to the 1968 election as well as the 1964 election, Congress also brought under special coverage three counties in New York City (the boroughs of Manhattan, Brooklyn, and the Bronx); Campbell County, Wyoming; Monterey and Yuba Counties in California; and five additional counties in Arizona (Cochise, Mohave, Pima, Pinal, and Santa Cruz). Also, some counties which had been exempted after 1965 were re-covered in 1970: Apache, Coconino, and Navajo Counties in Arizona; Elmore County, Idaho; and Election Districts 8, 11, 12, and 13 in Alaska.[15] More recently it was discovered that certain New England towns met the tests and they have also been

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13. Alaska v. United States, Civil No. 101-66 (D.D.C. Aug. 17, 1966); Wake County v. United States, Civil No. 1198-66 (D.D.C. Jan. 23, 1967); Apache County v. United States, 256 F. Supp. 903 (D.D.C. 1966)--including Navajo and Coconino Counties, leaving Yuma County covered; and Elmore County v. United States, Civil No. 320-66 (D.D.C. Sept. 22, 1966).

14. Gaston County v. United States, 395 U.S. 285 (1969). See p. 18.

15. 36 Fed. Reg. 5809 (March 27, 1971).

covered.[16]

The election districts in Alaska were exempted in 1972.[17] The three New York City boroughs were exempted in April 1972, but the exemption was rescinded and the three counties re-covered 2 years later.[18] Only one of the covered Southern States, Virginia, has sued for exemption. The Attorney General did not consent to exemption for Virginia,[19] and the district court continued its coverage.

It is important to note, as the list of covered jurisdictions shows, that the special coverage provisions of the Voting Rights Act reach into every corner of the United States. Obviously, the impact of the act has been greatest in the seven Southern States which are wholly or partially covered, but the act is not strictly regional legislation. Discrimination in voting is not limited to the South:

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16. 39 Fed. Reg. 16912 (May 10, 1974). Connecticut: the towns of Southbury, Groton, and Mansfield. New Hampshire: the towns of Rindge, Stewartstown, Stratford, Benton, Antrim, Boscawen, Newington, and Unity; Millsfield Township, and Pinkhams Grant. Maine: the towns of Limestone, Ludlow, Woodland, New Gloucester, Sullivan, Winter Harbor, Chelsea, Charleston, Waldo, Beddington, and Cutler; Caswell, Nashville, Reed, Somerville, Carroll, and Webster plantations, and the unorganized territory of Connor. Massachusetts: the towns of Bourne, Sandwich, Sunderland, Amherst, Belchertown, Ayer, Shirley, Wrentham, and Harvard.

17. Alaska v. United States, Civil No. 2122-71 (D.D.C. July 2, 1972).

18. New York v. United States, Civil No. 2419-71 (D.D.C.) orders of April 13, 1972, January 10, 1974. and April 30, 1974. The New York case is discussed in chapter 8.

19. Virginia v. United States, Civil No. 1100-73 (D.D.C. Sept. 18, 1974), appeal docketed 43 U.S.L.W. 3309 (U.S. Oct. 25, 1974) (No. 74-481). See p. 18.

the problems encountered by Spanish speaking persons and Native Americans in covered jurisdictions are not dissimilar from those encountered by Southern blacks, and the Voting Rights Act protects their rights as well.

SUSPENSION OF LITERACY TESTS

The Voting Rights Act suspended the use of tests and devices in jurisdictions with less than 50 percent turnout in the 1964 or 1968 Presidential election.[20] The 1970 amendments to the Voting Rights Act suspended all literacy tests, regardless of turnout, until August 1975.[21] Congress had found that such tests were particularly susceptible to abuse.

Literacy tests disfranchised illiterates; but, through the use of unfair tests or unfair administration of apparently fair tests, they also disfranchised large numbers of literates as well. Subjective "understanding" and "interpretation" tests and more extreme measures, such as Virginia's "blank form" (where applicants were required to supply the required information from memory without even a form to guide them), ensured that blacks could not register in substantial numbers.[22] The requirement of English-language literacy disfranchised

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20. 42 U.S.C. § 1973 b(a) and (b) (1970).

21. 42 U.S.C. § 1973aa (1970).

22. See sources cited in chapter 1, notes 4 and 5; See also Armand Derfner, "Racial Discrimination and the Right to Vote," Vanderbilt Law Review, vol. 26 (1973), pp. 563-64.

many otherwise qualified voters in jurisdictions such as New York, California, and Arizona.

The suspension of literacy tests permitted registration of literates who had been unfairly disfranchised, illiterates, and some persons whose usual language is not English. For the most part, the jurisdictions affected complied with the suspension of tests,[23] though the Attorney General, pursuant to section 5 of the Voting Rights Act, has objected to certain practices on the grounds that they constituted a test or device.[24]

The most important problem that has developed as a result of the suspension of literacy tests is the availability and quality of assistance to illiterates in the electoral process. To cast an effective ballot, illiterates must have meaningful help at the registration office and at the polls. The courts have held that the States must provide effective assistance.[25] States may not deny illiterates assistance which they permit physically disabled or blind persons.[26]

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23. See U.S. Commission on Civil Rights, The Voting Rights Act...The First Months (1965), pp. 24-25.

24. See David H. Hunter, Federal Review of Voting Changes, How to Use Section 5 of the Voting Rights Act (Washington, D.C.: Joint Center for Political Studies et al., 1974), pp. 25-26 (hereafter cited as Federal Review of Voting Changes). Objections were made to changes in South Carolina (Oct. 2, 1967), Georgia (Aug. 30, 1968), Alabama (Nov. 13, 1969), and North Carolina (March 18, 1971 and April 20, 1971). See appendix 5 for list of objections under the Voting Rights Act.

25. United States v. Mississippi, 256 F. Supp. 344 (S.D. Miss. 1966) and United States v. Louisiana, 265 F. Supp. 703 (E.D. La. 1966), affirmed 386 U.S. 270 (1967).

26. Ibid. and Garza v. Smith, 320 F. Supp. 131 (W.D. Texas 1970).

Nor may a State unduly limit the number of persons whom a helper may assist[27] or deny illiterates, but not literates, the use of sample ballots.[28] However, courts have not required that black helpers be available to assist black illiterates,[29] and some jurisdictions require that assistance be given only by an election official or an election official and a family member.[30]

Although the Supreme Court of the United States upheld the constitutionality of literacy tests applied in a nondiscriminatory manner in 1959,[31] it has since held that reimposition of literacy tests in jurisdictions with a history of unconstitutional school segregation may unfairly punish the victims of racial discrimination in education by depriving them of their voting rights.[32] Courts have refused to exempt such jurisdictions from coverage under the Voting Rights Act when it was shown that their segregated schools had provided inferior education.[33]

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27. Morris v. Fortson, 261 F. Supp. 538 (N.D. Ga. 1966). Georgia had reduced the number of persons a helper could assist from 10 to one.

28. Gilmore v. Greene County Democratic Party Executive Committee, 435 F.2d 487 (5th Cir. 1970).

29. Hamer v. Ely, 410 F.2d (5th Cir. 1969).

30. For details of the types of assistance permitted by various jurisdictions and their practices, see chapter 5.

31. Lassiter v. Northampton County Board of Elections, 360 U.S. 45 (1959).

32. Gaston County v. United States, 395 U.S. 285 (1969).

33. Ibid. and Virginia v. United States, Civil No. 1100-73 (D.D.C. Sept. 18, 1974), appeal docketed, 43 U.S.L.W. 3309 (U.S. Oct. 25, 1974) (No. 74-481).

Congress suspended the use of all literacy tests as an experiment. There is no indication that governments have been burdened by the loss of their literacy tests. Indeed, many States have begun to realize for the first time the seriousness of the literacy problem and the severity of the burden borne by illiterates and semiliterates in their dealings with their governments. In 1970 there were still more than 2 million persons 14 years old or over who had never attended school and 6.6 million persons 14 years old or over who had less than 5 years of school (i.e., were classified as functionally illiterate).[34] Minorities were disproportionately represented in these groups.

Some 5.5 percent of the total population 25 years old or older in 1970 had less than 5 years of school, while 15 percent of blacks and 16 percent of Spanish heritage persons 25 years old or older were functionally illiterate in 1970.[35] Of the 10 States wholly or partially covered by the Voting Rights Act that are discussed in this report, only New York and California had percentages of functionally illiterate population lower than the national figure. In

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34. U.S., Department of Commerce, Bureau of the Census, Educational Attainment by Age, Sex, and Race for the United States: 1970, no. PC(S1)-36 (April 1973). Of course, persons with limited or no schooling might be able to vote without assistance. These data, however, provide the only available estimate of the literacy problem for voting.

35. U.S., Department of Commerce, Bureau of the Census, City and County Data Book (1972), table 1, p. 3.

Alabama, Georgia, Louisiana, Mississippi, South Carolina, and North Carolina more than 10 percent of the population over 25 was functionally illiterate.[36]

In sum, literacy is still a problem in the United States, particularly for minorities and older people. The potential of literacy tests to disfranchise otherwise qualified voters remains. Although some States have removed literacy tests from their constitutions and codes,[37] without action by Congress, they will retain their power to reinstate tests when the suspension expires. Other States still have literacy tests on the books,[38] lending credence to the fears of many minority voters that tests will be reimposed, in one guise or another, as soon as the States are permitted to do so.[39]

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36. Ibid.

37. For example, in 1971, Virginia repealed the literacy requirement contained in Section 20 of its Constitution. Virginia v. United States, Civil No. 1100-73 (D.D.C. Sept. 18, 1974), slip opinion, p. 3.

38. See, for example, Code of Ala., Tit. 17 § 32 (Supp. 1973) and S.C. Code Ann. § 23-62 (4) (Supp. 1973).

39. Staff interviews in Alabama, Louisiana, Mississippi, and South Carolina, July-Sept. 1974.

Most literacy test States required English literacy as a prerequisite to registration and voting.[40] In the Voting Rights Act Congress addressed the particular problems of potential Puerto Rican voters. Education in Puerto Rico is in Spanish and Spanish is the usual language of Puerto Ricans born in Puerto Rico, whether resident on the island or the mainland. Until 1965, regardless of educational attainment or literacy in Spanish, Puerto Ricans, who are American citizens, could not vote in literacy test States unless they could demonstrate English language literacy. The largest concentration of Puerto Ricans was in New York City, where the State literacy test effectively disfranchised many of them. Indeed, this Commission found in its first report "that Puerto Rican American citizens are being denied the right to vote, and that these denials exist in substantial numbers in the State of New York."[41]

Section 4(e) of the Voting Rights Act enfranchised those Puerto Ricans who could prove they had completed 6 years of school in

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40. Hawaii accepted literacy in Hawaiian as well as English and Louisiana allowed the alternative of literacy in the applicant's mother tongue. See U.S. Commission on Civil Rights, Staff Memorandum, "Current Status of Literacy Tests or Devices for the Qualification of Prospective Voters" (Feb. 13, 1970), in U.S., Congress, Senate, Judiciary Committee, Hearings on Amendments to the Voting Rights Act of 1965 Before the Subcommittee on Constitutional Rights, 91st Cong., 1st and 2d Sess. (1969-70), p. 407.

41. Report of the U.S. Commission on Civil Rights, 1959, p. 68.

Puerto Rico even if they were not literate in English.[42] This provision is temporarily superseded by the national suspension of literacy tests, so otherwise qualified Puerto Ricans can register regardless of literacy in English or Spanish. If the suspension expires, New York's English-language literacy requirement will regain its force[43] and non-English-speaking Puerto Ricans will again have to demonstrate Spanish literacy by proving that they have completed the sixth grade.

Enfranchisement of Puerto Ricans has sharpened the focus on another aspect of the problem of helping voters use their ballots effectively. Court decisions in New York have resulted in specific orders that the board of elections provide extensive bilingual assistance to voters in election districts with substantial non-English-

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42. 42 U.S.C. § 1973b(e) (1970).

43. At the time it upheld section 4(e), the Supreme Court of the United States declined to rule New York's English-language literacy requirement (N.Y. Const., art. II sec. 1) unconstitutional. See Cardona v. Power, 384 U.S. 672 (1966). If the literacy test suspension expires, New York would be able to reinstate its test in all but the three specially covered counties in New York City. Since those counties were re-covered in 1974, the literacy test would remain in suspension there until 1984.

speaking population.[44] The rationale behind the decisions is the same as the reasoning that required help for illiterate voters: meaningful assistance to allow the voter to cast an effective ballot is implicit in the granting of the franchise. In Torres v. Sachs a Federal court found that the conduct of elections in English deprived Spanish speaking citizens of rights protected by the Voting Rights Act: "It is simply fundamental that voting instructions and ballots, in addition to any other material which forms part of the official communication to registered voters prior to an election, must be in Spanish as well as English, if the vote of Spanish-speaking citizens is not to be seriously impaired."[45]

As is the case with assistance to illiterates, the quality of bilingual assistance provided continues to be uneven. Courts in New York have ordered complete bilingual election assistance from dissemination of registration information through bilingual media to use of bilingual election inspectors. As subsequent sections of this report

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44. With reference to elections for the school board of Community School District One in Manhattan, see Lopez v. Dinkins, 73 Civ. 695 (S.D.N.Y. Feb. 14, 1973). The court invalidated the election because the bilingual assistance was not adequately provided. Coalition for Education in School District One v. Board of Elections of the City of New York, 370 F. Supp. 42 (S.D.N.Y. 1974), affirmed, 495 F.2d 1090 (2nd Cir. 1974). With reference to city elections, see Torres v. Sachs, 381 F. Supp. 309 (S.D.N.Y. 1974).

45. 381 F. Supp. 312.

show, failure to comply adequately with such orders compounds voting problems and increases the burden on minority citizens.[46]

Courts in some jurisdictions not covered by the special provisions of the Voting Rights Act that have substantial Puerto Rican populations have also ordered the development of bilingual election systems.[47] Some jurisdictions not under court order have moved voluntarily to deal with the problem of assisting the non-English-speaking voter.[48] The California Supreme Court found that State's English-language literacy requirement a violation of the equal protection clause of the 14th amendment but did not eliminate the requirement of literacy altogether (since suspended by the 1970 Voting Rights Act Amendments) or order the development of "a bilingual electoral apparatus."[49] Subse-

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46. See chapter 5. See also Coalition for Education in School District One v. Board of Elections of the City of New York, note 44 above.

47. Puerto Rican Organization for Political Action v. Kusper, 490 F.2d 575 (7th Cir. 1973) (Chicago); Marquez v. Falcey, Civil No. 1447-73 (D.N.J. Oct. 9, 1973); Ortiz v. New York State Board of Elections, Civil No. 74-455 (W.D.N.Y. Oct. 11, 1974) (Buffalo); and Arroyo v. Tucker, 372 F. Supp. 764 (E.D. Pa. 1974) (Philadelphia).

48. New Jersey has adopted a statute requiring bilingual sample ballots and registration forms in election districts with 10 percent or more Spanish speaking registered voters (N.J. Laws, 1974, ch. 51). Westchester County, N.Y., provides bilingual registration forms and plans to institute bilingual ballots for any town whose Spanish speaking population reaches 10 percent. Joseph A. McNamara, Commissioner of Elections, White Plains, N.Y., interview, Aug. 15, 1974.

49. Castro v. California, 85 Cal. Rptr. 20, 466 P.2d 244, 258 (1970).

quently the California State legislature enacted legislation which required county officials to make reasonable efforts to recruit bilingual deputy registrars and election officials in precincts with 3 percent or more non-English-speaking voting age population.[50] In addition, California now requires the posting of a Spanish-language facsimile ballot, with instructions, that also must be provided to voters on request for their use as they vote.[51]

SECTION 5 PRECLEARANCE

Section 5 of the Voting Rights Act requires that covered jurisdictions submit changes in "any voting qualifications, or prerequisite to voting, or standard, practices, or procedure with respect to voting" to the United States Attorney General or the United States District Court for the District of Columbia for a determination that the change is not discriminatory in purpose or effect before it can be enforced.[52] The point of section 5 preclearance was to break the cycle of substitution of new discriminatory laws and procedures when old ones were struck down.

Section 5 has become the focus of the Voting Rights Act in recent years.[53] The history of section 5 provides an index of the types of

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50. Cal. Election Code §§ 201, 1611 (West Supp. 1974).

51. Cal. Election Code § 14201.5 (West Supp. 1974).

52. 42 U.S.C. § 1973c (1970).

53. In the first 6 years of the act, section 5 was hardly used at all. See the discussion in Shameful Blight, pp. 136-39 and sources there cited, summarizing the 1970 and 1971 controversies over enforcement. See also Perkins v. Matthews, 400 U.S. 379, 393, n. 11 (1971).

discriminatory practices that covered jurisdictions have attempted to put into effect since 1965 and 1970, though it does not record all discriminatory practices in those jurisdictions or those of other jurisdictions.[54]

The language of the act clearly shows that Congress intended to include a very broad range of subjects under section 5. Courts have interpreted the language broadly: "The legislative history on the whole supports the view that Congress intended to reach any State enactment which altered the election law of a covered State in even a minor way."[55] Preclearance focuses on the effect of changes as well as on their purpose.

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54. Appendix 5 contains a list of all Attorney General objections to changes submitted under section 5. Information in this report about section 5 submissions and determinations is drawn from the letter of objection from the Assistant Attorney General for the Civil Rights Division to the appropriate State or local official, 28 C.F.R. § 51.21, cited "objection letter"; from summaries of section 5 objections contained in the section 5 chronological file, 28 C.F.R. § 51.26(b), cited "section 5 summary"; from the public section 5 file, 28 C.F.R. § 51.26(a), cited "section 5 files"; from the weekly list of section 5 submissions, 28 C.F.R. § 51.16, cited "section 5 weekly list"; and from the computer printout listing section 5 submissions and determinations that is maintained by the Voting Section of the Civil Rights Division, cited "section 5 printout, as of" the date of the printout. References to section 5 materials are included only to the extent necessary to identify the source and the date. For further information on section 5 procedures see David H. Hunter, Federal Review of Voting Changes.

55. Allen v. State Board of Elections, 393 U.S. 544, 566 (1969).

As the Supreme Court of the United States said: "Section 5 is not concerned with a simple inventory of voting procedures, but rather with the reality of changed practices as they affect Negro voters."[56]

Thus, the covered jurisdictions are required to submit all changes in their voting laws, practices, and procedures, whether major or apparently trivial. Congress knew that seemingly minor changes in electoral law could, in fact, serve to exclude minorities from participation or to minimize the effect of their participation. Changes in polling places, registration times and places, qualifications for office, schedules of elections, city boundaries, and districting are among the matters that must be submitted.[57] The issue of whether court-approved reapportionment plans may be implemented without section 5 review by the Attorney General or the District Court for the District of Columbia awaits further clarification.[58]

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56. Georgia v. United States, 411 U.S. 526, 531 (1973).

57. See Federal Review of Voting Changes, especially pp. 23-46, for discussion of many of the types of changes that must be submitted. Some indication of the range of changes may be found in appendix 5.

58. In granting a motion to stay a district court order regarding a Mississippi reapportionment plan, the Supreme Court declined to reach a section 5 argument, stating that "A decree of the United States District Court is not within the reach of Section 5 of the Voting Rights Act." Connor v. Johnson, 402 U.S. 690, 691 (1971). In Harper v. Kleindienst, 362 F. Supp. 742 (D.D.C. 1973), appeal docketed, No. 73-1776 (D.C. Cir. July 17, 1973), the court is being asked to overturn a district court ruling that the Attorney General is obligated under section 5 to review a reapportionment plan approved by the Federal district court in South Carolina. As of Dec. 20, 1974, the court had not decided the case. See chapter 8 for details of the South Carolina case.

Regulations to implement section 5 were not developed until 1971.[59] Under the statute and the regulations, it is up to the jurisdiction to make a submission and to persuade the Attorney General or the court that a change is not discriminatory. Should the Justice Department hear of a change that has not been submitted, it may request the jurisdiction to make its submission. Both the Department and private parties may sue to enjoin enforcement of any change which has not been submitted.[60]

Without more exact monitoring of the legislative activity of all governing bodies in covered jurisdictions, it is impossible to state the extent of compliance with the submission requirement. Although jurisdictions have been in substantially greater compliance in the second 5 years than they were in the first 5 years of the act, review of the Justice Department's May 1974 computer printout reveals that a large number of counties have never made any submissions under section 5. Spot checks by Commission staff indicate that in some cases, at least, changes have been made but not submitted or reviewed.[61] Non-compliance with the Voting Rights Act through failure to submit changes remains a problem in enforcement of the act.

The regulations specify the minimal information that jurisdictions must submit and encourage submission of detailed information to

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59. 28 C.F.R. Part 51. Issuance of the regulations was approved in Georgia v. United States, 411 U.S. 526 (1973).

60. See Allen v. State Board of Elections, 393 U.S. 544 (1966).

61. See discussion in chapters 8 and 9.

assist the Attorney General's review.[62] The submitting jurisdiction may include whatever material it wishes to support its case. Public comment on the reasons for a change and its likely racial impact is welcomed and even solicited by the Department.[63] The Department has 60 days from the time the submission is complete (i.e., the jurisdiction has provided all information the Department thinks it needs to evaluate the change) to determine whether the Attorney General shall "interpose an objection."[64] The alternative of seeking a declaratory judgment without Attorney General review has been used only once.[65] The option of an administrative proceeding is clearly preferred by the covered jurisdictions.

If the Attorney General does not object to a change, the jurisdiction may enforce it, though it remains subject to constitutional challenge. If the Attorney General does object, then the jurisdiction may, in effect, appeal by asking the Federal district court for a declaratory judgment that the change is not discriminatory.[66] The

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62. 28 C.F.R. § 51.10.

63. 28 C.F.R. §§ 51.10-51.15.

64. 42 U.S.C. § 1973c (1970); 28 C.F.R. § 51.3.

65. Vance v. United States, Civil No. 1529-72 (D.D.C. Nov. 30, 1972).

66. See, for example, Beer v. United States, 374 F. Supp. 363 (D.D.C. 1974), prob. jur. noted 43 U.S.L.W. 3186 (U.S. Oct. 15, 1974) (No. 73-1869) in which the court rejected New Orleans' contention that its second city council redistricting plan was not discriminatory after the Attorney General had objected to two plans. See discussion in chapter 9.

jurisdiction also may amend its change to remove the discriminatory aspects and resubmit it.[67] Though the Department does not redraft changes itself, the process of evaluation may take on the cast of negotiation and the Department may help shape the new submission. Or the process may involve a "negotiated settlement" in which the Attorney General does not object based on certain stated understandings.[68]

Section 5 also acts as a deterrent to passage or enforcement of discriminatory legislation. That is, the fact that a change must be submitted and reviewed by "outside" officials specifically for its racial purpose or effect inhibits jurisdictions from passing such legislation. For example, an attorney reports that Virginia's attorney general monitors submissions from local areas to ensure that objectionable changes go no further.[69] Attorneys familiar with the

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67. A second submission may also be objected to, as was the case in New Orleans (note 66 above) but compare, for example, New York's redistricting in which the second submission was not objected to (see chapter 8).

68. This occurred with respect to the Georgia legislative redistricting plan (see chapter 8). Former staff member, Department of Justice, telephone interview, Nov. 22, 1974. Similarly, the Attorney General did not object to Arizona's prohibition of straight party voting on the understanding that Arizona would provide bilingual assistance in the 1974 general election. J. Stanley Pottinger, Assistant Attorney General for Civil Rights, letter to N. Warner Lee, Attorney General of Arizona, Oct 3, 1974. (See chapter 5.)

69. Armand Derfner, Charleston, S.C., interview, Nov. 18, 1974. Mr. Derfner has been counsel for the plaintiffs in a number of voting rights suits in Virginia, including the Richmond and Petersburg annexations (see chapter 9).

operation of section 5 invariably refer to its deterrent effect.[70] In Bessemer, Alabama, for example, the city rescinded an increase in filing fees rather than submit it for preclearance.[71] At the time Bessemer was approaching an election in which blacks were expected to mount a significant challenge for control of the city commission.

FEDERAL EXAMINERS AND OBSERVERS

The Voting Rights Act deals most directly with the problems of registration of voters and the conduct of elections in sections 6 through 9, the provisions establishing the examiner and observer programs. Use of Federal registrars had been widely debated during consideration of the earlier civil rights acts, but establishment of an effective Federal registrar program was delayed until 1965. Failure of the earlier legislation forced acknowledgment that some Federal presence was necessary.

Federal examiners may be sent at the direction of the United States Attorney General to covered jurisdictions if the Attorney General has received 20 meritorious written complaints alleging voter discrimination or the Attorney General believes that the appointment of examiners

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70. Ibid. See also interviews with Stanley A. Halpin, Jr., attorney, New Orleans, La., Nov. 18, 1974, and David Coar, attorney, Birmingham, Ala., July 19, 1974.

71. Walter Jackson, Birmingham, Ala., interview, July 17, 1974. See also Birmingham News, June 14, 1974, p. 36.

is necessary to enforce the guarantees of the 15th amendment.[72] The times, places, and procedures for Federal examination are established by the Civil Service Commission with the advice of the Attorney General.[73] The Civil Service Commission actually appoints the examiners.[74]

The duty of the examiners is to list, that is, declare eligible and entitled to vote, those who satisfy State qualifications that are consistent with Federal law and that have not been suspended by the Voting Rights Act. Each person listed by the examiner is issued a certificate as evidence of eligibility to vote in any Federal, State, or local election.[75] The list is sent monthly to local election officials who must enter the names of the listed persons on the registration rolls.[76] The regulations also include procedures for

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72. 42 U.S.C. § 1973d (1970). The Attorney General has relied almost exclusively on the second of these grounds for designating jurisdictions for examiners, though complaints and requests from local citizens are investigated. Gerald W. Jones, Chief, Voting Section, interview, June 5, 1974. On April 29, 1974, the Attorney General designated Pearl River Co., Miss., for examiners on the basis of citizen complaints. Deposition of J. Stanley Pottinger, p. 9 in Connor v. Waller, Civil No. 3830 (S.D. Miss. Nov. 13, 1974).

73. J. Stanley Pottinger, Assistant Attorney General for Civil Rights, letter to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Dec. 23, 1974, attachment.

74. See 45 C.F.R. Part 801 for the Civil Service Commission's regulations for examiners.

75. 45 C.F.R. § 801.205.

76. 45 C.F.R. § 801.207. Shortly after the program began, State courts in Alabama, Louisiana, and Mississippi enjoined local officials from registering federally-listed persons, but Federal courts voided the injunctions and ordered that they be registered. Reynolds v. Katzenbach, 248 F. Supp. 593 (S.D. Ala. 1965); United States v. Louisiana, 265 F. Supp. 703 (E.D. La. 1966), affirmed 386 U.S. 270 (1967); United States v. Mississippi, 256 F. Supp. 344 (S.D. Miss. 1966).

challenging listings and for removing the names of persons who have died or lost their eligibility to vote.[77]

Despite fears expressed when the Voting Rights Act was passed (or perhaps because of them), examiners have been used sparingly and most served during the first few years after the act went into effect.[78] Although local registrars continue to complain about the use of examiners,[79] only 60 counties and parishes have ever had examiners in the 10 years of the Voting Rights Act.[80] Only 155,000 of the more than 1 million new minority registrants in the covered States were registered through Federal listing.[81] No examiners have

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77. 45 C.F.R. § 801.301 et seq. and 45 C.F.R. § 801.401 et seq.

78. For detailed and critical discussion of the policy on and use of examiners up until 1972, see Shameful Blight, pp. 51-60. During the years 1972 through 1974 examiners have been used in only two Mississippi counties for a total of 10 days. They listed 454 new registrants. Gerald W. Jones, Chief, Voting Section, Civil Rights Division, U.S. Department of Justice, letter to David H. Hunter, U.S. Commission on Civil Rights, Dec. 6, 1974, Attachment 8.

79. For example, Nell Hunter, Chairman of the Board of Registrars, Jefferson Co., Ala., interview, July 17, 1974; Cecil Manning, Registrar, East Carroll Parish, La., interview, Sept. 5, 1974.

80. Seventy-three of the 553 counties in the seven covered Southern States have been designated for examiners, including two new ones on Oct. 31, 1974 (U.S., Department of Justice, Press Release, Nov. 5, 1974). That designation is a necessary formality for the appointment of observers. See appendix 3 for the list of designated counties and the total number of persons listed by Federal examiners in each.

81. In the 10 years, 170,276 persons (of whom about 7 percent are white) have been listed. Slightly over 15,000 were rejected or have since had their names removed from the lists. U.S., Civil Service Commission, Bureau of Manpower Information Systems, "Cumulative Totals on Voting Rights Examining" (June 30, 1974).

ever been sent to North Carolina and Virginia. (See table 1.)

Table 1. SUMMARY OF EXAMINER ACTIVITY AS OF JUNE 30, 1974

State	Number of Examiner Counties	Number of Persons Listed (Net)
Alabama	12	62,798
Louisiana	9	21,107
Mississippi	34	62,273
South Carolina	2	4,582
Georgia	3	3,388
TOTAL	60	155,148

Source: U.S., Civil Service Commission, Bureau of Manpower Information Systems, "Cumulative Totals on Voting Rights Examining" (June 30, 1974).

Some persons told the Commission that the mere threat of examiners stimulated local registrars to begin registering blacks.[82] A black politician stressed the deterrent effect of the examiner program when he commented, "Birmingham would be appalled and embarrassed if examiners were sent back here."[83]

Federal observers are appointed by the Civil Service Commission at the request of the Attorney General to serve in jurisdictions which

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82. For example, Sam Ely, Circuit Clerk, Sunflower Co., Miss., interview, Aug. 9, 1974.

83. Dr. Richard Arrington, city council member, Birmingham, Ala., interview, July 19, 1974.

have been designated by the Attorney General for the appointment of Federal examiners.[84] The duty of the observers is to act as poll watchers to observe whether all eligible persons are allowed to vote and whether all ballots are accurately counted. The people who serve as observers are either Civil Service Commission field employees or field employees of other Federal agencies who are recruited by the Civil Service Commission.[85]

Since enactment of the Voting Rights Act, more than 6,500 observers have been sent to cover elections in five Southern States.[86] Almost half of all observers have been used in Mississippi. In 1974, 430 observers watched primary and general elections in Alabama, Georgia, Louisiana, and Mississippi.[87]

Black residents of jurisdictions that have had observers view the program with mixed reactions.[88] Most believe that the presence of observers deters local officials from preventing blacks from voting and, to a lesser extent, from treating black voters discourteously.

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84. 42 U.S.C. § 1973f (1970).

85. Charles Dullea, Voting Rights Task Force, U.S. Civil Service Commission, Washington, D.C., telephone interviews, Dec. 10 and 16, 1974. For background on the observer program see Political Participation, pp. 157-162 and Shameful Blight, pp. 87-88.

86. See appendix 4 for distribution of observers by county and year.

87. Jones letter to Hunter (n. 78 above), Attachment 2.

88. Staff interviews in Alabama, Louisiana, Mississippi, and South Carolina, July-Sept. 1974.

Most also believe that the presence of observers, if known in advance, encourages blacks to vote because the Federal presence can help to alleviate the widespread distrust of local election officials. Department of Justice staff attorneys who have served with observers have expressed similar views.[89]

Nevertheless, black residents of observer jurisdictions visited by the Commission staff expressed some dissatisfaction with the program. They complain that most observers are white Southerners from nearby States and often indistinguishable from the local election officials.

Neither the Department of Justice nor the Civil Service Commission maintains records showing the race of all observers,[90] but the limited information available indicates that few observers are black. According to the Civil Service Commission, 126 of the 191 Federal observers present at the November 1974 election were recruited from other Federal agencies, and there is no record of their race. Only 7 of the 65 who were Civil Service Commission employees were black.[91] A Civil Service Commission spokesman explained that arrangements for observers are made just before an election when there is no time to attempt to ensure that a substantial percentage of the observers are minorities.[92]

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89. Staff interviews with Department of Justice staff attorneys, August-September, 1974.

90. Jones letter to Hunter (n. 78 above); Dullea interviews.

91. Dullea interviews.

92. Ibid.

Black residents of observer jurisdictions also complain that the practice of last-minute assignment of observers tends to diminish the effectiveness of the program. One attorney noted that the observers arrive just before the election and are not well informed about local conditions.[93] Their last-minute assignment precludes widespread publicity about their presence, so the reassuring effect of their presence for minority voters may well be lost.

One of the least understood aspects of the Federal observer program is the role of the observer in actual practice. The number of complaints about the passivity of observers or the need for observers made to Commission staff during the preparation of this report indicates a lingering belief, or perhaps hope, that the observers are there on election day either to "do something" or "prevent the doing of something."[94] In fact, Federal observers merely observe and report the conduct of the election in the polling place they are assigned to; they do not participate in managing the poll in any way.[95]

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93. J. L. Chestnut, Selma, Ala., interview, Sept. 3, 1974.

94. Staff interviews in Alabama, Louisiana, Mississippi, and South Carolina, July-Sept. 1974.

95. James v. Humphreys County Board of Election Commissioners, No. GC-72-70-K (N.D. Miss. Oct. 4, 1974) illustrates the function of observers and use of the fruits of poll watching by a court. For the general election on Nov. 2, 1971, 30 Federal observers served in Humphreys County. The observers witnessed at least 634 assisted voters as they voted. They noted the method and manner of assistance at each polling place. The observer reports provided a relatively complete record of the conduct of the election that the court relied on in ordering that illiterates receive the same form of assistance afforded blind and disabled persons.

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The Voting Rights Act works through the interaction of its provisions. If a jurisdiction meets the conditions of the section 4 trigger, it is automatically covered by the special provisions. Coverage automatically suspended a jurisdiction's test or device (until the national suspension of literacy tests temporarily banned them all) and brings the section 5 review requirement into force. Use of examiners and observers under sections 6 through 9 is at the discretion of the Attorney General. Litigation under the act is both independent of the temporary provisions and in support of them. The act addressed the immediate problem of facilitating registration of minorities through provision for suspension of literacy tests and assignment of Federal examiners. It also anticipated the development of later problems through provision for observation of elections and review of changes in electoral laws and procedures.

As minority citizens have begun to exercise their political rights, the Justice Department's enforcement emphasis has shifted from using examiners for registration to using section 5 preclearance to block efforts to minimize the influence of new minority voters, candidates, and officeholders.

The Voting Rights Act was designed and has been implemented to change local circumstances in which minorities encountered severe difficulties in exercising their constitutional rights. Its impact can be seen through analysis of statistics on political participation and through review of the recent experience of minority citizens in the political process in jurisdictions covered by the act.

3. IMPACT OF THE VOTING RIGHTS ACT

Minority political participation has increased substantially in the 10 years since enactment of the Voting Rights Act. There are more minority citizens registered, voting, running for office, and holding office than at any time in the Nation's past. Though the potential of minority political participation has yet to be realized, the progress of the last 10 years is striking. A large part of this progress is due directly or indirectly to the impact of the Voting Rights Act. Minority citizens are no longer politically invisible. As a close observer of black politics commented, "[B]lack politics is much too important these days to be ignored."[1]

The extremely low participation of blacks in the South was a major stimulus for enactment of the Voting Rights Act. Review of "before and after" statistics on registration, voting, and office-holding for the seven Southern States wholly or partially covered by the act shows both that more blacks are participating in the political process

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1. Eddie N. Williams, president, Joint Center for Political Studies, "The Impact of the Black Vote on National Politics" (speech before the Public Affairs Council, Nov. 7, 1974), p. 2.

now and that the disparity between white and black participation has diminished substantially. Real progress has been made in ensuring that all citizens may exercise their political rights, and the available statistical evidence indicates that minority citizens have responded to the opportunity to participate.

PROGRESS IN THE COVERED SOUTHERN STATES

Inability or failure to register to vote usually prevents a citizen from running for or holding office as well as from voting. Thus, low registration generally means low levels of other forms of political participation. While increased registration rates are achievements in themselves, their real importance is that they create the potential for increased impact on the political process through voting, candidacy, and office-holding. Not only are black votes almost always critical to the success of black candidates, they are also often essential for the victory of white candidates as well. Thus, increased registration allows black voters to influence and sometimes determine election outcomes. In addition, the existence of a substantial number of black voters requires that candidates pay some heed to their needs and policy preferences. Registration is the key to full political participation.

More than 1 million new black voters were registered in the seven covered Southern States between 1964 and 1972, increasing the percentage of eligible blacks registered from about 29 percent to

over 56 percent.[2] The numerical increase in black registration in each State is shown in table 2.

Table 2. NUMERICAL INCREASE IN BLACK REGISTRATION IN SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT, 1964-1972

State	Number of New Black Registrants
Alabama	197,320
Georgia	282,337
Louisiana	190,006
Mississippi	239,940
North Carolina	40,427
South Carolina	67,850
Virginia	130,741
TOTAL	1,148,621

Sources: Calculated from "pre-act" estimates in U.S. Commission on Civil Rights, Political Participation (1968), appendix VII, and 1971-72 data provided by the Voter Education Project, Inc.

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2. Most registration data by race are unofficial figures estimated by county personnel, the Department of Justice, the Voter Education Project, or other unofficial sources. The pre-act dates of estimates vary widely from State to State; for a complete list of sources and dates, see U.S. Commission on Civil Rights, Political Participation (1968), Appendix VII (hereafter cited as Political Participation). Only Louisiana kept official figures in 1965; that State, North Carolina, and South Carolina maintained such data in 1972. Although Title VIII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(f), requires the Bureau of the Census to conduct surveys on registration for selected jurisdictions, these surveys have never been done. See Washington Research Project, The Shameful Blight: The Survival of Racial Discrimination in Voting in the South (Washington, D.C., 1972), pp. 49-50 and sources there cited (hereafter cited as Shameful Blight).

The sharp increase in numbers of blacks registered in these States has also contributed to the substantial reduction in the gap between white and black registration rates.[3] Registration rates report the percentage of voting age population that is registered. Table 3 presents black and white registration rates in each State before and after the Voting Rights Act was passed and for 1971-72. In addition, the table shows the gap, or difference, between white and black registration rates. The rates are based on statewide figures and thus do not indicate the differences in registration rates among the counties of one State or all the States.[4]

The most striking feature of these data is the steady decline in the gap between white and black registration rates since passage of the act. In the seven States, this disparity has been reduced from 44.1 percentage points to 11.2 percentage points. The gap diminished in each of the States, though in some States it remained relatively large. For example, the statewide gaps in South Carolina and Georgia were reduced by 1972 to less than 5 percentage points, but in Alabama and Louisiana the gaps were still greater than 20 percentage points.

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3. It should be noted that in some States reduction of the gap is attributable to decreased white registration as well as to increased black registration.

4. Registration rates vary widely within a State. Analysis of 1974 data for three States shows a very wide range in disparities among counties. See pp. 55-56 and appendix 1.

Table 3. REGISTRATION BY RACE AND STATE IN SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT

	Pre-act Estimate[a]			Post-act Estimate[b]			1971-72 Estimate		
	White	Black	Gap*	White	Black	Gap*	White	Black	Gap*
Alabama	69.2%	19.3%	49.9	89.6%**	51.6%	38.0	80.7%	57.1%	23.6
Georgia	62.6	27.4	35.2	80.3**	52.6	27.7	70.6	67.8	2.8
Louisiana	80.5	31.6	48.9	93.1	58.9	34.2	80.0	59.1	20.9
Mississippi	69.9	6.7	63.2	91.5	59.8	31.7	71.6	62.2	9.4
North Carolina	96.8	46.8	50.0	83.0	51.3	31.7	62.2	46.3	15.9
South Carolina	75.7	37.3	38.4	81.7	51.2	30.5	51.2	48.0	3.2
Virginia	61.1	38.3	22.8	63.4	55.6	7.8	61.2	54.0	7.2
TOTAL	73.4	29.3	44.1	79.5	52.1	27.4	67.8	56.6	11.2

a. Available registration data as of March 1965.

b. Available registration data as of Sept. 1967.

* The gap is the percentage point difference between white and black registration rates.

** The race was unknown for 14,297 registered voters in Alabama, and for 22,776 in Georgia.

Sources: U.S. Commission on Civil Rights, Political Participation (1968), appendix VII: Voter Education Project, Attachment to Press Release, Oct. 3, 1972.

Although blacks are still underregistered, compared to whites, substantial progress has been made toward equalizing statewide registration. Some of this progress is due to listing for registration by Federal examiners appointed pursuant to the Voting Rights Act.[5] Most of it, however, is due to the willingness of blacks to seek to register and of registrars to comply with the law.

The substantial increases in registration since 1964 are reflected in increased voting by blacks in the seven Southern States wholly or partially covered by the Voting Rights Act. It is impossible to document that assertion with exact statistics because most States do not maintain records of voting by race.[6] However, analysis of statewide turnout in national elections and of survey data indicates trends which support that conclusion. Also, the gap between turnout in those States and national turnout has diminished, a change which may be attributable to both increased voting by Southern blacks and decreased voting by others in the population.

Table 4 shows the percentage of persons of voting age that voted for President in the elections of 1964, 1968, and 1972, in the United States as a whole and in each of the seven Southern States discussed in

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5. The Federal examiner program is discussed in chapter 2.

6. South Carolina now reports turnout by race (see p. 61).

this report. Presidential election data are used because in most cases turnout in Presidential elections is higher than in any other kind of election and because turnout in Presidential elections is less likely to be affected by strictly local considerations. The figures are totals for States and therefore do not indicate either the range of turnout among counties within a State or the race of the voters. The table also shows the change in turnout between the 1964 and 1968 elections and between the 1964 and 1972 elections.

Table 4. VOTER TURNOUT IN THE PRESIDENTIAL ELECTIONS OF 1964, 1968, AND 1972 IN SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT

	1964	1968	1972	Percentage Point Change in Turnout 1964 to 1968	Percentage Point Change in Turnout 1964 to 1972
Alabama	35.9%	52.7%	44.2%	+16.8	+ 8.3
Georgia	43.3	43.4	37.8	+ 0.1	- 5.5
Louisiana	47.3	54.8	45.0	+ 7.5	- 2.3
Mississippi	33.9	53.2	46.0	+19.3	+12.1
North Carolina	52.3	54.3	43.9	+ 2.0	- 8.4
South Carolina	39.4	46.7	39.5	+ 7.3	+ .1
Virginia	41.1	50.1	45.6	+ 9.0	+ 4.5
United States	61.8	60.7	55.7	- 1.1	- 6.1

Source: U.S., Department of Commerce, Bureau of the Census, Statistical Abstract of the United States 1974, 95th ed., table no. 704, p. 438.

In the 1964 election, all of the States fell well below the national average, and only in North Carolina did statewide turnout exceed 50 percent of the voting age population. In 1968, while national turnout dropped slightly, turnout increased in all seven Southern States covered by the Voting Rights Act in 1965-66. The increase ranged from 0.1 percentage point in Georgia to 19.3 percentage points in Mississippi. Some of this increase in voting is probably due to the impact of the Voting Rights Act in the covered States.

Furthermore, although turnout in all seven States declined between the 1968 and 1972 elections and national turnout dropped sharply during the same period, in four of the seven States 1972 turnout remained higher than 1964 turnout. In North Carolina, which had the highest turnout among these States in the 1964 election, turnout had dropped 8.4 percentage points by the 1972 election. But in Mississippi, which had the lowest turnout in 1964, turnout by 1972 had increased 12.1 percentage points. Similarly, in Alabama, which had the second lowest turnout in 1964, turnout between 1964 and 1972 increased 8.3 percentage points. Where persons vote in States with traditionally low turnout, despite a strong national trend toward nonvoting, it seems likely that many of the voters are persons who had previously been denied the opportunity to vote.

Survey data concerning reported voting by race and region also tend to support this inference. After each national election since 1964 the Bureau of the Census has conducted a survey on voting in that election.[7] Although these are the most complete surveys available, their utility is limited by the fact that more persons are reported as having voted than actual votes were cast.[8] Their utility for this study is further limited by the fact that, although statistics are presented for blacks and whites by major regions of the country, there are no data by race for individual States and the Bureau of the Census definition of the South includes the District of Columbia and nine other States in addition to the seven Southern States discussed in this report. Also, the Bureau of the Census has not surveyed voting by any other minority group discussed in this report.[9]

With these qualifications stated, the surveys show clearly that the pattern of participation in Presidential elections reported by

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7. The surveys since 1966 have also included some questions about registration.

8. There are several explanations to account for this overreporting, including, e.g., spoiled ballots as well as simple misreporting by the persons surveyed. Because the overreported figures are different from the actual turnout discussed above, to avoid confusion this discussion describes patterns of voting rather than the reported numbers.

9. In 1972 the Bureau of the Census did obtain a national figure for registration and voting by persons of Spanish origin, but no regional breakdowns were obtained.

Southern blacks is toward increased participation since passage of the Voting Rights Act.[10] Southern black voting increased sharply between 1964 and 1968. Though it declined somewhat between 1968 and 1972, Southern black voting in 1972 remained higher than in 1964. That is, the pattern of voting reported by Southern blacks was similar to that exhibited by several of the seven States, whose 1972 turnout remained higher than 1964 turnout despite the low national turnout in 1972.

Thus, both types of data suggest that Southern blacks are taking advantage of the opportunity to participate in politics that the Voting Rights Act has attempted to secure. There has been substantial progress even though turnout in the seven Southern States and voting by Southern blacks continues to lag behind national turnout and voting by whites.

Increased registration and voting by blacks in the seven Southern States covered by the Voting Rights Act has resulted in a substantial increase in the number of blacks running for and winning election to

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10. This discussion is based on analysis of data reported in the post-election surveys of the three most recent Presidential elections: U.S., Department of Commerce, Bureau of the Census, Voter Participation in the National Election November 1964, Series P-20, no. 253 (Oct. 1965); Voting and Registration in the Election of November 1968, Series P-20, no. 192 (Dec. 1969); and Voting and Registration in the Election of November 1972, Series P-20, no. 253 (Oct. 1973) (hereafter cited as Voting and Registration in the Election of November 1972).

public office. The number of black elected officials has grown throughout the country, but the change is especially striking in the States discussed in this report.

There is no available estimate of the number of black elected officials in the seven States before passage of the Voting Rights Act. Certainly it was a small number, well under 100 black officials.[11] By February 1968, 156 blacks had been elected to various offices in the seven States. This total included 14 State legislators, 81 county officials, and 61 municipal officials.[12] Table 5 shows their distribution by State and type of office.

More recent statistics show greater progress in electing black officials. By April 1974, the total number of black elected officials in the seven States had increased to 963. This total included 1 Member of the United States Congress, 36 State legislators, 429 county officials, and 497 municipal officials. Table 6 sets out their distribution by State and type of office.

In all of the covered Southern States there are now some blacks in the State legislature[13] and in at least some counties of each State

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11. Political Participation, p. 15.

12. Ibid.

13. The number of blacks elected to State legislatures in these States has increased again as a result of the Nov. 1974 election. The total is now 68 black State legislators. See p. 62.

Table 5. BLACK ELECTED OFFICIALS, AS OF FEBRUARY 1, 1968, IN SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT

	State Legislature	County Offices				Municipal Offices			
	Senate/House	Governing Body	Law Enforcement	School Board	Others	Mayor	Council	Others	Total
Alabama	0/0	0	3	3	4	2	12	0	24
Georgia	2/9	3	0	1	0	0	4	2	21
Louisiana	0/1	10	16	4	0	1	5	0	37
Mississippi	0/1	4	15	1	2	1	5	0	29
North Carolina	0/0	0	0	1	0	0	9	0	10
South Carolina	0/0	3	2	0	5	0	1	0	11
Virginia	0/1	2	1	0	1	0	12	7	24
SEVEN STATES	2/12	22	37	10	12	4	48	9	156
TOTALS	14	81				61			156

Source: U.S. Commission on Civil Rights, Political Participation (1968), appendix 1.

Table 6. BLACK ELECTED OFFICIALS, AS OF APRIL 1, 1974, IN SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT

	U.S. Congress	State Legislature	County Offices				Municipal Offices			Total
		Senate/House	Governing Body	Law Enforcement	School Board	Others	Mayor	Council	Others	
Alabama	0	0/3	9	52	16	12	8	48	1	149
Georgia	1	2/14	8	6	26	3	2	69	6	137
Louisiana	0	0/8	32	19	41	0	4	38	7	149
Mississippi	0	0/1	8	41	23	19	7	62	30	191
North Carolina	0	0/3	7	2	29	0	8	104	5	158
South Carolina	0	0/3	18	12	23	2	6	51	1	116
Virginia	0	1/1	15	4	0	2	1	38	1	63
SEVEN STATES	1	3/33	97	136	158	38	36	410	51	963
TOTALS	1	36	429				497			963

Source: Joint Center for Political Studies, National Roster of Black Elected Officials, vol. 4 (April 1974).

there are blacks on county governing boards. Although the number of offices held by blacks is rather small in comparison to the total number of offices in these States, the rapid increase in the number of black elected officials is one of the most significant changes in political life in the seven States since passage of the Voting Rights Act.

ANALYSIS OF CURRENT STATISTICS

Although blacks are beginning to catch up, the U.S. Assistant Attorney General for Civil Rights noted recently, "Some of the gains of the past ten years are more apparent than real."[14] Analysis of current statistics shows that, though the gaps between white and black participation rates have diminished, there remain significant disparities. Furthermore, though the number of black elected officials has increased rapidly, blacks have gained only a meager hold on the most significant offices. Participation data on other minority groups discussed in this report are very scarce; but, overall, their participation seems to lag behind that of both whites and blacks in the covered Southern States.

The most recent estimates of registration by race for the seven covered Southern States as a group are those of the Voter Education Project for 1971-72.[15] Table 7 shows black and white voting age

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14. J. Stanley Pottinger, "Justice and the Voting Rights Act of 1970" (speech before the Congressional Black Caucus, Sept. 27, 1974), p. 12.

15. As noted previously, the Bureau of the Census has never done a registration survey as required by Title VIII of the Civil Rights Act of 1964 (42 U.S.C. 2000(f)).

Table 7. VOTER REGISTRATION IN SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT, 1971-1972

State	White VAP*	Black VAP*	Whites Registered**	Blacks Registered**	Percent White VAP Registered	Percent Black VAP Registered
Alabama	1,697,434	508,326	1,369,542	290,057	80.7%	57.1%
Georgia	2,263,467	663,581	1,598,268	450,000	70.6	67.8
Louisiana	1,644,732	600,425	1,315,981	354,607	80.0	59.1
Mississippi	936,704	431,617	670,710	268,440	71.6	62.2
North Carolina	2,647,812	644,511	1,648,254	298,427	62.2	46.3
South Carolina	1,200,907	429,598	614,383	206,394	51.2	48.0
Virginia	2,532,537	508,995	1,550,000	275,000	61.2	54.0
TOTALS	12,923,589	3,787,053	8,767,138	2,142,925	67.8	56.6

* VAP or voting age population is the number of persons 18 years old or older in 1970, according to the 1970 census, calculated by Commission staff. The Voter Education Project population figures are projections to 1972.

** Registration figures shown are for the following dates: Ala., Jan. 1972; Ga., May 1971; La., Dec. 1971; Miss., Dec. 1971; N.C., Dec. 1971; S.C., Dec. 1971; and Va., Jan. 1972.

Source: Voter Education Project, Inc., 1972.

populations and numbers registered as well as registration rates. In all of the States black registration was lower than white. The disparity ranged from 3 percentage points in Georgia to 24 in Alabama.

Of the seven Southern States covered by the act, only three--Louisiana, North Carolina, and South Carolina--collect registration data by race. Table 8 shows 1974 registration in those States.

Table 8. VOTER REGISTRATION IN LOUISIANA, NORTH CAROLINA, AND SOUTH CAROLINA, 1974

State	Whites Registered	Blacks Registered	Percent White VAP Registered	Percent Black VAP Registered
Louisiana	1,335,027	391,666	81.2	65.2
North Carolina	1,911,448	350,560	72.2	54.4
South Carolina	736,302	261,110	61.3	60.8

Voting age populations (VAP) as of the 1970 census are shown in table 7 above.

Sources: Louisiana State Board of Registration (as of Oct. 5, 1974); North Carolina State Board of Elections (as of Oct. 30, 1974); South Carolina State Election Commission (as of Oct. 25, 1974).

The trend of increasing black registration has continued in these three States since 1971-72. Also, in Louisiana and South Carolina the statewide gap between white and black registration rates has been further reduced, by 4.9 and 2.7 percentage points, respectively. In North Carolina, however, the disparity between white and black registration has increased by 1.9 percentage points since 1972.

The lack of current data on registration by race for the other covered Southern States precludes drawing firm conclusions about

registration for all the covered States.[16] If the three States are typical, then the black registration rate will have increased, but the disparity between black and white registration may have increased or decreased slightly.

All of the registration figures mentioned above are statewide figures. They obscure the disparities between white and black registration rates which actually exist within the States.[17] In Louisiana where 81 percent of eligible whites are registered, compared to 65 percent of the eligible blacks, the gap is much more evident in rural than in urban parishes.[18] In 8 of the 10 least populous parishes, the disparity is greater than 20 percentage points, while only 2 of the 10 most populous parishes have gaps of that size. For example, in Orleans Parish (New Orleans), the difference is only 3 percentage points while in Lincoln Parish (population 34,000) there is a 34 percentage point interval. Blacks constitute 45 percent and 40 percent of the population in the two parishes, respectively.[19]

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16. The Voter Education Project estimates that overall the gap is about 15 percent. John Lewis, Executive Director of the Voter Education Project, Inc., Atlanta, Ga., speech reported in the Washington Post, Nov. 15, 1974, p. A-8.

17. See appendix 1 for 1974 registration by race and the gap between white and black registration by county for these three States.

18. Data supplied by Louisiana State Board of Registration as of Oct. 5, 1974.

19. Unless otherwise noted in this report, all population and voting age population figures are calculated from 1970 census data for each State: U.S., Department of Commerce, Bureau of the Census, 1970 Census of Population: General Characteristics of the Population, vol. 1. For black percentages of the population in counties 25 percent or more black in the seven Southern States, see appendix 2-A.

A similar range of disparities exists in North Carolina. In the State as a whole the white registration rate is 18 percentage points higher than the black rate, and in the 39 counties covered by the act white registration exceeds black by 11 percentage points.[20] The difference is more than 25 percentage points in 6 of the covered counties. For example, in 54 percent black Halifax County, the gap is 31 percentage points. The gap is 33 percentage points in Beaufort County, which is 44 percent black.

In South Carolina the black registration rate now approaches that of whites.[21] This is so both because the black rate is actually higher than the white rate in two urban counties (Charleston and Richland) and because the white rate has dropped substantially since 1964. In many rural counties, however, whites are registered at much higher rates than blacks. For example, in Newberry County (33 percent black population) the gap is 37 percentage points and in McCormick County (60 percent black population) it is 28 percentage points.

Thus, despite the increase in numbers of blacks registered and the steady decline in the disparity between white and black registra-

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20. Data supplied by North Carolina State Board of Elections as of Oct. 30, 1974.

21. Data supplied by South Carolina State Election Commission as of Oct. 25, 1974.

tion in Southern States covered by the Voting Rights Act, black registration continues to lag behind that of whites. Among counties for which data are available, a wide range of disparities exists. There is no reason to believe that this is not also true in the States for which racial data are not available. To the extent that the Voting Rights Act was intended to equalize black and white registration rates, its promise has yet to be fulfilled.[22]

Data on registration of Mexican Americans, Puerto Ricans, and Native Americans in the covered jurisdictions are even more scarce than data on black registration. Apparently, registration of Spanish-speaking voters throughout the United States lags behind that of blacks and well behind that of whites. According to the Bureau of the Census' postelection survey in 1972, only 46.0 percent of Mexican Americans and 52.7 percent of Puerto Ricans reported themselves registered, compared to 65.5 percent of blacks and 73.4 percent of whites.[23] One study reports that the registration rate of Mexican Americans in South Tucson, Arizona, was reduced to about 35 percent after a 1970 re-

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22. Only 9 of Louisiana's 64 parishes and 2 of South Carolina's 46 counties have had Federal examiners. No examiners have been used in North Carolina. See appendix 3.

23. Voting and Registration in the Election of November 1972, table 1, pp. 22-23, and table 2, p. 27. As mentioned above, p. 47, data from these surveys are overreported so the figures should be considered as estimates of the differences among the groups rather than as actual registration rates. See ibid., pp. 7-8.

registration.[24] Another study estimated Puerto Rican registration in New York City at 30 percent, about half that of the city as a whole.[25] More recent data, which might reflect the impact of the suspension of literacy tests, are not available. Whatever the actual numbers, there is general agreement that registration of Spanish-speaking voters is very low.

Lack of data prevents direct comparison of white and Native American registration rates in covered counties of Arizona.[26] However, Navajo registration has increased substantially in recent years, reflecting both the suspension of literacy tests and energetic efforts by Navajo leaders. In Apache County, where Native Americans account for 74 percent of the population and about 69 percent of the voting age population, the overall registration rate has increased from 62.8 percent for the 1972 primary to 81.8 percent for the 1974 general election.[27] During the same period the share of the total registra-

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24. Penn Kimball, The Disconnected (New York: Columbia Univ. Press, 1972), p. 193.

25. Mark R. Levy and Michael S. Kramer, The Ethnic Factor: How America's Minorities Decide Elections (New York: Simon and Schuster, 1972), p. 90.

26. The Bureau of the Census does not report registration and voting statistics for Native Americans. One study estimated 1972 registration in two heavily Native American Arizona counties to be 20 to 40 percent below the rest of the State. Kimball, The Disconnected, p. 191.

27. Registration data supplied by Virgie B. Heap, County Recorder, Apache Co., Ariz. Assessing the meaning of changes in Arizona registration data is difficult because of the frequent purges (see chapter 4). Also, some Arizona counties have been covered, exempted, and re-covered by the Voting Rights Act.

tion accounted for by reservation precincts increased from 71.1 percent to 78.6 percent.[28]

In Coconino County, which also includes part of the Navajo Reservation, Native Americans constitute 25 percent of the population and about 17 percent of the voting age population. Total registration in the county has increased from 44.1 percent for the 1970 primary to 80.1 percent for the 1974 primary.[29] The proportion of registration accounted for by the reservation precincts has increased from 10.8 percent for the 1970 primary to 23.5 percent for the 1974 primary. The actual number of persons registered in those precincts has increased fourfold during the same period. The most substantial increase in registration in the reservation precincts occurred between 1970 and 1972, after the reregistration and the literacy test suspension.

In sum, the available data indicate that minority registration rates in jurisdictions covered by the Voting Rights Act are increasing. Where the data permit comparison of white and minority registration, however, minority registration continues to lag behind that of whites.

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28. Reservation precincts are those which are located on the Navajo Reservation. Most, but not all, of the registered voters in those precincts are Native Americans. Furthermore, not all Native Americans live on the reservation, so these figures only partially reveal the status of Native American registration.

29. Registration data supplied by Pat Fabritz, County Recorder, Coconino Co., Ariz. The caveats in notes 27 and 28 also apply to Coconino County.

As mentioned above, increased black registration apparently results in increased voting.[30] This is probably true for other minority groups as well. Nevertheless, minority turnout apparently continues to lag behind that of whites.

In the 1972 Presidential election national voter turnout was 55.7 percent. Turnout in all but 2 of the 10 States discussed in this report was below the national average.[31] It is likely that some of this difference is due to relatively low minority voting rates. According to the 1972 postelection survey, minority turnout nationally was significantly lower than white turnout. Voters in different groups reported the following turnout percentages: white, 64.5; black, 52.1; Puerto Rican, 44.6; and Mexican American, 37.4.[32] No figure was reported for Native American voting. Furthermore, black turnout in the South was reported to be 9.2 percentage points lower than Southern white turnout and 19.7 percentage points below white turnout in the North and West.[33]

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30. See p. 44 above for discussion of the problems of ascertaining the racial composition of voter turnout.

31. For turnout in the seven Southern States, see table 4 above. Turnout in Arizona (50.3 percent) also fell below the national average. Turnout in New York (56.1 percent) and California (60.0 percent) was above the national average. U.S., Department of Commerce, Bureau of the Census, Statistical Abstract of the United States 1974, 95th ed., table 704, p. 438.

32. Voting and Registration in the Election of November 1972, table 1, pp. 22-23 and table 2, p. 27. For difficulties in the use of this survey data, see p. 47 above.

33. Ibid., table 1, pp. 24, 26.

Review of recent election returns in South Carolina, which maintains records of voter turnout by race, supports the conclusion that minority turnout is lower than white turnout. In the 1974 general election 44.4 percent of the white voting age population and 35.5 percent of the nonwhite (almost all black) population voted.[34] The statewide disparity of 8.9 percentage points may mask a wide range of disparities in turnout by race among the counties, as is the case with registration statistics.

Just as examination of current statistics on registration and voting reveals persistent disparities between minority and white political participation, analysis of the types of offices to which blacks have been elected in covered jurisdictions reveals that the overall picture is not as bright as sheer numbers suggest. Most offices held by blacks are relatively minor and located in small municipalities or counties with overwhelmingly black population.[35] Atlanta is the most notable exception to this phenomenon.

There is only one black representative in Congress from the seven Southern States which are wholly or partially covered by the

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34. Calculated from election returns supplied by the South Carolina State Election Commission.

35. Data for this analysis are taken from Joint Center for Political Studies, National Roster of Black Elected Officials, vol. 4 (April 1974). There are no similar rosters of Mexican American, Puerto Rican, or Native American elected officials.

Voting Rights Act. No black holds statewide office in the South and no black candidate for statewide office has even come close to election. Under the impact of the Voting Rights Act and court-ordered, single-member districting, blacks have begun to appear in State legislatures, county commissions, school boards, and city councils. But this occurs almost always in places where blacks are sufficiently numerous and concentrated residentially to dominate a district by a substantial population margin and a comfortable registration margin.

As a result of the November 1974 general election, 68 blacks will now serve in the seven State legislatures, over half of them in Alabama and Georgia.[36] (See table 9.) Blacks will hold 60 of 856 lower house seats (7.0 percent) and 8 of 318 senate seats (2.5 percent). This is a substantial increase over previous years, but it does not even approach the proportion of the population which is black. Mississippi, which is 37 percent black, has only one black legislator, first elected in 1967. Alabama, with the highest percentage of blacks in the legislature, still falls short of fair representation of blacks.

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36. Data supplied by Voter Education Project and Joint Center for Political Studies, Nov. 15, 1974. No regular State legislative elections were held in Louisiana, Mississippi, and Virginia in 1974. One black was elected to the Louisiana senate in a special election in 1974.

Table 9. BLACKS ELECTED TO STATE LEGISLATIVE SEATS IN SOUTHERN STATES COVERED BY VOTING RIGHTS ACT, AS OF NOVEMBER 15, 1974

State	Lower House			Upper House			Percent of Total Seats Held by Blacks	Black Percent of Population (1970)
	Black Seats	Total Seats	Percent Black Seats	Black Seats	Total Seats	Percent Black Seats		
Alabama	13	105	12.3%	2	35	5.7%	10.6%	26.2%
Georgia	20	180	11.1	2	56	3.6	9.3	25.9
Louisiana	8	105	7.6	1	39	2.6	6.3	29.8
Mississippi	1	122	0.8	0	52	0.0	0.6	36.8
North Carolina	4	120	3.3	2	50	4.0	3.5	22.2
South Carolina	13	124	10.5	0	46	0.0	7.6	30.7
Virginia	1	100	1.0	1	40	2.5	1.4	18.5
TOTALS	60	856	7.0	8	318	2.5	5.8	25.8

Sources: Joint Center for Political Studies, Washington, D.C.; Voter Education Project, Atlanta, Ga.

Political power continues to elude blacks in most local governments as well.[37] In Mississippi, for example, of the 410 county supervisors, only 10 are black.[38] There are no black sheriffs or judges. Thirteen of the 25 counties with majority black populations have no blacks elected to any county office. Most black elected county officials are justices of the peace, constables, or school board members, with little authority for county policymaking.

Blacks in the other covered Southern States have had little more success. They have barely begun to appear on county governing boards. In Alabama there are nine black supervisors in four counties, all of which have an overwhelmingly black population majority. In the 39 covered counties in North Carolina there are only three black county supervisors. Louisiana has only 32 black police jurors, while South Carolina and Virginia have only 18 and 15 black county commissioners, respectively. There are eight black county commissioners in Georgia. There are only five black elected judges in all seven States. The only four black sheriffs in the seven States are from the same four counties in Alabama with black county supervisors.

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37. See appendix 2, table 2-A, for the distribution by type of office of black elected officials in counties with 25 percent or more black population in the seven Southern States covered by the Voting Rights Act.

38. Since the national roster was compiled, blacks have been elected as county supervisors in special elections in Adams and Marshall Counties, Miss., bringing that State's total to 10. Frank R. Parker, attorney, Lawyers' Committee for Civil Rights Under Law, Jackson, Miss., letter to Rims Barber, Delta Ministry, Jackson, Miss., July 3, 1974 (copy in Commission on Civil Rights files); county clerk's office, Marshall Co., Miss., telephone interview, Dec. 5, 1974.

Although substantial numbers of blacks have been elected to municipal governing bodies, most of them serve in small towns which often have an overwhelmingly black population.[39] While the functions of mayors and council members may be similar regardless of the size of a municipality, the political influence of such officials often varies directly with the size of the municipality. A large majority of cities have only one or two black elected officials.

The lack of data on the election of other minorities precludes drawing strong conclusions about their political success. However, there is no reason to assume that Mexican Americans, Puerto Ricans, and Native Americans in the covered jurisdictions are more successful than blacks in winning public office.

In situations where members of a minority group dominate in the population, they have begun to elect representatives from their group. For example, in Arizona, the reservation Navajos dominate one legislative district from which one senator and two representatives are elected. In the 1974 general election three Native Americans were elected to the State legislature from that district. The first Native American county supervisor was elected in 1972. Native Americans also sit on school boards serving the reservation.[40]

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39. See appendix 2, table 2-B, for the distribution of black elected municipal officials by type of office and size of municipality.

40. Staff interviews, Apache Co., Ariz., July 1974, and telephone interviews, Nov. 1974. See chapter 6 for discussion of the election of the Native American county supervisor.

Similarly in the covered counties of New York City, Puerto Ricans have been elected to six State legislative seats, representing districts either predominantly Puerto Rican or predominantly Puerto Rican and black. One member of the congressional delegation is Puerto Rican. They have been less successful, however, in winning city council elections. Two of 43 city council members are Puerto Rican, though the city's population is about 10 percent Puerto Rican.[41]

In Monterey County, California, which is 21 percent Mexican American, none of the five county supervisors is Mexican American. Salinas, the largest city in Monterey County with 59,000 people, 27 percent of whom are Mexican American, has no Mexican Americans on its five-member city council.[42]

Some minorities have been elected even though their group is not dominant in a district. For example, black registration is less than 40 percent of the total in the Georgia congressional district served by Andrew Young.[43] Similarly, Mexican Americans hold two of

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41. Staff interviews, New York City, Oct. 1974, and telephone interviews, Nov. 1974. See also the discussion of New York redistricting in chapter 8.

42. Staff interviews, Monterey Co., Calif., Nov. 1974, and telephone interviews, Dec. 1974. It was reported in 1971 that 3 of 205 local government offices in Monterey County were held by Mexican Americans. See California State Advisory Committee Report to the U.S. Commission on Civil Rights, Political Participation of Mexican Americans in California (1971), pp. 84-88.

43. Stuart E. Eizenstat and William H. Baruto, Andrew Young: The Path to History (Atlanta, Ga.: Voter Education Project, Inc., 1973), p. 2.

five city council seats in Tucson, Arizona (24 percent Mexican American) and one of five supervisor seats in Pima County (18 percent Mexican American). In the 1974 general election, a Mexican American was elected to one of five seats on the Tucson District One School Board, which encompasses most of the city.[44] A Mexican American was also elected Governor of Arizona in 1974.

Progress obviously has been made in recent years in electing minorities to public office in jurisdictions covered by the Voting Rights Act. However, the significance of the apparently startling gains in numbers of minorities elected diminishes when the types of offices won are analyzed. There is a very long way to go before minorities have gained an equitable share of political offices.

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Despite the substantial progress toward full enjoyment of political rights by minority citizens in jurisdictions covered by the Voting Rights Act, significant disparities between white and minority participation rates persist. In part such disparities

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44. Staff interviews, Pima Co., Ariz., Nov. 1974, and telephone interviews, Dec. 1974.

simply reflect the fact that minorities have only recently begun to participate in all aspects of the political process. The years of the Voting Rights Act have been years of catching up, a process that is clearly underway, but also clearly not completed.

The statistical review presented in this chapter sheds some light on the current status of minority voting rights, but statistics, particularly statewide or national data and estimates, cannot communicate the experience of minority citizens as they become involved in the political process. Statistics provide clues, but they do not answer the question of whether minorities encounter discrimination in their efforts to exercise their voting rights. In the following chapters, this report addresses directly the issue of persistent barriers to full political participation. Since rights are exercised or denied in local contexts, the focus now shifts from aggregate data and a national perspective to the problems and events which comprise the actual experience of minorities attempting to register, vote, and run for office in localities around the country, many of which have long been hostile to the idea of minority political participation.

4. BARRIERS TO REGISTRATION

Registration prior to 1965 frequently functioned as a barrier to exclude minorities from political participation rather than being an entry into the process.[1] The end of formal barriers brought about by the Voting Rights Act resulted in an immediate increase in minority registration. The use or threat of use of Federal examiners and the suspension of literacy tests are undoubtedly important factors leading to that increase.

Perhaps an equally important factor in the immediate success of the Voting Rights Act was the work of private organizations in voter registration drives.[2] These drives depended chiefly on foundations for financial support. Congress in 1969 enacted legislation, however, which prevents an organization from receiving more than 25 percent of its support from one foundation and which prohibits the use of foundation grants to finance voter registration programs in more than one State or in more than one "election season."[3] According to John Lewis,

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1. See chapter 1, p. 3, n. 5, for a listing of earlier Commission reports which contain information on registration barriers to minorities prior to passage of the Voting Rights Act.

2. See U.S. Commission on Civil Rights, Political Participation (1968), pp. 154-56 (hereafter cited as Political Participation); Pat Watters and Reese Cleghorn, Climbing Jacob's Ladder: The Arrival of Negroes in Southern Politics (New York: Harcourt, Brace & World, 1967).

3. 26 U.S.C. § 4945(d)(2) and (f)(4) (Supp. 1974).

executive director of the Voter Education Project, these restrictions have "seriously hampered" the ability of his organization, the principal voter registration organization in the South, to remain active in voter registration work.[4]

The work of organizations such as this is important because the Voting Rights Act does not require affirmative efforts to register voters on the part of county registrars. The attitude of many of these registrars is that people who really want to vote can find the time and the means to come to the courthouse to register. As one registrar said, "They can come in during these hours [8:00 a.m. - 4:30 p.m.] if they really want to."[5] The chairman of one State board of registrars commented: "If people really care about voting, they will come to the registrar's office like they are supposed to."[6]

While formal barriers for the most part no longer exist, the lack of interest and of affirmative attempts to register voters on the part of county registrars become hindrances to participation. These hindrances include restrictive time and location for registration, the inadequate number of minority registration personnel, and purging of the registration rolls and reregistration. These are more than minor

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4. John Lewis, Atlanta, Ga., telephone interview, Nov. 25, 1974.

5. Staff interview, Louisiana, Sept. 1974.

6. Staff interview, Sept. 1974.

annoyances. To minority persons, who not long ago were excluded almost entirely from the political process, they represent more obstructions on the part of white officials to prevent their participation. In many cases these officials are the same persons who were in charge of registration before the Voting Rights Act. The memories of violence and economic repression linger on in the minds of many blacks and others. Furthermore, minority registration still lags behind that of whites, in some cases far behind.[7] Any hindrance which makes it hard to register ensures that the gap will persist.

TIME AND PLACE OF REGISTRATION

Restrictive periods and location of registration, inadequate information, and dual registration for county and municipal elections reportedly contribute to low registration of minorities in the areas visited by Commission staff members.[8] Registration is usually centralized in the county courthouse during normal business hours. Counties in most of the States visited also permit registration offices to open during other hours or take registration books into other parts of the counties.[9]

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7. See chapter 3, and appendix 1.

8. Staff interviews in Alabama, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina, July-Sept. 1974.

9. For specific laws regarding time and place of registration in the States discussed in this section, see the following State election codes: Code of Ala., Tit. 17 §§ 28, 30, 30(1) (1959); A.R.S. § 16-106 (Supp. 1974); Ga. Code Ann. § 34-610 (1970); L.S.A.-R.S. 18:270.301, 270.302 (Supp. 1974); Miss. Code § 23-5-29 (1972); N.C. Election Laws § 163-67 (1972); S.C. Code Ann. 23-63, - 65.1 (Supp. 1973).

Black leaders allege that in many areas the hours and location of registration offices are so restrictive that a large number of blacks are unable to register.[10] For example, hours of registration in York County, South Carolina, are allegedly inconvenient for blacks in Rock Hill, the county's largest city. People must travel 20 miles from Rock Hill to the county seat in the town of York to register. The hours are 8:30 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m., Monday through Friday. County officials travelled to Rock Hill and registered voters for 1 day during working hours just prior to the 1973 municipal primary elections in that city. Blacks in Rock Hill believe that because of these restrictions many persons who wanted to register for the primary were denied the opportunity.[11]

In some areas even the hours prescribed by law are reportedly not followed. In one county in Alabama a politically active black told a Commission interviewer that the registrar's office literally had no set hours of business. The office, according to this person, is supposed to be open from 8:30 a.m. to 5:00 p.m.[12]

> I have told people to be there at 8:30 a.m. and they tell their employers that they will be a little late and then they get there and the registration people don't show up. After waiting an hour or so they get disgusted and leave. The registrar, of course, closes the office during the lunch hour and in the afternoon when he feels like it. Before the

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10. Staff interviews in Alabama, Mississippi, and North Carolina, July-Sept. 1974.

11. Complaint, p. 4, Cleveland v. Reese, Civil No. 73-1618 (D.S.C. filed Dec. 5, 1973).

12. Staff interview, Alabama, Sept. 1974.

> 1972 election, it seemed that when there was a line of people to be registered the registrar would close the doors and go home; and it certainly wasn't five o'clock. 13

According to Myrtis Bishop, the registrar in Madison Parish, Louisiana, she closes the registration office only "on rare occasions for meetings and such, but I always put it in the paper." 14 Zelma Wyche, chief of police of Tallulah, the parish seat, and president of the Madison Voters League, said that the registrar is ready with excuses for closing the office whenever she feels like it, often to the disadvantage of blacks, as for example, during a voter registration drive. 15 Frequently the office is closed earlier than it should be.

Blacks in Humphreys County, Mississippi, informed the Commission that when they do go to register, there is no way of knowing whether G.H. Hood, the circuit clerk and registrar, will be there. On some days when a number of blacks were brought in to register, the circuit cleark had left. 16

The scheduled hours for registration in one county in Georgia are 9 a.m. to 4 p.m. Monday through Friday with an hour off for lunch,

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13. Ibid.

14. Myrtis Bishop, Tallulah, La., interview, Sept. 4, 1974.

15. Zelma Wyche, Tallulah, La., interview, Sept. 3, 1974. As required by law the Commission has offered Mrs. Bishop the opportunity to reply to these statements. Her reply is included in appendix 7.

16. Staff interviews, Belzoni, Miss., Sept. 1974; see also Washington Research Project, The Shameful Blight: The Survival of Racial Discrimination in Voting in the South (Washington, D.C., 1972), pp. 13-14 (hereafter cited as Shameful Blight). As required by law the Commission has offered Mr. Hood the opportunity to reply to these statements. His reply is included in appendix 7.

and 9 a.m. to 1 p.m. Saturday. Blacks have had continuing problems with the registrar's not keeping the registration office open, especially when a group of blacks try to register.[17] One black leader told the Commission, "If you bring in a lot of people to the courthouse, like two carloads at once, the registrar says there isn't time to register everyone and closes the office."[18]

If the courthouse is the only place to register, even if it has regular hours, there may still be the problem of having to travel long distances to register. Especially in rural areas such travel puts a great burden on persons without transportation and on people who cannot leave work for long periods. In rural Wilcox County, Alabama, it is 30 miles from Boykin, an all-black town, to Camden, the county seat.[19] In Talladega County, Alabama, blacks from Munford, mainly sharecroppers and farmers, must travel 20 miles to the county seat, losing a half day's work and a half day's pay. "These are all [poor] working people...they can't afford this."[20]

Blacks also report problems in finding transportation to travel the long distances to the courthouse in Jasper and Beaufort Counties, South Carolina, and in Bertie County, North Carolina.[21] Mexican Americans

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17. Shameful Blight, p. 15.

18. Staff interview, Aug. 1974.

19. The Rev. Thomas L. Threadgill and Charles McCarthy, community leaders and former candidates, Camden, Ala., interview, Sept. 5, 1974.

20. Frank Strickland, NAACP leader, Talladega, Ala., interview, Sept. 7, 1974.

21. Staff interviews, South Carolina, Sept. 1974; staff interview, North Carolina, July 1974.

have experienced the same problems in Pima County, Arizona.[22]

The restricted times and places of registration have led many minority group persons to ask registrars to visit other parts of the county to register. Blacks in two predominantly black parishes in Louisiana--Madison and Tensas--have asked for such visits by the registrars. Their requests have been refused.[23] White registration rates in both parishes exceed the black rates by more than 25 percentage points.[24]

Charleston County, South Carolina, is over 100 miles long and 20 miles wide. Most registration is centered in Charleston, the county seat. Although mobile units may be sent into the county upon request, it is reported that they have not been sent to areas of heavy black concentration despite requests.[25]

Even when there is decentralized registration, there often is no notification of the times and places. The registrar in one county in Alabama rarely adheres to a schedule to go to various locations in the county. Notices of time and place usually are not posted, and even

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22. William Edward Morgan, attorney and professor, Tucson, Ariz., interview, Nov. 7, 1974.

23. Bruce Baines, Madison Voters League, Tallulah, La., interview, Sept. 3, 1974; Woodrow Wiley, Tensas Parish police juror, Waterproof, La., interview, Sept. 5, 1974.

24. Registration information supplied by State of Louisiana, Board of Registration, Oct. 5, 1974.

25. Septima Clark, author and long time civil rights activist, Charleston, S.C., interview, Sept. 4, 1974.

when they are, often the registrar does not appear.[26] In another county registration personnel do not post notice of their schedule for precinct visits. The only way blacks know the time and place of these visits is through notices sent out by the NAACP or other black organizations.[27]

In an effort to alleviate the problems related to having a small registration staff and limited hours, many minority persons have expressed a need for deputy registrars who would be able to register voters at any time. In Talbot County, Georgia, blacks recently requested the appointment of 11 black deputy registrars whose names they submitted to the county. In a July 26, 1974, agreement between the black community and representatives of local government in Talbot County all parties agreed that deputy registrars would be appointed. Despite urgings of the official representatives and the Georgia Secretary of State, the registrar, who did not sign the agreement, has refused to appoint any deputies.[28]

Problems with registration are multiplied if dual registration is required. In some areas persons must register with the county to

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26. Staff interview, Alabama, Sept. 6, 1974.

27. Staff interview, Alabama, Sept. 7, 1974.

28. J.B. King, Jr., former candidate, Talbot Co., Ga., interview, Sept. 3, 1974.

be eligible to vote in county, State, and national elections, but must register separately with the municipality in which they reside to vote in municipal elections.[29] This requirement imposes a burden because registering twice and at two different places increases the costs of time and transportation. In addition, many persons complain that minorities are not informed by county officials that they must register with the city in order to vote in city elections. This has resulted in confusion and frustration at the polls when minorities are told that they are not registered for a particular election.

In Leflore County, Mississippi, blacks are not informed that they must register separately for municipal elections, and many think that they are registered. Election officials have a difficult time convincing blacks that they cannot vote.[30] A deputy clerk in Warren County, Mississippi, said: "We try to send Vicksburg residents to city hall to register but sometimes we forget."[31] Blacks in Bertie County, North Carolina, do not realize they must register separately for municipal elections and are not told at the registrar's office in

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29. Five States have provisions requiring or permitting dual registration: A.R.S. § 16-114 (1974) (West 1956); Ga. Code Ann. § 34A-501(b) (1970); Miss. Code § 21-11-3 (1972); N.C. Election Laws § 163-285 (1972); Va. Const., art. 11, § 8.

30. David Jordan, Greenwood Voters League, Greenwood, Miss., interview, Aug. 8, 1974; James Moore, Chairman, Greenwood Movement, and John Henry Johnson, former candidate for mayor, Greenwood, Miss., interview, Aug. 8, 1974.

31. Staff interview, Vicksburg, Miss., Sept. 3, 1974.

Windsor to register in the towns for these elections.[32]

REGISTRATION PERSONNEL

When minorities go to the registration office they are frequently greeted by whites unsympathetic with their desire to register. In the case of blacks, very often it is the same person who refused to register them before the passage of the Voting Rights Act. For Puerto Ricans, Mexican Americans, and Native Americans, it may be someone who has little knowledge or feeling for their language and culture. Only rarely are registration personnel of the same race or ethnic background as the minorities they register.

The process of selecting registrars and other registration personnel is generally in the hands of public or party officials who are almost always white.[33] In only one of the jurisdictions visited by Commission staff was the registrar or other officials responsible for registration a minority person. In most cases the staffs were also predominantly white.[34]

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32. Staff interview, Bertie Co., N.C., July 1974.

33. The following State election code provisions specify the method of selection of county registration officials in those States discussed in this section: A.R.S. § 16-105, 16-141 (Supp. 1974); Code of Ala., Tit. 17 § 21 (1959); Ga. Code Ann. § 34-603 (1970); S.C. Code Ann. § 23-51 (Supp. 1973); Miss. Code Ann. §§ 23-5-1, 23-5-7 (1972); Va. Code Ann. §§ 24.1-32, 24.1-43 (1973); N.C. Election Laws § 163-41 (1972); L.S.A.-R.S. 18:1 (1969).

34. In Tucson, Arizona, the registrar and over half the staff are Mexican American. Observation by Commission on Civil Rights staff, Nov. 6, 1974.

In Birmingham, Alabama, the chairman of the board of registrars is a white who has a staff consisting of 16 full-time clerks and typists, with part-time help hired for rush periods. Blacks have been hired but only as part-time help during rush periods around election time.[35]

The black communities in two rural counties in Alabama for a number of years have sought the appointment of black registrars. But this has been a very frustrating experience for blacks, since appointment of registrars is in the hands of persons not sympathetic to their requests. Although the governor, the State auditor, and the commissioner of agriculture and industries jointly appoint the registration board,[36] in reality, a Commission staff member was told, "The governor's office calls the probate judge and that's who decides, and he's not going to appoint a black."[37] In two Virginia counties blacks have also requested that a black registrar or assistant be appointed, but with no success.[38]

Many white registrars reportedly treat blacks discourteously at the registration office. Blacks find the registration process under these circumstances at best embarrassing and humiliating. In Madison

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35. Nell Hunter, Chairman of the Board of Registrars of Jefferson Co., Birmingham, Ala., interview, July 17, 1974. As required by law the Commission has offered Ms. Hunter the opportunity to reply to this statement.

36. Code of Ala., Tit. 17 § 21 (Supp. 1973).

37. Staff interview, Alabama, Sept. 1974.

38. Staff interviews, Virginia, July 1974.

Parish, Louisiana, the person to handle the entire registration process is the registrar, Myrtis Bishop. Black community leaders and officials have found her incompetent, uncooperative, and hostile. One black official stated that her behavior was that of a "vicious racist."[39] In addition to closing the office without notice when it is scheduled to be open, the registrar is charged with harassing black registrants. She is particularly strict in demands for identification. Many blacks, especially the more elderly, do not have adequate identification with them, lacking such things as social security cards or birth certificates. Even blacks who have identification with them have difficulties.[40]

> Sometimes she will accept social security cards as sufficient identification. Other times she will require much more and make people go back home three and four times. 41

According to another source, Mrs. Bishop often intimidates registrants. A black volunteer in a registration drive took two young blacks to register. One of them, while filling out the registration form, asked the registration volunteer a question, at which point Mrs. Bishop yelled: "I'll answer your questions here...you don't ask anyone for information here except me."[42] In another instance she

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39. Zelma Wyche, Chief of Police, Tallulah, La., interview, Sept. 3, 1974.

40. Ibid.

41. Ibid.

42. Staff interview, Tallulah, La., Sept. 4, 1974. As required by law the Commission has offered Ms. Bishop the opportunity to reply to these statements. Her reply is included in appendix 7.

was involved in a fight with a registrant.[43]

According to a black civic leader in another Louisiana parish, when blacks come to register, the registrar constantly finds ways to slow down the process. He tells people to come back with more proof of their identification. He seems especially adept in delaying the registration process just before elections. His occasional demonstrations of anger also intimidate some black registrants.[44]

The registrar in Humphreys County, Mississippi, G.H. Hood, has been in the position since 1960 and has steadfastly opposed the black franchise. A few years ago he is reported to have operated a segregated facility with separate waiting areas for the races in the registration office.[45] Among the complaints made against him at that time was that "he operates his office in such an arrogant manner that registrees come away thoroughly denigrated, embarrassed and intimidated."[46] Black political leaders in Humphreys County indicated that the registrar's reputation was such "that many people would not register if he came knocking at their door."[47] In a recent interview a Commission staff

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43. This incident is described in chapter 7, pp. 183-185.

44. Staff interview, Louisiana, Sept. 1974.

45. Staff interviews, Belzoni, Miss., Sept. 4, 1974.

46. Lawrence Tardy, chairman, Humphreys County Advancement Project, and others, letter to Richard Bourne, Voting and Accommodations Section, Department of Justice, cited in Shameful Blight, p. 24.

47. Ibid.

member was told that the registrar continues to behave in a manner that makes registration a grueling process.[48]

The circuit clerk in another Mississippi county has a reputation in the black community for discourtesy. "She lets you stand there a long time" and "looks at you as though you have no business in her office."[49] Often when blacks go to register she asks them, "Who sent you here?" or "Who told you to come here and register?" In many instances she tells them they don't have to register.[50]

The registration personnel in one Alabama county are reportedly composed of whites who are unconcerned with the voting rights of blacks. They have shown a lack of courtesy to black registrants with such comments as, "I don't see why you need to vote if you can't even read."[51]

A recent case in Marshall County, Mississippi, illustrates some of the more subtle tactics currently used to minimize black registration. The Department of Justice charged that county registration officials improperly entered the names of 256 white persons on the registration books before the 1971 elections.[52] These persons voted in the primary

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48. Staff interview, Belzoni, Miss., Sept. 4, 1974. As required by law the Commission has offered Mr. Hood the opportunity to reply to these statements. His reply is included in appendix 7.

49. Staff interview, Aug. 1974.

50. Ibid.

51. Staff interview, Sept. 1974.

52. Complaint, p. 4, United States v. Marshall County, Miss., Civil No. WC-73-28-K (N.D. Miss. filed Jan. 26, 1973).

and general election. The complaint further alleged that 104 voters, the majority of whom were black, were assigned to the wrong polling places, thereby preventing most of them from voting.[53] The court ordered the defendants to purge the names of improperly registered persons and to specifically notify the misassigned black voters of their proper polling places.[54]

PURGING AND REREGISTRATION

When registered voters move away, die, or are convicted of a felony, their names may be purged from the registration rolls. Most of the States visited by Commission staff also remove names of persons who have not voted within a specified length of time.[55]

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53. Ibid., p. 5.

54. United States v. Marshall County, Miss., Civil No. 73-28-K (N.D. Miss., consent decree, June 10, 1974). Other litigation in Marshall County resulted in an order requiring that uniform standards be applied to all applicants for registration, including black students attending college in Marshall County. Registration officials were enjoined from refusing to register all student applicants who had previously been denied registration because of the application of a stricter or more stringent standard than that applied to other applicants. Frazier v. Callicutt, Civil No. WC-72-77-S and U.S. v. Callicutt, Civil No. WC-73-28-S (N.D. Miss. Sept. 1974).

55. A.R.S. § 16-151 (Supp. 1974); Cal. Election Code § 383(f) (West Supp. 1974); Ga. Code Ann. § 34-620(c) (1970); L.S.A.-R.S. 18:240, 165 (1969); N.Y. Election Law § 17-405 (McKinney 1964); N.C. Election Laws § 163-69 (1972); Va. Code Ann. § 24.1-59 (1973).

Notification that a voter is to be purged is an important factor in the process. Notification may provide the necessary means of preserving the registration, through such measures as the return of the notice with indication of a desire to remain on the rolls or by other more time-consuming requirements such as reregistration or reapplication.

Purging may have many salutary effects on the electoral process. It removes names of persons who never participate as well as those no longer available to do so. It decreases opportunity for vote fraud because it prevents persons out of the area from voting and persons voting under the names of others who no longer participate in the political process. Nevertheless, purging, particularly when it is done for nonvoting at short time intervals, removes from the registration rolls large numbers of minority voters. Their lack of participation may be due to a combination of factors, including long working hours, lack of transportation, or previous mistreatment at the polls. Purging may be for nonvoting in the general election when the primary may be perceived by minority persons to have greater importance.

In addition, minority voters often are not adequately notified that they are to be purged. Frequently they fail to receive the notice. In jurisdictions with large non-English-speaking populations

notices are provided only in English, so that many people are not aware that they are being purged.

Arizona has particularly strict purging statutes. Failure to vote every 2 years in the general election results in the cancellation and removal from the general county registration rolls.[56] The county recorder then mails to the elector a postcard stating that registration has been cancelled and informs that voter that he or she has 2 months to sign and return the card in order to be reinstated.[57]

This purging procedure has eliminated large numbers of Native Americans from the rolls in Coconino and Apache Counties, Arizona. The attrition rates in these counties, both of which have large Navajo populations, were particularly high after the 1972 election. In Apache County 4,277 of 11,783 (36 percent) registered voters were purged for not voting.[58] In Coconino County 25 percent of the 24,358 registered voters were purged for failure to vote. Most of the more than 6,000 purged were Navajos.[59] According to Pat Fabritz, the Coconino County

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56. A.R.S. § 16-151A (Supp. 1974).

57. A.R.S. § 16-151B, C (Supp. 1974).

58. Unpublished data on "Cancellation totals after general election 1972," obtained from Virgie Heap, County Recorder, Apache County, n.d.

59. Unpublished registration and voting data, Nov. 1972 general election, obtained from Pat Fabritz, County Recorder, Coconino County.

Recorder, many Navajos received their notice of cancellation after a delay of several weeks. Most get their mail at the trading post and in bad weather infrequently make the trip from their homes to the post. Moreover, purge notices are often discarded, since few Navajos can read English.[60]

The attrition rate for nonvoting among Chicanos in Tucson also has reportedly been very high. In 1974 research in Tucson on lists of challenged and purged voters in Pima County showed that a much higher percentage of Mexican Americans had been purged than of other voters. A sample of these cancelled voters showed that many were not aware they had been purged and did not know what to do to get reinstated.[61]

New York law also contains strict purge provisions.[62] Many Puerto Ricans in New York also have been eliminated from the rolls for not voting. According to a Puerto Rican community leader:

> It seems so unfair to remove voters from the list for failing to vote in the general election. Many people vote only in the primaries and believe that

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60. Pat Fabritz, Flagstaff, Ariz., interview, July 25, 1974.

61. Dr. Anne McConnell, community leader, Tucson, Ariz., interview, Nov. 6, 1974.

62. Voters can be purged if they do not vote in the general election every 2 years. For nonvoters who have not voted since a previous reinstatement the registration is cancelled. Other nonvoters are notified and unless they fill out, sign, and return an affidavit within 3 weeks of the date of postmark, their registration is cancelled. N.Y. Election Law § 405.2 (McKinney Supp. 1974).

> the general elections are mostly pro forma. The Democratic candidate elected in the primary is usually assured of victory. 63

The system of notification has also caused Puerto Rican voters problems, according to a campaign organizer in New York. Frequently people do not receive their purge notification in the mail. Even if they do, they are often not able to understand what the notice says because they do not read English.[64]

In Monterey County, California, the system of notification of purging allegedly does not work well for Mexican Americans.[65] John Saavedra, mayor of Soledad, California, told a Commission staff member that many people do not receive such notifications.[66] The county clerk said that the cards are mailed out but only a few are returned. None of the purge notices are in Spanish.[67]

Discriminatory purging, among other irregularities, led a Federal court to set aside the April 1970 Democratic primary in Tallulah,

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63. Frank Lugoviña, president, Mobicentrics Consultant Corporation, New York City, interview, Oct. 10, 1974.

64. Paul Mejia, campaign manager and community leader, New York City, interview, Oct. 3, 1974.

65. Staff interviews, Salinas, Cal., Nov. 4, 1974. According to California law, not later than the first of January following a general election the county clerk mails a double postcard to those persons who have failed to vote. The individual can either contact the clerk prior to cancellation or return the postcard within 60 days to remain on the list. Cal. Election Code §§ 383(f), 386, 387 (West Supp. 1974).

66. Staff interview, Nov. 6, 1974.

67. Ernest Maggini, Salinas, Cal., telephone interview, Nov. 22, 1974.

Madison Parish, Louisiana.[68] According to the court, the registrar failed to provide adequate notification of the purge and reinstatement procedures to 141 persons purged for nonvoting, all but 11 of whom were black. Conducting the purge during the 30-day preelection period when the books were closed violated the spirit of the law, according to the State attorney general.[69] Louisiana requires that purged voters have 10 days in which to appear personally to reaffirm their eligibility, but the registrar's office was open only for 4 days during the 10-day period. Although the registrar extended the reinstatement period for 4 days, she failed to inform the public or the purged voters of that fact. In addition, the registrar purged 29 other blacks from registration lists when whites submitted their names allegedly for failing to report nonresidence or a change of address in the town.[70] In purging these names she failed to follow procedures to safeguard the rights of registrants set forth by Louisiana law. She also failed to require

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68. Toney v. White, 348 F. Supp. 188 (W.D. La. 1972) rev. in part, 476 F.2d 203 (5th Cir.), original dec. reinstated as modified, 488 F.2d (5th Cir. 1973) (en banc). The lower court had previously set aside elections in Madison Parish. See Brown v. Post, 279 F. Supp. 60 (W.D. La. 1968) and U.S. v. Post, 297 F. Supp. 46 (W.D. La. 1969). See generally, Note, "Voting Rights: A Case Study of Madison Parish, Louisiana," Univ. of Chicago Law Review, vol. 38 (1971), pp. 726ff.

69. Toney v. White, 348 F. Supp. 188, 192-93 (W.D. La. 1972).

70. 348 F. Supp. 193.

affidavits from the whites presenting the lists and to satisfy notice requirements.[71] Moreover, some of the 29 names were improperly included.

Another discriminatory purging technique was allegedly used by white officials in a small Georgia town.[72] In December 1971 blacks won three of five city council seats in the municipal election. Whites, it is alleged, were determined to prevent a similar black election victory in 1973.[73] According to a complaint filed by black plaintiffs, white election officials illegally purged black voters from the voting list.[74] Prior to the December 5, 1973, election, a committee of four was established to purge voters for nonresidency in the town. There were, however, no procedures to determine whether a registered voter lived in the town. This decision was left to the unsupported personal opinion of those members of the committee who were in attendance at particular sessions. It was further alleged that the purge "was instituted for the purpose of removing black voters from the list of electors in order to insure that black candidates for office would be defeated in the December 5, 1973, general election."[75] The

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71. 348 F. Supp., p. 193-94. Failure to administer the law requiring verification of the eligibility of persons who regularly vote absentee resulted in the casting of illegal absentee ballots. See chapter 5, p. 126.

72. Seals v. Moye, Civil No. 74-16 MAC (M.D. Ga., filed Jan. 23, 1974).

73. Staff interview, Sept. 1974.

74. Complaint, p. 7, Seals v. Moye.

75. Complaint, p. 8, Seals v. Moye.

result of the election was that blacks lost all five seats on the municipal council.[76]

In addition, the plaintiffs alleged that neither the committee nor the municipal officials charged with supervising the elections notified blacks that their names had been removed from the list. In fact, it was further alleged that the purged voters did not discover that they had been disqualified until the day of the election when it was too late for them to be reinstated, a practice in violation of Georgia laws.[77]

Blacks in the town filed suit to overturn the December 1973 election. They argued that the failure to give notice as required by statute amounted to changes in the practice and procedure of conducting the general election which should have been submitted to the Justice Department for approval under section 5 of the Voting Rights Act.[78] The plaintiffs subsequently voluntarily accepted a consent judgment from the court. In the consent decree issued on September 9, 1974, the court's judgment was that to the extent that changes in municipal elections are made they must be submitted for section 5 preclearance.[79]

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76. Julian Davis, black community leader, Sandersville, Ga., interview, Sept. 4, 1974.

77. Complaint, p. 7, Seals v. Moye.

78. Ibid., p. 8.

79. Seals v. Moye, Civil No. 74-16 MAC (M.D. Ga., consent decree, Sept. 9, 1974).

Purging of individuals convicted of a felony or other disqualifying crime is usually an automatic process. It particularly affects minorities in that a disproportionate share of their numbers are convicted of crimes that disqualify them from voting. Moreover, in addition to being purged, minorities often find difficulty in having their rights restored since they may face discrimination in obtaining a pardon.

In several of the jurisdictions visited, the Commission was told of problems minorities convicted of crimes encounter in attempting to have their civil rights restored.[80]

Woodrow Wiley, a black police juror in Tensas Parish, Louisiana, said that he knew from personal experience that blacks encounter major difficulties in having their right to vote restored "if they have been convicted of any offense, even misdemeanors."[81] In a number of instances where minor offenses have been involved, blacks have been told by the registrar that they have lost their right to vote; and, rather than argue or seek expensive legal counsel, they have allowed their names to be stricken from the rolls.[82]

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80. Staff interviews in Louisiana, South Carolina, and Virginia, July-Sept., 1974.

81. Wiley Interview.

82. Ibid.

In some cases young people who have had difficulties with the law as juveniles are denied the right to vote when they reach voting age. Wiley cited the example of a young woman who as a juvenile had been charged with assault and battery. She was registered by the registrar, who later learned about the conviction and purged her from the rolls without informing her. This young woman has been in the process of trying to reregister for several months.[83]

A black attorney in Columbia, South Carolina, informed a Commission staff member that a significant number of blacks in South Carolina are denied the right to vote because of criminal convictions.[84] It is charged that the police in many towns file serious charges against blacks without just cause. The blacks, who are afraid of jail sentences, may plead guilty even when innocent, in exchange for a suspended sentence or fine. They then lose their voting rights and pardons to restore these rights are difficult to obtain.[85]

In Dorchester County, South Carolina, Victoria DeLee, a black community leader, said that large numbers of blacks are unable to vote

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83. Ibid.

84. Thomas Broadwater, attorney, Columbia, S.C., interview, July 31, 1974.

85. Ibid.

because they have been convicted of crimes. DeLee also reports that she has seen whites voting who she knows have been convicted of crimes. The chances of a black in Dorchester County ever voting again after conviction appear almost nil, since no black in Dorchester County has ever been pardoned.[86]

A large number of blacks in Southampton County, Virginia, are unable to vote because they have served time at the county correctional farm. Many have tried but have been unable to have their civil rights restored.[87]

Closely related to purging, both in its function and in its effect on minority voters, is reregistration. This requires that every person, regardless of past voting habits, register again if he or she wishes to remain on the rolls. Reregistration is undertaken in order to eliminate from the rolls persons who have died or moved away or have no interest in voting.

The process places a substantial burden on the minority voter, who has often succeeded in registering only after overcoming many obstacles. The result of a reregistration can be a decline in the number of minorities who are registered. For example, a complete reregistration in Arizona in 1970 eliminated from the books the names of many Native

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86. Victoria DeLee, long-time civil rights activist and former congressional candidate, Dorchester Co., S.C., interview, Aug. 2, 1974.

87. Staff interviews, Southampton Co., Va., July 10-13. 1974.

Americans and Mexican Americans who had only recently been able to register because of the Voting Rights Act.[88]

Many counties in Mississippi have undergone reregistration, generally in connection with the adoption of a new districting plan. These counties have been widely criticized for undertaking reregistration and the Department of Justice has been criticized for not objecting to reregistration under section 5 of the Voting Rights Act or suing to prevent reregistrations which have not received section 5 clearance.[89] The most recent reregistration in Mississippi is that of Grenada County, approval for which was requested from the Attorney General on May 25, 1974.[90]

Warren County conducted a reregistration in 1971 without section 5 clearance.[91] The president of a black civic association in the county told a Commission interviewer that it was difficult getting blacks registered originally. He felt that many would not go back again. The reregistration, he said, was "another trick" which "accomplished its aim." It "got many black people off the books."[92]

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88. See Shameful Blight, pp. 47-49 and Pat Fabritz Interview.

89. See Shameful Blight, pp. 24-27 and sources there cited.

90. Section 5 printout, as of July 30, 1974.

91. Shameful Blight, pp. 43-44.

92. Frank Summers, president, Warren County Improvement League, Vicksburg, Miss., interview, Sept. 3, 1974.

Another black active in county politics was critical of the requirement that a voter go in person to reregister. He said this was difficult to accomplish.[93]

In Sunflower County there was underway, as of late 1974, a reregistration of registered voters.[94] According to the circuit clerk, notices of reregistration were sent to all persons with their property tax assessment. In addition to regular hours at the courthouse, the clerk plans to visit each precinct in the county for a period of 2 or 3 days. The only way to reregister is at the courthouse or during these visits. Reregistration by mail is not allowed.[95]

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93. Eddie Thomas, former candidate for election commissioner, Vicksburg, Miss., interview, Sept. 3, 1974.

94. The reregistration was not objected to by the Department of Justice, June 8, 1972. Section 5 printout, as of May 8, 1974.

95. Sam Ely, Indianola, Miss., interview, Aug. 9, 1974.

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The Voting Rights Act of 1965 led to large increases in the registration of minority persons. These increases for the most part have been the result of large scale efforts on the part of minority organizations who have informed people of their right to vote. Nevertheless, these efforts and increases are threatened by such tactics of registration officials as making registration an inconvenient or humiliating experience or forcing newly-enfranchised voters to register again. Registration should be an easy step for all who wish to cast the ballot. It is not. Instead it is often difficult and inconvenient. For those who only recently have been able to exercise the franchise, it is often a barrier that is not surmounted.

5. BARRIERS TO VOTING

Registration is merely the beginning of participation in the political process. Once registered, minorities have no guarantee that they may easily cast a ballot. What is done at the local level by local officials has the most impact upon the ability of minorities to vote and the effectiveness of that vote. Minority persons do not control the election or appointment of local officials and are seldom in positions of influence. Many obstacles placed by these officials frighten, discourage, frustrate, or otherwise inhibit minority persons from voting. Outright exclusion and intimidation at the polls are only two of the problems they face.

Other problems that have a discriminatory impact on minority voters are denial of the ballot by such means as failing to locate voters' names on precinct lists; location of polls at places where minority voters feel unwelcome or uncomfortable, or which are inconvenient to them; inadequacy of voting facilities; underrepresentation of minority persons as poll workers; unavailability or inadequacy of assistance to illiterate voters; lack of bilingual materials at the polls for non-English-speaking persons; and problems with the use of absentee ballots. Memories of past discourtesies or physical abuse may compound the problems for many minority voters. The people in charge are frequently the same ones who so recently excluded minorities

from the political process.

DENYING MINORITIES THE BALLOT

Minority persons may be denied the right to vote for various reasons. In some places, white officials may treat minority voters in a discourteous manner or otherwise show a bias against them or minority candidates. One poll watcher in the 1971 election in Noxubee County, Mississippi, reported:

> The white officials who checked the list of registered voters were consistently hostile and uncooperative with black voters. They were difficult and technical in verifying the registration of blacks, and they frequently cross-examined blacks about their identity and registration. This was in marked contrast to the manner in which they received and treated white voters. They were consistently helpful to whites, but not to blacks.[1]

Frequently, election officials are not able to find a person's name on the roster for that precinct. This may be legitimate; for example, if a person moves from one precinct to another and does not notify the county registrar. In other cases, however, many minority persons registered in the precinct, some for many years, go to vote only to find that their names are not on the roster. They are turned away without any aid from election officials or are told to go to another precinct. This presents a special hardship for the elderly or

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1. Affidavit of Larry Miller, Stewart v. Waller, Civil No. EC-73-42-S (N.D. Miss., filed May 3, 1973).

others with limited means of transportation, those who vote after work and may not have time to straighten out the situation, and non-English-speaking persons who may not understand what is happening.

According to black candidates and campaign workers in Oktibbeha County, Mississippi, election officials frequently claim they cannot find black voters' names on the list. The voters are told to go to the city hall or the courthouse to verify their registration. In most cases, the registration is verified and the voter is eventually allowed to vote.[2] Such incidents, however, waste voters' time and tend to deter people from voting.

> The effect of incidents such as these on voters whom I have driven to polling places has been to discourage these persons from voting, especially since most of the voters we drive to the polls are elderly persons or persons otherwise unable to get to the polls.[3]

Sometimes voters whose names are allegedly not on the precinct list are not allowed to vote at all. In the 1973 municipal election in Starkville, Mississippi, election officials refused to allow a woman to cast a challenge ballot when she came to vote about 20 minutes before the polls closed. They claimed her name was not on the list, and it was impossible for her to verify her registration before the polls closed.[4]

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2. Affidavits of Harold Williams and Dr. Douglas L. Conner, Stewart v. Waller.

3. Affidavit of Harold Williams, Stewart v. Waller.

4. Affidavit of Dr. Douglas L. Conner, Stewart v. Waller.

In a similar incident in the 1973 municipal election in Moss Point, Mississippi, two blacks were not allowed to vote because the election officials could not locate their names on the list at their usual polling place. The precinct manager refused to call city hall and also refused to let them cast challenge ballots. A black poll watcher reports:

> When I and other poll watchers inquired why the election official refused to let them file challenge ballots, she replied, "you all can't talk to me like that 'cause I'm a white."[5]

Another black voter in Mississippi described her experience when she attempted to vote in a 1973 municipal election:

> In the election in Macon last year I attempted to vote at the polling place at the Courthouse. I was told that they could not find my name on the list of registered voters. As a result, I did not vote. Two or three days later my sister and I went back to the Courthouse and asked them again to look for my name. That time he found my name easily.[6]

Similar incidents led to a suit to void the November 7, 1972, election in Wilcox County, Alabama. Several National Democratic Party of Alabama candidates charged that the names of numerous black electors were left off lists provided to election officials at several polling places. Those whose names were not on lists were not permitted

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5. Affidavit of Marcus Harris, Stewart v. Waller.

6. Affidavit of Fannie Bee Hopkins, Stewart v. Waller.

to cast challenge ballots.[7] The defendant election officials agreed to instruct all poll workers to inform voters whose names cannot be found on the official voter list of their right to cast challenge ballots and the procedure for doing so.[8]

Black voters in Camden in Wilcox County were also denied the ballot through questionable challenges at the polls. According to Charles McCarthy, an official with the Alabama Migrant and Seasonal Farm Workers Union, no one really knows Camden's boundaries. During the 1972 municipal election, however, any blacks who did not live near the center of the city were likely to be refused ballots. Two blacks hired by the white voting officials sat at one poll McCarthy visited and pointed out blacks who supposedly did not live within the city limits. These individuals were then denied ballots. As a result, several hundred blacks were not permitted to vote. On the other hand, whites were not questioned on residence nor were they denied a ballot, in spite of the fact that many of them, according to McCarthy, lived much farther from the center of town than some of the blacks who were not permitted to vote.[9]

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7. Complaint, p. 5, Threadgill v. Bonner, Civil No. 7475-72-P (S.D. Ala. Nov. 7, 1973).

8. Consent Decree, Threadgill v. Bonner.

9. The Rev. Thomas L. Threadgill and Charles McCarthy, community leaders and former candidates, Wilcox Co., Ala., interview, Sept. 5, 1974.

Blacks have complained of problems of names being left off voter lists in several Georgia counties.[10] One black community leader reported that in the 1973 municipal election in Sandersville white election officials told elderly blacks that their names were not on the list. The rejected registrants had to go to city hall to verify their registration. Many did not do this. Others, who found that their names were listed, did not return to the polling place to challenge white election officials and ask again for a ballot.[11]

In Southampton County, Virginia, there have been a number of instances where blacks reported that they registered but were unable to vote when election officials could not find their names listed. According to a black who has been active in voter registration drives:

> When black people go to vote, often the polling officials do not have a record of their names. This has happened fairly frequently. The blacks come to me and tell me their problem. I know some of these people are registered because I went with them so I could see them registered.[12]

In one instance the omission of blacks' names from the list was reportedly a significant factor in the election of a county supervisor in Southampton County in 1972.[13] Blacks were not informed of polling

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10. Lynmore James, former candidate for county commissioner, Macon Co., Ga., interview, Sept. 4, 1974; Joseph B. Williams, president, Stewart County Movement, Louvale, Ga., interview, Aug. 15, 1974.

11. Julian Davis, Sandersville, Ga., interview, Sept. 4, 1974.

12. Staff interview, Southampton Co., Va., July 13, 1974.

13. Ibid.

place changes after redistricting in 1971. Many went to their old precinct to vote, but election officials said that they did not have their names, and that they should go to the new polling site. In most cases the second polling place did not have their names either and many blacks could not vote at all. The black candidate lost by 16 votes.[14]

A Mexican American voter who went to the polls in the November 1974 election in Monterey County, California, could not find his name on the list posted outside the polling place and asked the election workers if he could vote there. He showed them his registration stub dated October 3, 1974. He was told he could not vote because he had registered too late.[15] In fact the deadline for registering was October 5.

Poll workers who speak only English sometimes have difficulty finding names of persons with Spanish or other non-English surnames. In the 1974 election in Tucson, Arizona, a Chicana voter told a campaign worker that she was unable to vote because the roster clerk did not find her name on the list. The clerk had offered no further information or assistance as to how the voter might verify her registration or cast a challenge ballot. The campaign worker took the voter to the courthouse and found that she was registered to vote in that

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14. Ibid.

15. Staff interview, Salinas, Cal., Nov. 6, 1974.

precinct. They returned to the polls and showed the roster clerk her name on the list, and she was allowed to vote.[16] One community leader alleged that this is not an uncommon occurrence in predominantly Chicano precincts.[17]

POLLING PLACES: LOCATION AND ADEQUACY

The location and adequacy of polling facilities are of special importance to minority voters. Many polls are located in all-white clubs or lodges, where minority persons are otherwise not allowed to go, or in white homes or stores that present a hostile atmosphere for minorities. Some blacks have complained that they are often required to vote in white areas but the reverse is rarely the case, allegedly because whites do not want to go into black neighborhoods to vote.[18]

Polling places include the National Guard Armory in a white neighborhood in Talladega, Alabama;[19] the all-white American Legion Hall and Elks Club in Vicksburg, Mississippi;[20] and white-owned general

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16. Connie Duarte, community leader, Tucson, Ariz., interview, Nov. 5, 1974. Election day observation by Commission on Civil Rights staff, Tucson, Ariz., Nov. 5, 1974.

17. Dr. Anne McConnell, Tucson, Ariz., interview, Nov. 6, 1974.

18. Moses Knox, chairman, Greensville County NAACP, Emporia, Va., interview, July 11, 1974.

19. Frank Strickland, NAACP leader, Talladega Co., Ala., interview, Sept. 7, 1974.

20. Staff interview, Vicksburg, Miss., Sept. 3, 1974.

stores, private homes of whites, and white churches in various parts of the South.[21] In the 1971 election in Humphreys County, Mississippi, one polling place was in the same building as a white candidate's office.[22]

The courts and the Department of Justice have been concerned about the location of polling places and have objected when a proposed change would put the polling place in a more inconvenient location or in a more hostile environment. When Leflore County, Mississippi, was redistricted in 1973, changes were made in election precincts and polling place locations. The court found all changes reasonable except for the selection of the VFW Club as one of the polling places.

> The VFW Club, a private organization, has a membership of whites only; and black citizens who constitute the voter majority in Southeast Greenwood may likely be inhibited or embarrassed in free access to vote at that location.[23]

In another case, a group of black voters successfully sued the Atlanta election officials in Federal court for changing polls to inconvenient or too-distant places after the 1971 decennial redistricting.[24] The complaint alleged that officials changed virtually all the

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21. Staff interviews in Louisiana, Mississippi, and Virginia, July-Sept. 1974.

22. James v. Humphreys County Board of Election Commissioners, Civil No. GC-72-70-K (N.D. Miss. Oct. 4, 1974).

23. Moore v. Leflore County Board of Election Commissioners, 361 F. Supp. 609, 613 (N.D. Miss. 1973), affirmed, Civil No. 73-3090 (5th Cir. Oct. 10, 1974).

24. Davis v. Graham, Civil No. 16891 (N.D. Ga. 1972).

polling places located in predominantly black areas of the Fifth Congressional District without considering possible discriminatory effects on poor and black voters.[25] The court found that 9 of the 18 sites objected to by the plaintiffs were discriminatory and ordered the defendants to establish new or additional polls more convenient to the voters.[26] Subsequently the Department of Justice objected to a number of polling place changes in Atlanta.[27]

The Department of Justice has also objected to moving a polling place in Jones County, Georgia, from a store in the central part of the precinct to the Lions Club Fairground Building on the outer fringe. In addition to the fact that the Lions Club does not accept blacks as members, many blacks would have had to travel an additional 3 1/2 miles to vote.[28]

Another polling place change was objected to by the Department of Justice in a 95 percent black precinct in New Orleans because it would have required voters to travel an excessive distance outside

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25. Complaint, p. 5, Davis v. Graham.

26. Davis v. Graham.

27. Objection letters, Nov. 27, 1972, and March 1, 1973.

28. Section 5 Summary, Aug. 12, 1974.

the precinct to vote. Furthermore, the change was deemed unnecessary because several more convenient polling sites were available.[29]

A recent objection was made to polling place changes in Newport News, Virginia. The city planned to move one polling place from the courthouse to an elementary school. The change would have meant that blacks had to travel an additional 1 to 1 1/2 miles to vote, without public transportation.[30]

Whenever changes in polling place location are made, voters accustomed to voting at a particular place are burdened. This is especially true for minority voters who may already be hesitant about voting. When a polling place change is not publicized, many voters go to the wrong place to vote. Told to go somewhere else, many see it as a runaround and may not vote at all.

Most States covered by the Voting Rights Act have minimal provisions for notifying voters of polling place changes. Alabama and Virginia provide for publishing changes in newspapers.[31] Posting changes in several locations is required in Alabama and Georgia.[32] North Carolina county election boards may use either of these methods.[33]

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29. Section 5 Summary, July 17, 1974.

30. Objection letter, May 17, 1974.

31. Code of Ala., Tit. 17 § 85 (1959); Va. Code Ann. § 24.1-36 (1973).

32. Code of Ala., Tit. 17 § 85 (1959); Ga. Code Ann. § 34-703 (1970).

33. N.C. Election Laws § 163-128 (Supp. 1972).

Notices are mailed to registered voters in Virginia and South Carolina.[34] In Arizona, the county may either indicate the new polling site on the sample ballot mailed to each voter or mail a separate notice.[35] Similarly, in California, the location of new polling sites may be determined from sample ballots mailed to all voters.[36] Changes are published in the parish police jury proceedings in Louisiana.[37]

Counties frequently do only the minimum the law requires. Many minority persons have reported that voters are unaware of changes. Several polling sites were recently changed in East Carroll Parish, Louisiana, to more central locations. However, many blacks were confused about where to vote. A black civic organization, the East Carroll Citizens for Progress, has been chiefly responsible for undertaking the difficult task of letting blacks in rural areas know about the changes.[38]

The campaign manager in Tucson for Governor Raul Castro told Commission staff that in a predominantly Chicano precinct a polling place change had been made for the November 1974 election from "the traditional landmark in that neighborhood to a place that is less

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34. Va. Code Ann. § 24.1-39 (1973); S.C. Code Ann. § 23-222 (Supp. 1973).

35. A.R.S. § 16-762 (Supp. 1974).

36. Cal. Election Code § 10009 (West Supp. 1974).

37. L.S.A.-R.S. 18:585 (1969).

38. Theodore Lane, president, East Carroll Citizens for Progress, Lake Providence, La., interview, Sept. 4, 1974.

centrally located and less accessible."[39] Reportedly, people were not informed of the change. "No signs had been put up at the old polling place to inform people of the change. The typical voter in this precinct has no transportation [or] money to pay for transportation."[40]

Similarly in Soledad, California (about 80 percent Mexican American), a polling place was changed from an entrance on the side of the police station to the new city hall directly behind it. The only indication of the new polling place was a small flag required by State law. Persons arriving at the old polling place found the door locked. If they inquired at the police station, they were directed to the new polling place.[41] No sign was there to inform voters of the new location.

Even when some type of notification is made, it is not effective unless it is in the language a voter knows. In Arizona, as well as in California, the only notification each registered voter received prior to the 1974 election was a sample ballot saying, "Your polling place is. . .[location]."[42] This announcement was in English only.

Inadequate facilities at the polls may lead to crowded situations that deter voters from returning to the polls in future elections. A

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39. R. Dan Valdenegro, Tucson, Ariz., interview, Nov. 7, 1974.

40. Ibid.

41. B. J. Jimenez, Chief of Police, Soledad, Cal., interview, Nov. 5, 1974. Election day observation by Commission on Civil Rights staff, Soledad, Cal., Nov. 5, 1974.

42. Election day observation by Commission on Civil Rights staff, Pima Co., Ariz., and Monterey Co., Cal., Nov. 5, 1974.

serious shortage of polling places on the Navajo Reservation in Apache and Coconino Counties in Arizona caused hardships and curtailed the reservation vote in the 1972 general election.[43] In Apache County only 10 polling places served the extensive reservation area,[44] where turnout was heavy. Many Navajos waited several hours in bad weather to vote. At Chinle, in the northern part of the county, 900 voters were expected but nearly 3,000 came, causing voters to wait 2 1/2 hours to cast their ballots.[45] According to the Apache County manager, it was 12:30 a.m. before all the people in line at the Chinle polling place voted. Many did not have the stamina for the long wait; others had to return to work.[46]

After much haggling with the county board of supervisors, the reservation portion of Apache County recently obtained new polling places, raising the total number of polling places on the reservation to 21.[47] Some problems remain, however, because the county assigned people to precincts arbitrarily and without firsthand knowledge of location of residence.[48]

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43. Benjamin Hanley, member of the Arizona House of Representatives for District 3, Window Rock, Ariz., interview, July 19, 1974.

44. Office of County Recorder, Apache Co., Ariz., General Election Registration List for 1972.

45. Lucy Hilgendorf, Justice of the Peace, Chinle, Ariz., interview, July 22, 1974.

46. Buzz Hawes, St. John, Ariz., interview, July 26, 1974.

47. Office of County Recorder, Apache Co., Ariz., Registration for General Election 1974.

48. Lucy Hilgendorf, Chinle, Ariz., letter to David H. Hunter, U.S. Commission on Civil Rights, Nov. 10, 1974.

In neighboring Coconino County, the overcrowding of voting facilities in the 1972 election was most obvious at the community center in Tuba City on the Navajo Reservation, where people waited in line for several hours before voting.[49] According to the county recorder, the number of polling places in the county has increased from 31 to 39 since the 1972 election.[50] Eight of those polling places are on the Navajo Reservation, an increase of four over the 1972 total.[51]

Crowded and confused conditions prevailed at several schools in predominantly Mexican American areas of Tucson during the 1974 election. Voting booths were placed in hallways near the front door and students and other persons who were not voting continually walked through the polling area. At one polling place, conditions were so crowded that the line of persons waiting to vote wound around the booths. Some of those waiting were so close to the booths that they could see the choices of persons voting.[52]

ELECTION OFFICIALS

One of the major obstacles to minority voting is the inadequate number of minority election workers. Minority persons frequently view

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49. Hanley Interview.

50. Pat Fabritz, Flagstaff, Ariz., interview, July 25, 1974.

51. Unpublished maps and tables, 1972-74, obtained by Commission staff from Pat Fabritz, Sept. 1974.

52. Election day observations by Commission on Civil Rights staff member, Tucson, Ariz., Nov. 5, 1974.

whites as opposed to minority enfranchisement. They feel that needed assistance is not nearly as likely to come from whites as from persons of their own background. Although the number of minority election workers has grown since the passage of the Voting Rights Act, they are still seriously underrepresented.

Even when minorities do work as poll workers, they are generally not in supervisory positions. Since the choice of poll workers is made by election officials[53] who are almost always white, blacks charge that only those blacks who are easily influenced are chosen.[54] According to one black leader in Alabama, blacks are asked to serve "who don't know what they are doing and whom they can tell, 'Go take a long lunch hour.'"[55]

Most counties rarely have to recruit new election officials for each election. When blacks in Sandersville, Georgia, complained about the lack of black poll workers, county officials said that the people who work at the polls had served for years and that training new people

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53. Code of Ala., Tit. 17 §§ 120-125 (1959); A.R.S. § 16-771 (Supp., 1974); Cal. Election Code §§ 1618-1618.5 (West Supp. 1974); Ga. Code Ann. § 34-401, § 34-501 (1970); L.S.A.-R.S. 18:555 (1969); N.Y. Election Law §§ 39-40 (McKinney, 1964); N.C. Election Laws § 163-41 (Supp. 1972); S.C. Code Ann. § 23-400 (1962); Va. Code Ann. § 24.1-32.

54. Staff interviews in Mississippi, Sept. 1974, Virginia, July 1974, Alabama, Aug. 1974, and Louisiana, Aug. 1974.

55. Albert Gordon, 1974 candidate for State senate, Camden, Ala., interview, Sept. 5, 1974.

would be difficult.[56] There was only 1 black among the 20 poll workers in the September 1974 runoff even though the city is 53 percent black. One source said that blacks usually constitute only 5 or 10 percent of the poll workers in county elections, even though Washington County is 54 percent black.[57] Blacks are never poll managers.

In Macon County, Georgia, 61 percent black, 3 of the 30 election workers in the September 3, 1974, primary were black. None of them was in charge. Although blacks requested more black poll workers, white officials refused to appoint them.[58]

One source in Tucson, Arizona, stated:

> There are simply too few minorities working at the polls and there is no doubt that this has a serious adverse effect on the participation of minorities in voting. They are made to feel like strangers at the polling places.[59]

In a Mississippi town in 1973, a black poll worker was not asked to work in the runoff election because of her participation in a voting rights lawsuit against the city. She was the only black of six officials in one precinct in the first election. As election returns were announced on the radio, the announcer stated that she had instituted a suit challenging at-large voting. When she asked a local party

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56. James Interview.

57. Davis Interview.

58. James Interview.

59. William Edward Morgan, attorney and professor, Tucson, Ariz., interview, Nov. 7, 1974.

official why she was not reappointed, he told her it was because of the lawsuit.[60]

The need for minority poll workers is accentuated in areas where large portions of the population do not speak English. Communication between a non-English speaker and a person who speaks only English becomes almost impossible. As a result the poll worker may become angry, the voter frustrated or embarrassed and not vote.

Recent legislation in California and court orders in New York require the recruitment of bilingual poll workers, but this has not always been carried out adequately.

California law now requires county officials to recruit bilingual poll workers in precincts where 3 percent of the voting age population is non-English-speaking.[61] Nevertheless, in obtaining poll workers, the county clerk of Monterey County depends chiefly on word of mouth for publicity.[62] Not only were no special recruitment efforts made,[63] but interested and qualified Chicanos who requested assignments from the

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60. Affidavit of Rosa Stewart, Stewart v. Waller, Civil No. EC-73-42-S (N.D. Miss., filed May 3, 1973).

61. Cal. Election Code § 1611(c) (West Supp. 1974).

62. Ernest Maggini, County Clerk, Monterey County, Salinas, Calif., interview, Nov. 6, 1974.

63. The job announcement for Monterey County on October 15, 1974, listed a job opening for Election Aide III ($3.052/hr.) or Election Aide II ($2.69/hr.). Nowhere did the announcement specifically advertise for bilingual election aides.

county clerk were told that the quota was already filled.[64] Visits to eight polling places by a Commission staff member revealed that there were only two bilingual election officials, both at one precinct in Soledad.[65] At one polling place in a Salinas elementary school, an election worker said: "We had a few voters who couldn't speak English, but we finally got through to them. We had some of the teachers come and help with interpretation."[66]

California has recently passed legislation that allows Spanish to be spoken at the polls. Nevertheless, a Commission staff person was told by one election official: "We are not supposed to speak Spanish, but someone can for the purposes of interpretation."[67]

According to John Saavedra, mayor of Soledad, California, older whites with "hard core anti-Chicano attitudes" generally work at the polls in Monterey County. Although some poll workers are bilingual, they are not given positions of major responsibility. A Chicano whom Saavedra had recommended worked at the last election but was not hired for the 1974 election.[68]

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64. Staff interview, Salinas, Calif., Nov. 5, 1974. As required by law the Commission has offered Mr. Maggini the opportunity to reply to these statements. His reply is included in appendix 7.

65. Election day observation by Commission on Civil Rights staff, Monterey Co., Calif., Nov. 5, 1974.

66. Ibid.

67. Ibid.

68. John Saavedra, Soledad, Calif., interview, Nov. 6, 1974.

One former candidate for New York city council criticized that city's efforts to obtain bilingual poll workers:

> In recent years a few Hispanos have been appointed poll workers but they are definitely not a good cross section of the community nor are their numbers proportionate to the total population.[69]

Congressman Herman Badillo also criticized the fact that there is an insufficient number of bilingual election workers. He pointed out that the burden of assisting the voter is borne by volunteer groups when it should be the responsibility of election officials.[70]

Despite assurances from Arizona officials which were accepted by the Department of Justice that bilingual election workers would be available where they were needed,[71] visits by a Commission staff member to several polling sites in November 1974 revealed that there were few, if any, bilingual workers in most precincts. At one precinct, the election inspector had to ask campaign workers to interpret for non-English-speaking voters several times during the day. In addition, only one of the election supervisors in the eight predominantly Chicano precincts visited was bilingual.[72]

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69. Yolanda Sanchez, New York City, N.Y., interview, Oct. 3, 1974.

70. U.S. Representative Herman Badillo, New York City, N.Y., interview, Oct. 3, 1974.

71. J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, Department of Justice, letter to N. Warner Lee, Attorney General, State of Arizona, Oct. 3, 1974.

72. Election day observations by Commission on Civil Rights staff, Tucson, Ariz., Nov. 5, 1974.

The need for adequate assistance in the voter's language is perhaps best exemplified by the situation on November 5, 1974, at the Tuba City precinct on the Navajo Reservation in Coconino County. Since many Navajos do not speak or read English, they needed assistance in the use of voting machines and in translating the 10 propositions on the ballot. Even though there were 13 voting booths, there was only one interpreter to assist all the voters who needed help. Consequently the lines were 3 hours long throughout the day. Many people left without voting and indicated that they would not want to vote again because of the difficulties they encountered.[73]

INADEQUATE BILINGUAL INFORMATION AND MATERIALS

In the past the laws of most States required that most governmental proceedings, including elections, be conducted only in English.[74] Realization that bilingual materials are needed if a non-English-speaking voter is to cast an effective ballot is a recent phenomenon. Court cases in New York and other areas and recent legislation in California and New Jersey have required bilingual assistance and translation of parts

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73. Robert Miller, attorney, Dinebeiina Nahiilna Be Agaditahe (DNA), Tuba City, Ariz., telephone interview, Nov. 13, 1974. DNA is a Navajo legal services organization.

74. For a State-by-State compilation of laws which discriminate against the non-English-speaking, see Arnold H. Leibowitz, "English Literacy: Legal Sanction for Discrimination," Notre Dame Lawyer, vol. 45 (1969), pp. 52-53.

of the voting instructions and the ballot.[75]

Of the three States under consideration which have substantial non-English-speaking populations, only California has a law requiring the translation of propositions and voting instructions into a language other than English. The translation must be posted in at least one conspicuous place at each polling site and be available for non-English-speaking voters to use as sample ballots.[76] New York City is under court order to provide bilingual assistance, including personnel, publicity, ballots, signs, and other election materials.[77]

California county officials have yet to comply fully with the translation provisions. Before the 1972 election the secretary of state sent instructions on the use of the Spanish ballot to all county clerks.[78] Nevertheless, there was still confusion about its use during the 1974 election. In the instructions sent by Ernest A. Maggini, county clerk of Monterey County, to all election officers, the only instruction regarding the Spanish ballots was to "[p]lace...about the polling place...Spanish facsimile ballots."[79] Although the county offers

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75. For a discussion of recent legislation and litigation regarding bilingual developments, see chapter 2.

76. Cal. Election Code § 14201.5 (West Supp. 1974).

77. Torres v. Sachs, 381 F. Supp. 309 (S.D. N.Y. 1974).

78. Memo to the County Clerk and Registrar of Voters from Edmund G. Brown, Jr., Secretary of State, Nov. 3, 1972.

79. Votomatic Election General Instructions to election officers, p. 2A.

training for election workers, attendance is voluntary and many do not attend and may not be aware of new legislation. The assistant registrar, who conducts the training, reported that she told the workers to "distribute the Spanish ballot around the precinct."[80]

No Spanish facsimile ballot was posted at any of the eight polling places in Monterey County visited by a Commission staff member on November 5, 1974. Asked about use of the Spanish ballot, some election officials did not know what they were to do with them; others said they were supposed to be placed on the tables and made available to people who asked for them.[81] According to some persons in the area, the existence of Spanish facsimile ballots is not well known by the Spanish speaking citizens, nor is the fact publicized by the county either in English or Spanish.[82]

In New York City, the election board is under court order to provide Spanish translation of the ballot.[83] According to one Puerto Rican candidate, translation for the September 10, 1974, primary was so inadequate that it created "confusion and disillusionment" among

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80. Doris J. Peterson, Salinas, Cal., interview, Nov. 6, 1974.

81. Election day observations by Commission on Civil Rights staff, Monterey Co., Cal., Nov. 5, 1974.

82. Staff interviews, Salinas and Soledad, Cal., Nov. 1974.

83. Torres v. Sachs, 381 F. Supp. 309, 312 (S.D. N.Y. 1974).

Puerto Ricans.[84] A New York Times article reported that it was "so full of mistakes that Spanish-speaking voters may be confused or seriously misled...."[85] Some of the voting instructions were at best ambiguous and, at worst, diametrically opposite to their meaning. For example,

> ...the English version tells voters to "vote for any two" candidates for the Court of Appeals.... The Spanish tells voters to vote for "cualquiera de los dos" [which means] any of the two....[86]

Arizona has no law governing the use of bilingual voting materials. Chicano and Navajo leaders agree that such materials would be extremely helpful. A Tucson attorney active in civil rights work suggested that "complete, balanced information on elections and the issues involved should be the responsibility of the board of elections."[87] A local television station aired a half hour voter education class in Spanish prior to the 1974 election, but one politically active Chicano believes that "this should be an official function of those who are responsible for the participation of all people in the voting process."[88] The only official effort was a translation of a small section on the sample ballot

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84. Sanchez Interview.

85. New York Times, Sept. 10, 1974, p. 70.

86. Ibid. As required by law the Commission has offered the New York City election board the opportunity to reply to these statements. Its reply is included in appendix 7.

87. Morgan Interview.

88. Valdenegro Interview.

mailed to each voter listing three recent changes in election law. Neither the section on the use of the voting machine nor the propositions were translated. Several years ago Pima County prepared a leaflet with instructions in Spanish on the use of the Votomatic.[89] However, some election workers are not aware of the existence of this leaflet.[90]

Navajos are concerned about the lack of information in their native language. Suggestions include putting candidates' pictures on the ballots and the use of cassette recordings translating the ballot for non-English-speaking voters. Apache County has not made any provisions, however, for making translations available.[91]

THE PROBLEMS OF ILLITERATE VOTERS

The Voting Rights Act Amendments of 1970 temporarily banned the use of literacy tests. Nevertheless, to make their votes effective illiterate voters must receive some type of aid at the polls in casting their ballots. Both the people permitted to assist illiterate voters and the kind and quality of the assistance they provide constitute serious problems for illiterate voters. There is a belief among some minority persons that a white poll worker assisting an illiterate

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89. The Votomatic is a voting device in which a stylus is used to indicate choices on a punch card using a booklet form ballot.

90. Election day observations by Commission on Civil Rights staff, Tucson, Ariz., Nov. 5, 1974.

91. Staff interviews, Window Rock, Ariz., July 1974.

minority voter will vote for the candidate the poll worker chooses, or advise the voter for whom to vote regardless of the voter's preference.[92]

The Mississippi State legislature repealed the provision regarding assistance to illiterates just prior to the passage of the Voting Rights Act of 1965.[93] A Federal court held that it was "the duty and the responsibility of the precinct officials at each election to provide to each illiterate voter who may request it such reasonable assistance as may be necessary to permit such voter to cast his ballot in accordance with the voter's own decision."[94] The State interpreted this to mean that illiterate voters could receive assistance only from election officials, although blind or disabled persons may receive help from a poll manager or other persons of their choice.[95] This distinction, however, has been held a violation of the equal protection clause of the 14th amendment.[96] The court declined to require that the assistance be provided by persons of the same race.[97]

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92. Staff interviews in Mississippi, Aug. 1974.

93. Miss. Code § 3212.7.

94. United States v. Mississippi, 256 F. Supp. 344 (S.D. Miss. 1966).

95. Miss. Code § 23-5-157.

96. James v. Humphreys County Board of Election Commissioners, Civil No. GC-72-70-K (N.D. Miss. Oct. 4, 1974).

97. Ibid., p. 30.

Straight party voting allows an elector to vote for a full slate of candidates in a particular party by pulling one lever on a voting machine or marking one box on a ballot. Where straight party voting exists, it allows illiterates who wish to vote for candidates of one party to vote with a minimum amount of assistance. Without straight party voting, the illiterate voter may have to receive assistance for each race or may not be able to finish voting because of time limits. For this reason, the Department of Justice approved Arizona's prohibition of straight party voting on the condition that adequate assistance would be available to minority voters and that sufficient time would be allowed for voting.[98]

Nevertheless, in the November 1974 election in Tucson, a Commission staff member observed a Chicana who was quite confused by not being able to vote a straight party ballot. She continued to ask for an explanation from an election supervisor who did not offer assistance but merely said, "I can't tell you how to vote, I can only tell you that straight party voting is no longer allowed."[99]

In Madison Parish, Louisiana, and Surry County, Virginia, poll workers reportedly do not assist black illiterate voters but, instead, leave them alone so that they will make a mistake and disqualify their ballot.[100]

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98. J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, letter to N. Warner Lee, Attorney General, State of Arizona, Oct. 3, 1974.

99. Election day observation by Commission on Civil Rights staff, Tucson, Ariz., Nov. 5, 1974.

100. Zelma Wyche, Chief of Police, Tallulah, La., interview, Sept. 3, 1974; M. Sherlock Holmes, Chairman, Surry County Board of Supervisors, Surry, Va., interview, July 9, 1974.

A black political leader in South Carolina alleged that in the July 1974 primary a white candidate had paid his campaign workers to masquerade as election officials at the polls. These people saw how illiterates voted and in some instances took ballots from them and cast them themselves.[101] He further noted that in Hampton County campaign workers for a white candidate allegedly took illiterates into the booths and marked their ballots for them.[102]

Two incidents involving illiterate voters reportedly occurred in Macon County, Georgia, in the September 1974 primary. In one case two blacks asked for assistance from a poll worker. She said that the first man, after voting, could help the second, even though both required assistance. In another case a voter was receiving assistance when a poll worker pulled the lever to open the curtain before the voter was finished.[103]

ABSENTEE VOTING

Problems with absentee voting were reported in many of the States visited by Commission staff. Because the process is very complex, there is ample opportunity for abuse. Blacks report that they have more difficulty obtaining absentee ballots than whites. Blacks look suspiciously at the large number of white absentee voters compared to

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101. George Hamilton, former executive director, South Carolina Human Relations Commission, Walterboro, S.C., interview, July 27, 1974.

102. Ibid.

103. James Interview.

black, as well as at the vote totals giving white candidates substantial majorities in the absentee vote count. In some close elections this has meant defeat for black candidates.

All States allow absentee voting for certain groups of voters, including the military, students, sick people, institutionalized persons, and those who are out of the county on business or vacation.[104] A person wishing to vote absentee may obtain an application either in person or by mail from the county registrar. The application usually contains an oath or affidavit of identity and eligibility that must be signed before a notary public. The application is returned and the person's signature verified by the appropriate county official. The ballot, instructions, and special envelopes are then mailed to the voter. If the oath is taken before a county official, these materials may be obtained in person.

The voter must mark the ballot in the presence of, but not in view of, a county official if in person, or a notary public if to be mailed, and place it in the envelope according to specific instructions. On

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104. This explanation is not meant to present the procedures for any particular State but only to demonstrate the complexity of the process. It is based on the following sections from State Election Codes: Code of Ala., Tit. 17 § 64(15) to 16-64(34) (1959); A.R.S. § 16-1101 to 16-1110 (Supp. 1974); Cal. Election Code § 14600 to 14634 (West 1961); Ga. Code Ann. § 34-1401 to 34-1411 (1970); L.S.A.-R.S. 18:1071 to 18:1081 (1969); Miss. Code § 23-9-401 to 23-9-613 (Supp. 1974); N.Y. Election Law § 117 to 130 (McKinney, 1974-75); N.C. Election Laws § 163-226 to 163-253 (Supp. 1974); S.C. Code Ann. § 23-441 to 23-449.41 (Supp. 1973); Va. Code Ann., § 24.1-227 to 24.1-234 (Supp. 1974).

the outside of the sealed envelope is usually a ballot affidavit, which is to be executed by the official or notary. The ballot is then placed in an outer envelope and mailed or given to the county official. Absentee ballots, usually due prior to or on election day, are counted separately after the close of the polls. The whole process usually must be completed within 30 days, including mailing time.

Blacks in Madison Parish, Louisiana, brought suit in Federal court to void the 1970 Democratic primary in Tallulah.[105] If only votes cast in person had been counted, blacks would have won every office in which they were candidates. Only two of the nine blacks won election, however. The victorious whites won by margins ranging from 24 to 104 votes, all provided by absentee ballots. Of the 222 absentee ballots cast, 62 were cast by whites whose eligibility to vote absentee should have been challenged under Louisiana law, but the county registrar had failed to do this.

Though a Federal court set aside the election,[106] a panel of the Fifth Circuit Court of Appeals reinstated its outcome.[107] The full Fifth Circuit Court of Appeals agreed with the lower court,[108] but by then it was almost time for the regularly scheduled election in 1974.

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105. For a discussion of discriminatory purging prior to this election, see chapter 4, pp. 87-89.

106. Toney v. White, 348 F. Supp. 188 (W.D. La., 1974).

107. 476 F.2d 203 (5th Cir.).

108. 488 F.2d 310 (5th Cir. 1973) (en banc.).

In the 1972 municipal election in Fort Valley, Georgia, three blacks were defeated by whites in the runoff on the strength of absentee votes. In 1973 the Department of Justice filed suit to overturn the election, alleging that city officials had allowed ineligible white voters to cast absentee ballots.[109] Although the court declined to set aside the election, it enjoined the city officials from issuing absentee ballots to nonresidents of Fort Valley and from issuing them on grounds of disability without a medical certificate. All future applications must show the reason the voter required an absentee ballot.[110]

In Talbot County, Georgia (68 percent black), irregularities with absentee ballots allegedly occurred in the June 1973 special election for school superintendent between a white teacher and a black principal. There were only 15 days between the white candidate's announcement and the deadline for receiving absentee ballots. Blacks believe that there was not enough time for the 102 people to receive absentee ballots and return them either in person or by mail. Most of the margin of victory for the white candidate came from absentee votes.[111]

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109. Complaint, pp. 5-8, United States v. Anthone, Civil No. 2872 (M.D. Ga., filed June 29, 1973).

110. United States v. Anthone.

111. Bob Marvin, Voter Education Project, letter to Lawrence Guyot, Jr., attorney, Lawyers' Committee for Civil Rights Under Law, Washington, D.C., June 28, 1973 (copy in Commission on Civil Rights files).

In the 1972 general election in Wilcox County, Alabama (68.5 percent black), the count of absentee ballots showed the white candidate for county commissioner receiving 178 votes, the black candidate, 2. The black candidate would have won by more than 100 votes had it not been for the absentee votes.[112] Subsequent investigation indicated that blacks had great difficulty even obtaining absentee ballots. According to a black attorney, county officials

> ...always found something wrong with black applications for absentee ballots, they were signed wrong...or they checked the wrong box ....This never happened to whites...their applications weren't rejected...and perhaps 200 absentee ballots were mailed to whites.[113]

In addition, a black poll watcher charged that people known to be sympathetic to the black candidates but unable to vote in person did not receive absentee ballots at all or received them too late to be returned in time to be counted.[114]

John Hulett, black sheriff of Lowndes County, Alabama, said that many blacks had trouble voting absentee. In the 1972 election blacks who were ill had difficulty obtaining a doctor's certificate to allow them to vote absentee. The attitude of the doctors purportedly was that "people should be able to go out on their own and vote."[115] All doctors in Lowndes County are white.

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112. Threadgill and McCarthy Interview.

113. Henry Sanders, Selma, Ala., interview, Sept. 4, 1974.

114. Threadgill and McCarthy Interview.

115. Hulett Interview.

In Eutaw, Greene County, Alabama, blacks charged that in the 1972 municipal election, in which white candidates won all offices, white election officials had violated various State laws concerning absentee voting.[116] The blacks contended that the official list of qualified voters was not published in the county paper prior to the election, as required by Alabama law;[117] a separate list of absentee voters was not made; and absentee ballots were not separated from other ballots.[118] The NAACP field office forwarded the complaint to the Department of Justice on August 16, 1972, and asked to be informed of further action.[119] On August 20, 1972, the Department acknowledged the NAACP letter, saying that they would investigate and

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116. O. B. Harris, chairman, Investigating Committee, Eutaw Chapter NAACP, letter to the Rev. K. L. Buford, Alabama Field Director, NAACP, Tuskegee Institute, Ala., Aug. 10, 1972 (copy in Commission on Civil Rights files).

117. Code of Ala., Tit. 17 § 38 states that a list of qualified electors by precinct shall be published by April 15 in some newspaper with a general circulation in the county.

118. Code of Ala., Tit. 17 § 64 (Supp. 1973), requires that by March 15 of each year a list of absentee voters of each county be filed with the county probate judge and the secretary of state. The ballots of these voters must be placed in an absentee box and nowhere else.

119. The Rev. K. L. Buford, letter to Gerald W. Jones, Chief, Voting and Public Accommodations Section, Civil Rights Division, U. S. Department of Justice, Washington, D.C., Aug. 16, 1972 (copy in NAACP Field Office files, Tuskegee Institute, Ala.).

inform the NAACP if they found grounds for complaint.[120] No further reply had been received as of September 4, 1974.[121]

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The Voting Rights Act of 1965 has had a great impact on the opportunity of minority persons to vote. The number of overt actions to exclude them on the part of white officials has decreased substantially. Nevertheless, abuses of the past have left scars on the memories of many minority group members. Furthermore, certain methods used by county officials and poll workers have the intent or the effect of convincing them not to vote or making their votes less effective. This chapter has been concerned with several of these methods which discourage or inhibit minority voters. In the areas covered by the Voting Rights Act many Puerto Ricans, Native Americans, Mexican Americans, and blacks believe that these attempts to discourage them from voting will continue as long as there are barriers which keep them from gaining political office.

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120. Gerald W. Jones, Chief, Voting and Public Accommodations Section, Civil Rights Division, U.S. Department of Justice, Washington, D.C., letter to the Rev. K. L. Buford, Alabama Field Director, NAACP, Tuskegee Institute, Ala., Sept. 20, 1972 (copy in Commission on Civil Rights files).

121. The Rev. K. L. Buford, Ala. Field Director, NAACP, and Rufus C. Huffman, NAACP Education Field Director, Tuskegee Institute, Ala., interview, Sept. 4, 1974.

6. BARRIERS TO CANDIDACY

Since the passage of the Voting Rights Act of 1965 minority citizens have begun to seek elective office in ever-increasing numbers. To a great extent whether they are elected or not depends on the same factors that determine whether any candidate is elected. But minority candidates also face problems which other candidates typically do not have.

Minority candidates are more likely than white candidates to feel helpless in trying to cope with the difficulties of running for office. As a group they are inexperienced at politics. Moreover, they do not have the luxury of assuming the good will of officials whose cooperation is necessary. Unlike whites they start as outsiders in the political process and do not have the practical experience of coping with the inevitable problems of a political campaign. Intensifying these problems in many rural areas is a shortage of lawyers who are able and willing to defend the political rights of minorities and to give legal guidance to minority candidates.

The problems which minority candidates encounter range from structural problems, like expensive filing fees or legal restrictions on third party or independent candidates, to problems of the abuse of discretion, such as the dishonest counting of votes.

Some of the events described may strike the reader as minor and the complaints petty. This is not how they are viewed by those who experience them. They may affect the outcome of an election and are even more likely to discourage future candidates, reinforcing the notion that minorities should stay away from politics.

FILING FEES

Typically a candidate for office must pay a fee as part of the qualifying process. Because minorities are more likely to be poor than whites, a substantial filing fee is a more significant barrier to them. Even when a minority candidate is able to pay the fee, that much money is taken away from the campaign effort.

Two justifications are given for fees: They help meet the expenses of elections, and they deter frivolous candidates from running. There are, of course, other ways to finance an election and other ways--such as petition requirements--to limit the field to serious candidates. Moreover, fees do nothing to deter the frivolous candidate who happens to be rich.[1]

The fact that filing fees are set or administered by political party committees does not exempt them from the scrutiny of the courts under the 14th and 15th amendments. The fees are an integral part of the electoral

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1. See Lubin v. Panish, 415 U.S. 709 (1974), and Harper v. Vance, 342 F. Supp. 136 (N.D. Ala. 1972).

system which is controlled by the State and thus requiring a fee is "state action" for constitutional purposes.[2]

Because a change in the method of qualifying to run for office is a change with respect to voting, it is subject to the requirements of section 5 of the Voting Rights Act.[3] It must be submitted either to the United States District Court for the District of Columbia or to the Attorney General for a determination that its purpose is not discriminatory and that it will not have a discriminatory effect. Under section 5 the Attorney General has objected to fees and to other qualifying requirements that might be burdensome for minorities.[4]

Recent decisions of the Supreme Court of the United States have made highly questionable the legal standing of more than a nominal filing fee where there is no readily accessible alternative to paying the fee.[5] Yet the barrier to minority candidates of substantial fees has not been removed in many jurisdictions. Where increases in fees have been prevented

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2. Bullock v. Carter, 405 U.S. 134, 140 (1972). See Smith v. Allwright, 321 U.S. 649 (1944), and Terry v. Adams, 345 U.S. 461 (1953).

3. See discussion of section 5, chapter 2, pp. 25-31.

4. But see Washington Research Project, The Shameful Blight: The Survival of Racial Discrimination in Voting in the South (Washington, D.C., 1972), pp. 72-73 (hereafter cited as Shameful Blight) for a description of Department policy in the past.

5. See Lubin v. Panish and Bullock v. Carter.

or already substantial fees lowered it has been through the time- and resource-consuming efforts of private litigation, through the aid of section 5, or through a combination of the two.

In 1970 a Federal court found the qualifying fee for candidates for the Mobile, Alabama, city commission unconstitutional.[6] Two percent of the commissioner's salary, or $360, was required. In response to the court's decision the city created two alternatives to the fee: a petition containing the names of 2,000 registered voters or a pauper's oath. In August 1973 the Attorney General objected under section 5 to these alternatives.[7] The petition put a greater burden on blacks than whites because there are fewer blacks than whites in the city. The pauper's oath did not relieve the financial burden of the fee on those who were not totally destitute. The Attorney General withdrew his objection after the city revised its oath and agreed to interpret it liberally, allowing anyone who shows a reasonable inability to pay the fee to use the oath.[8]

In 1970 the Georgia legislature set the qualifying fee for the general assembly at $400. For other State and local offices the fee was set at 5 percent of the annual salary for the office.[9] The Attorney General did

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6. Thomas v. Mims, 317 F. Supp. 179 (S.D. Ala. 1970).

7. Objection letter, Aug. 3, 1973.

8. Section 5 summary for Oct. 10 and Oct. 24, 1973. The city was also allowed to reinstate the petition requirement, although no reason was given for this change in attitude on the part of the Attorney General.

9. Ga. Code. Ann. § 34-1013 (1970).

not object to this schedule of fees when it was submitted in 1970,[10] but in Fulton County a court struck down the 5 percent requirement in 1972.[11] In 1973 the 5 percent requirement was still being applied elsewhere in Georgia. For example, candidates for county superintendent of education in Talbot County in 1973 were required to pay a fee of $600.[12] The legislature in 1974 reduced the fee to 3 percent and allowed qualifying by a petition as an alternative.[13]

Fees have also been reduced through section 5 objections or litigation in Ocilla and Albany, Georgia, and in Rock Hill, South Carolina. Increases in fees in Ocilla and Albany were disallowed by the Attorney General.[14] A Federal court struck down the $818 filing fee for the office of mayor in Rock Hill, South Carolina.[15]

Section 5 has been useful as a bargaining tool in preventing fees from being raised. The city of Bessemer, Alabama, adopted a $50 qualifying

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10. Non-objection letter, May 22, 1970.

11. The court ordered the name of a candidate placed on the ballot though he had not paid a fee of $1,006. Price v. Fulton County, Civil No. B-75710 (Super. Ct. of Fulton Co., Ga., June 29, 1972).

12. Talbotton New Era, June 14, 1973, p. 1.

13. Act No. 757, H.B. 227, 1974 General Assembly. The new provision has not yet been cleared under section 5.

14. Ocilla, Ga.: June 27, 1972. Albany, Ga.: Dec. 7, 1973.

15. Agurs v. Reese, Civil No. 73-1411 (D.S.C. Nov. 6, 1973).

fee for commission candidates, reportedly to discourage "spurious candidates." When informed by the Legal Evaluation Action Project that the new fee would have to be submitted to the Attorney General, the fee was rescinded.[16]

In many other areas, however, minorities are still burdened by qualifying fees. Zelma Wyche, chief of police, Tallulah, Louisiana, and president of the Madison Voters League, reported that filing fees in the parish have been raised repeatedly since 1966. Until that year, he said, fees had always been set at the minimum allowed by State law. As more and more blacks have run for office the Democratic Party executive committee has raised the fees, which are now at the maximum allowable.[17] No change in fee from the parish has been submitted to the Attorney General under section 5 of the Voting Rights Act.[18] Wyche further alleged that this tactic is widespread in other parts of Louisiana.[19]

In 1968 the Louisiana legislature passed special legislation setting the filing fees for offices in Caddo Parish. The fee required for members of the legislature, sheriff, clerk of court, treasurer, coroner, and district judge was $250. For police jury and school board a fee of $75

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16. Walter Jackson, director, Legal Evaluation Action Project, Birmingham, Ala., interview, July 17, 1974.

17. Zelma Wyche, Tallulah, La., interview, Sept. 3, 1974.

18. Section 5 Printout, as of May 8, 1974.

19. Wyche Interview.

was set; for constable and justice of the peace, $25.[20] This provision has not received section 5 clearance.[21]

A black candidate for the Louisiana State Senate, Mrs. Annie Smart, who is the mother of 13 and a welfare activist, reportedly attempted to be excepted from the qualifying fee requirement to run in the primary but was unsuccessful. Exceptions for indigents were only made for delegates to the Democratic Party national convention. The fee for the senate can be as much as $500.[22]

OBSTACLES TO QUALIFYING

The informal qualifying requirements can be as great a barrier to potential minority candidates as the formal. At the outset they may find it difficult to obtain the required information on the legal requirements of candidacy. In some instances they may encounter a lack of cooperation or resistance from officials to their candidacy. A variety of other difficulties--rarely twice the same--can prevent minorities from becoming viable candidates.

In 1972 a black businessman who had been active in registration efforts among blacks attempted to run for the city council in a small town in Sussex County, Virginia. When he and another black candidate filed their

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20. L.S.A.-R.S. 18:311 (1968).

21. Section 5 Printout, as of May 8, 1974.

22. David Robinson, school board member, East Feliciana Parish, La., interview, Aug. 17, 1974.

petitions on the last day for filing they were assured by the clerk at the courthouse that nothing more had to be done in order to qualify. Subsequently, the two candidates were informed that they had not satisfied the recently enacted requirement of naming a campaign treasurer and, therefore, their names would not appear on the ballot on election day.[23]

In the most recent county elections in Humphreys County, Mississippi, held in 1971, blacks had great difficulty finding out how to qualify. One prospective candidate phoned the circuit clerk to find out how to run for the county board of education. He told a Commission interviewer that the clerk claimed not to know the answer or whom he should ask. The chairman of the election commission was also uncooperative, he reported. Another prospective candidate succeeded in getting information only with the assistance of an attorney from the Lawyers' Committee for Civil Rights Under Law in Jackson.[24]

Blacks reportedly also have difficulties obtaining information about qualifying to run for office in Sharkey County, Mississippi. According to one person active in black political efforts in the county, election information appears in the newspaper only a few days before the deadline

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23. Wiley Mitchell, Waverly, Va., and the Rev. Curtis Harris, Hopewell, Va., interviews, July 9, 1974. A State court denied them relief because they had not exhausted administrative remedies.

24. Sam Liddell and Kermit James, Humphreys Co., Miss., interviews, Sept. 4, 1974.

for qualifying. For example, before the 1973 municipal election in Rolling Fork, the county seat, a newspaper notice of the election appeared only 2 days before the deadline. County officials, a Commission interviewer was told, make it hard for blacks to participate in politics by denying they have information that potential candidates need.[25]

In one Alabama county the probate judge has attempted to make it more difficult for blacks to run for office by giving them inaccurate information, according to an active member of the National Democratic Party of Alabama, a predominantly black party. He told a potential challenger for his position that the filing fee was higher than it actually was.[26]

Blacks have also reported difficulties in obtaining information about running for office in Southampton[27] and Greensville Counties,[28] Virginia, Tensas Parish, Louisiana,[29] and Camp Hill, Alabama.[30]

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25. Staff interview, Sharkey Co., Miss., Sept. 1974.

26. Staff interview in Alabama, Sept. 5, 1974.

27. Staff interview, Southampton Co., Va., July 10, 1974.

28. Moses Knox, chairman, Greensville County NAACP, Emporia, Va., interview, July 11, 1974.

29. Woodrow Wiley, police juror, Tensas Parish, Waterproof, La., interview, Sept. 5, 1974.

30. Lewis Martin, Camp Hill, Ala., letter to the Rev. K. L. Buford, Alabama Field Director, NAACP, Tuskegee Institute, Ala. (n.d., refers to the Aug. 8, 1972 municipal election) (copy in Commission on Civil Rights files).

An unsuccessful black candidate for county commissioner in Macon County, Georgia, in 1974, told a Commission interviewer that William F. Blanks, chairman of the county Democratic executive committee, had tried to discourage him from running. The candidate said that, when he went to see him at his office, Blanks treated him discourteously and argued that he should not run. Blanks reportedly told the candidate that the other commissioners would not work with him and that he did not have the proper knowledge and sufficient time for the job. In addition, at a meeting Blanks reportedly had said that they "could not afford to let this damn nigger win."[31] At the time Blanks was also the vice chairman of the Georgia State election board.[32]

In 1974 Dorothy Jones ran for school board in East Carroll Parish, Louisiana, but only with difficulty, according to the president of East Carroll Citizens for Progress. Because Jones, who had taken the name of her common-law husband, had registered to vote under her maiden name, Dorothy Lee, the local newspaper questioned whether she was a registered voter and thus eligible to be a candidate. The Democratic county executive committee disqualified her and returned her filing fee. Later, after blacks in the parish had hired a lawyer, the committee agreed to let her run.[33]

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31. Staff interviews, Montezuma, Ga., Sept. 1974.

32. As required by law the Commission has offered Mr. Blanks the opportunity to reply to these statements. His reply is included in appendix 7.

33. Theodore Lane, Lake Providence, La., interview, Sept. 4, 1974.

In 1971 Casey Clark ran for sheriff in Sharkey County, Mississippi. According to persons knowledgeable about the political efforts of blacks in the county, an attempt was made by whites to disqualify Clark by hiding narcotics in his car. Local police tore his car apart in search of the narcotics which had allegedly been planted. He subsequently left the area.[34]

In 1973 Doug Durant was a candidate for city council in Itta Bena, the second largest town in Leflore County, Mississippi. According to a leader of the county voters league, local officials tried to prevent Durant from qualifying for the race on the ground that he had served time in the State prison. In fact, it was someone else with the same surname in a neighboring county who was the ex-felon. Durant was allowed to run but allegedly received "threats" of an unspecified nature.[35]

Florence Farley, a candidate in the 1973 municipal election in Petersburg, Virginia, reported that her opponent sought to have the title M.D. placed after his name on the ballot. When she asked to have her profession, psychologist, listed, the board of electors refused. Only after she threatened court action did the board agree to drop her opponent's title.[36] When a black ran for a second term on the Southampton

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34. Staff interviews, Sharkey Co., Miss., Sept. 1974.

35. William McGee, Leflore Co., Miss., interview, Aug. 8, 1974.

36. Florence Farley, former councilmember, Petersburg, Va., interview, July 9, 1974.

County, Virginia, board of supervisors in 1972, he was listed on the ballot by his first name although he is generally known in the community by his initials and would have preferred their use on the ballot. He lost the election by 16 votes.[37]

CAMPAIGNING

Once the qualifying obstacles have been hurdled, the minority candidate still faces the campaign necessary to get elected. A particularly bothersome problem for minority candidates, who are often new to politics, is how to get the information necessary for a serious campaign from officials who are uncooperative.

One prerequisite to an effective campaign and a fair election is that a candidate know who his or her opponent is. Without this basic knowledge the candidate will not be able to campaign effectively or know how much effort to expend. Voters have on their part as great an interest in knowing who the candidates will be. It is, therefore, reasonable to have some regulation of write-in candidates to guard against surprise and to assure that such a candidate meets the statutory requirements for filling the office.[38]

In Stewart County, Georgia, a black, David White, ran unopposed in the August 1974 primary for the Democratic nomination for school board

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37. Staff interview, Southampton Co., Va., July 1974.

38. See Byrd v. Short, 228 Ark. 369, 307 S.W.2d 871 (1957).

in the majority black Louvale district.[39] At that time there was some suspicion in the black community that there would be a write-in campaign for a white candidate in the general election.[40] Rumors circulated in the black community prior to the election that such a campaign was under way, but no confirmation could be obtained from county officials.[41]

On election day the write-in effort was still a secret withheld from the black community. At the Louvale polling place no black election workers and no black poll watchers were present during the voting or the count. The tally showed that Raymond Miller, a white, had received 59 votes and David White, 58.[42] Miller, however, had failed to satisfy the 20-day notice requirement for write-in candidates contained in Georgia law.[43] Representatives of the black community suspected also that the vote totals were rigged. They have complained to the Department of Justice and sought the assistance of Georgia Legal Services.[44]

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39. Charles L. Rodgers, former school board candidate, Richland, Ga., interview, Aug. 15, 1974.

40. Joseph B. Williams, president, Stewart County Movement, Louvale, Ga., telephone interview, Aug. 15, 1974.

41. Robert Mants, Voter Education Project, Albany, Ga., telephone interview, Nov. 12, 1974; Williams, telephone interview, Nov. 13, 1974.

42. Ibid.

43. Ga. Const. Art. 2., § 7, par. 1.

44. Williams Interview, Nov. 13, 1974; Mants Interview; staff attorney, Voting Section, Civil Rights Division, Department of Justice, telephone interview, Nov. 12, 1974; Dan Steer, attorney, Georgia Legal Services, Columbus, Ga., telephone interview, Dec. 6, 1974.

While not knowing the name or even the existence of one's competitor is an extreme problem, more prosaic information problems also inhibit the campaigns of minority candidates. One necessary ingredient of a successful campaign is a list of the registered voters, which tells the candidate whom he has to reach and who can be ignored.

A leader of the Leflore County (Mississippi) Voters League told a Commission interviewer that black candidates in that county were not allowed to have a certified list of registered voters. Blacks had to copy names from the official list themselves and could not prove the registration of challenged black voters at the polls because they did not have the certified list.[45]

Black candidates in St. Helena Parish, Louisiana, were also unable to obtain a list of registered voters from the registrar. A black leader in the parish reported spending many days handcopying names of registered voters from the parish books.[46]

The Tucson manager for the 1974 Arizona gubernatorial campaign of Mexican American Raul Castro reported that Castro campaign workers received "very, very rude" treatment from the Pima County Recorder's office when they went there for information or assistance. "They reacted like they were being bothered by these requests."[47]

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45. McGee Interview.

46. Pearl Bryant, St. Helena Parish, La., interview, Aug. 17, 1974.

47. R. Dan Valdenegro, Tucson, Ariz., interview, Nov. 7, 1974.

ACCESS TO VOTERS AT THE POLLING PLACE

To preserve the neutrality of the polling place States prohibit campaigning within the place of voting itself and usually limit campaign activities in the vicinity of polling places. Such regulations are a necessary safeguard, but, if carried to extremes, they can infringe upon the candidate's right to communicate with the voter. Traditionally, candidates take advantage of the polling place on election day as the last chance to communicate with the voter. Overly restrictive regulations can be especially burdensome for minority candidates. They are less likely than whites to be incumbents and therefore need more publicity. In addition, they often have less money for their campaigns and consequently are less able to reach the voter through television, radio, and newspaper advertising.

While Alabama believes that keeping a distance of 30 feet from the polls clear of campaign activity is sufficient, Louisiana has a 300-foot limit; Georgia, 250 feet; South Carolina, 200 feet; and Mississippi, 150 feet.[48] Such distances can often prevent the campaign worker from having any contact with the person going to vote. Even more serious are the instances in which the statutory prohibitions of campaigning within a certain distance of polling places are enforced in a way that discriminates against minority candidates.

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48. Code of Ala., Tit. 17 § 144 (Recomp. 1958); L.S.A.-R.S. 18:1534; Ga. Code Ann. § 34-1307; S.C. Code Ann. § 23-658 (1952); Miss. Code § 23-3-17 (1972).

The campaign of Raul Grijalva, a Mexican American elected to the Tucson, Arizona, school board in November 1974, encountered difficulties because of heavy-handed enforcement of regulations on campaigning near polling places. Under Arizona law posters may be placed no closer than 150 feet from a polling place.[49] At the Santa Cruz Church School polling place the sign indicating the 150-foot limit appeared to Grijalva campaign workers to be about 250 or 300 feet away. Campaign workers requested that the sign be moved. Instead two police cars arrived. The workers were threatened with arrest but, though they were told three times that they were under arrest, they were never taken into custody. The signs were moved, but not enough to satisfy the campaign workers. By 1:30 p.m., when a representative of the county attorney's office arrived with a tape measure, the campaign workers had gone to another polling place.[50]

At the Manzo School polling place the election marshal tried to prevent Grijalva campaign workers from passing out their literature. In response to his request they indicated that they were beyond the sign marking the 150-foot limit.[51] They were allowed to stay. At three other polling places[52] Grijalva workers protested to marshals that the signs

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49. A.R.S. § 16-862.

50. Election day observations by Commission on Civil Rights staff, Tucson, Ariz., Nov. 5, 1974.

51. While Arizona law prohibits posters within 150 feet of the polling place, campaign workers are allowed as close as 50 feet. A.R.S. § 16-862. This distinction was apparently not observed at some polling places.

52. Tully School, No. 37; Menlo Park, No. 19; Pueblo Gardens, No. 85.

had been placed without proper measurement and were located too far away from the polling place.[53]

In one Louisiana town, a polling place official, who happened to be the relative of one of the white candidates, vigorously enforced the 300-foot rule. The one black candidate sat most of the day behind a post on a porch across the street from the poll. She was prevented from communicating with her poll watchers unless they came out to see her. The official, however, had frequent conferences with his relative, apparently keeping him informed of all the events inside the poll.[54] At several other polling places in the parish, campaign posters for white candidates were observed within the 300-foot limit.[55]

On election day in 1973 in Petersburg, Virginia, law enforcement officers stationed at the polling places removed signs of black city council candidates that they said were posted illegally but did not touch signs in the same area belonging to white candidates.[56]

Campaign workers for a black candidate in Moss Point, Mississippi, in 1973 were standing beyond the State's 150-foot limit while distributing sample ballots on election day. Nevertheless, "they were repeatedly

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53. Election day observations.

54. Election day observations by Commission on Civil Rights staff, St. Helena Parish, La., Aug. 17, 1974.

55. Ibid.

56. The Rev. Clyde Johnson, councilman, Petersburg, Va., interview, July 8, 1974.

harassed by police officials, who said that they did not have a right to hand out such ballots."[57]

In Stewart County, Georgia, in the August 1974 primary, a "checkoff" worker for an unsuccessful black school board candidate, was not allowed to sit outside the polling place checking off the names of persons who entered to vote. In addition, although the black candidates' white opponent was allowed to enter the polling place freely during the day to check the voting machines, which were being used for the first time, the black candidate was not.[58]

Lynmore James, who lost in his bid to become a commissioner of Macon County, Georgia, in 1974, complained of partiality shown to his opponents by the election officials. At the Montezuma polling place James requested a table for the use of his checkoff people. He was told that none was available. When his opponent asked for a table, one that was being used for refreshments was made available immediately. Later, the polling place manager bought refreshments for the other election workers and for the checkoff people for James' opponent, but not for James' checkoff people.[59]

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57. Affidavit of Billy Frank Broomfield, Stewart v. Waller, Civil No. EC-73-42-S (N.D. Miss., filed May 3, 1973).

58. Staff interview in Georgia, Aug. 15, 1974.

59. Lynmore James and others, Montezuma, Ga., interview, Sept. 4, 1974.

POLL WATCHERS

It is traditional in the United States for political parties and candidates for public office to have poll watchers at primary and general elections. While the election officials are expected to run a fair election, the poll watcher is present as the advocate for a party or candidate--to challenge ineligible voters, to point out the errors in the conduct of an election that are inevitable on a long election day, and in general to assure that the candidate or the party and its supporters are treated fairly. Just as important are representatives at the count of the vote to assure that the votes are counted accurately and that disputes over ballots are resolved in the desired direction.

If the candidate is a black in the South who has no reason to trust the honesty of election personnel, the need to be represented when the votes are cast and counted becomes urgent. Despite this clear need--and in some cases because of it--black candidates have in some elections been unable to have poll watchers present for either the voting or the counting. In some instances watchers were present but not as many were allowed as were needed, they were not allowed to be effective, or they received less cooperation than did poll watchers for white candidates.

One example of an attempt to exclude a poll watcher for a black candidate from a polling place altogether comes from a special election in 1974 in Adams County, Mississippi. The white poll manager of one polling place would not let in the poll watcher for the black candidate

for county supervisor until after 10:00 a.m., 3 hours after the polls opened.[60]

In another incident which occurred during the 1974 election in Mississippi two poll watchers for a black candidate for school board in Copiah County were arrested. The poll watchers had tried unsuccessfully to challenge white voters who allegedly were not qualified to vote in the county school board election and to ensure that qualified black voters were given the proper ballot.[61]

In Wilcox County, Alabama, in 1972 black poll watchers at some polling places were either excluded from the polls entirely or otherwise hampered. In a village situated in the western part of the county, the polling place was located in a store owned by a white. Shortly after the poll watcher for a black candidate arrived, he was ordered off the property by the store owner. He spent the day standing on the road in the rain about 10 or 15 feet from the store.[62]

Juanita White, a defeated black candidate for the South Carolina State House in 1974, reported that one of her poll watchers was forceably barred from a polling place by a white candidate.[63]

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60. Frank R. Parker, attorney, Lawyers' Committee for Civil Rights Under Law, Jackson, Miss., letter to David H. Hunter, U.S. Commission on Civil Rights, Nov. 8, 1974.

61. Ibid.

62. The Rev. Thomas L. Threadgill and Charles McCarthy, community leaders and former candidates, Wilcox Co., Ala., interview, Sept. 5, 1974.

63. Juanita White, Hardeeville, S.C., interview, Sept. 6, 1974.

Even when poll watchers for black candidates are not physically excluded from the polling place, they frequently encounter isolation from the activities that they are to watch. In effect, they serve at the pleasure of the manager of the poll to which they are assigned.

According to the chairman of the Leflore County (Mississippi) Board of Election Commissioners, "anyone may observe an election but if they interfere the State statute allows poll workers to eject them."[64] A poll watcher's standing too close or looking over a poll worker's shoulder would be grounds for ejection.[65]

A black resident of Moss Point, Mississippi, was assigned to be a poll watcher during the March 1974 municipal election. She was instructed by the precinct manager of the old City Garage polling place to sit at a location about 30 feet from the ballot box. Later she moved closer to the ballot box and was able to remain there until the polls closed.[66]

Similarly, a black who was defeated in a race for a county board of supervisors in Virginia in 1972 reported that his watcher at the election was not permitted to be behind the table where the voters' names were checked off. He was thus unable to verify that the persons who voted were actually on the voters' list. He could only observe

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64. George Dulin, Chairman, Leflore County Board of Election Commissioners, Greenwood, Miss., interview, Aug. 7, 1974.

65. Ibid.

66. Affidavit of Melodie Shelton, Stewart v. Waller.

who went in and out of the voting booth. He was also not allowed to observe the counting of the ballots.[67]

The poll watcher who actually is close enough to observe the conduct of the election may see seriously improper behavior. A watcher for a black candidate in Moss Point, Mississippi, in 1973 has sworn:

> On at least two occasions white voters at the community center stated aloud that they weren't sure who they should vote for....[T]he precinct manager--who was a white woman--wrote a name on a slip of paper and handed it to these voters. On one of these two occasions I was close enough to see that the name of a white candidate was written on the piece of paper.[68]

Equally important as representation during voting is representation after the polls have closed and the votes are being counted. Black candidates whose poll watchers have been excluded from this phase of the election day process often suspect that the votes have not been counted honestly.

During the 1972 election in Pine Apple, in the southeastern corner of Wilcox County, Alabama, the white election officials told the black poll watcher that the votes would not be counted that night. Arriving at the polling place in the morning, he found the results of the election posted on the door.[69] At another site, it was reported that shortly before the poll was to close the black poll watcher stepped outside to his

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67. Staff interview, July 1974.

68. Affidavit of Melodie Shelton, Stewart v. Waller.

69. Threadgill and McCarthy Interview.

car to get a pack of cigarettes and on his return found the door locked and whites inside busy counting the votes. Blacks in the county expressed the belief that a white poll watcher would not have been treated in this fashion.[70]

A similar incident was reported in Lafayette, Alabama, during the municipal elections of August 1972. According to the Chambers County branch of the NAACP, the black poll watchers were sent home at the close of the polls. The doors were then locked, the voting machines unlocked, and the votes tallied by the white election officials. In this election a black candidate lost by only two votes.[71]

Blacks in predominantly black Twiggs and Washington Counties, Georgia, alleged they were not allowed to see the counting of the vote in the August 1974 election primary.[72]

COUNTING THE VOTES

If voters and candidates cannot rely on the honesty of the persons counting the votes or on the system for counting votes, they will have

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70. Ibid.

71. Ruth Nunn, vice president, Chambers County-Valley Branch NAACP, letter to the Rev. K. L. Buford, Tuskegee Institute, Ala., Aug. 12, 1972. A complaint was filed with the Department of Justice, which determined the facts of the case did not justify their taking action. J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, Department of Justice, letter to the Rev. K. L. Buford, Mar. 22, 1973. (Correspondence in NAACP Field Office files, Tuskegee Institute, Ala.)

72. Staff attorneys, Voting Section, Civil Rights Division, Department of Justice, telephone interviews, Aug. 29 and 30, 1974.

very little faith in the electoral system as a whole and will see little reason to participate in it. Commission staff interviews in Alabama, Georgia, Louisiana, and South Carolina revealed widespread distrust of the activities of this crucial phase of the electoral process.[73]

Some black citizens of Mississippi do not feel that they can win an election even if they receive a majority of the votes. A resident of Noxubee County active in the campaign of a black candidate for sheriff in the 1971 election recalled that blacks frequently felt that their votes would not matter.

> Many expressed the view that they could not get a black elected even if they all voted. Many felt that a black candidate would not win even if he or she, in fact, received a majority of the votes cast. These are both views that I myself shared at that time. I still have this view.[74]

A poll watcher who observed the count in that election indicated that this distrust was not without justification. He reported that the election workers discriminatorily reviewed ballots for disqualification:

> When a ballot cast for a black was examined, white vote counters would often remark, "Here's another one of <u>these</u>." Many ballots cast for black candidates were disqualified because the checkmark was on the boundaries of the parenthesis or box next to the candidate's name. Ballots cast for white candidates were much less frequently disqualified for similar technicalities.[75]

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73. Staff interviews in Alabama, Georgia, Louisiana, and South Carolina, July-Sept. 1974.

74. Affidavit of Sherell Williams, Stewart v. Waller.

75. Affidavit of Larry Miller, Stewart v. Waller.

Blacks also had reason to distrust the count of the vote in Moss Point, Mississippi, in 1973. A defeated black candidate reported that, although normal procedure is for the votes to be counted by the Democratic election committee, at this election the votes "were counted by and called off by" two white candidates. "Black poll watchers present at the time objected to this procedure, but to no avail."[76]

A black candidate defeated for the nomination for the South Carolina State house seat from Hampton and Colleton Counties sought to investigate and obtain affidavits regarding possible election fraud by his opponent. He reported that he was prevented from carrying out his investigation by local law enforcement officials, who detained him without cause for 2 hours.[77]

OBSTACLES TO MULTIRACIAL AND MULTIETHNIC POLITICS

In many areas the great increase in minority registration and voting since the passage of the Voting Rights Act in 1965 has meant that politicians can no longer afford to ignore minority voters. This has brought about a significant decline in racial appeals by candidates and has made incumbents and candidates more responsive to minority needs. Nevertheless, in many areas the political process remains segregated. For example, black candidates in the South are often unable to reach white voters in their campaigns, and many white voters refuse to vote for black candidates

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76. Affidavit of Billy Frank Broomfield, Stewart v. Waller.

77. George Hamilton, former executive director, South Carolina Human Relations Commission, Walterboro, S.C., interview, July 27, 1974.

solely because of their race. This was the view of the United States District Court for the District of Columbia in its analysis of a 1970 election for a seat in the Louisiana legislature. In a New Orleans district a white Republican defeated a black Democrat, producing the first Republican legislator from that district in this century.[78]

In many situations minority candidates must receive a substantial number of votes from the white community in order to win. Even if white votes are not essential to victory, minority candidates have the right to take their campaign to the white community, and white voters have the right to hear from minority candidates. In some instances these rights have been denied.

A former black candidate for sheriff in Noxubee County, Mississippi, believes that black candidates running for office have virtually no access to the white community other than through newspaper advertisements. He stated: "I was never invited to appear before white organizations when I was a candidate. I, as a black, do not feel free or welcome to campaign in the white community."[79]

Another black candidate in Noxubee County reported that the separation of the white and black communities in Macon severely limited his access to the white community during his campaign. He doubts that it is possible in Macon to form coalitions with whites in support of a black

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78. Beer v. United States, 374 F. Supp. 363, 375 (D.D.C. 1974).

79. Affidavit of Albert Walker, Stewart v. Waller.

candidate. He recalled from his campaign experiences: "I entered the store of one white merchant in Macon, approached him, and told him that I was soliciting votes. When I said that, he and the other white with him broke into laughter."[80] One white who did work with him reported that he was "completely ostracized" from the white community because of his campaign activity and his other involvement with the black community.[81]

A black candidate in Moss Point, Mississippi, in 1973 reported approaching a prominent white politician to discuss the possibility of forming a coalition. His response was that there were "too many rednecks here and they are not ready for this yet."[82]

A black physician was a candidate for alderman in Starkville, Mississippi, in 1973. He reported:

> No black candidate in Starkville has ever been supported by the white business community or by white-dominated political organizations. The general atmosphere and political climate in Starkville deter attempts to form black-white coalitions in support of black candidates. I would be very reluctant to approach white organizations in Starkville and ask for their support for my candidacy. I have no realistic expectation that I could obtain the support of white business or political organizations in Starkville.[83]

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80. Affidavit of Garfield Triplett, Stewart v. Waller.

81. Affidavit of Larry Miller, Stewart v. Waller.

82. Affidavit of W. M. Williams, Stewart v. Waller.

83. Affidavit of Dr. Douglas L. Conner, Stewart V. Waller.

Black candidates also reported that they were not invited to appear before white organizations. In a 1973 campaign in Jackson County, Mississippi, a black reform ticket for the Moss Point aldermanic board included a white candidate. The white candidate before black community meetings, but a black candidate reported:

> [A] women's business club in Moss Point invited all the candidates running for mayor or alderman to come and appear before their organization. This was to be a political rally at the football field. I and other black candidates received written invitations. Before this rally was held, however, it was cancelled for no apparent reason.[84]

He and another black candidate in the same election reported that this was a general problem they encountered.[85]

Although racial or ethnic appeals to voters have declined as minority voting strength has increased, they still occur. They are more subtle now, but for many a clear message is presented.

Congressman Herman Badillo, a Puerto Rican who ran unsuccessfully for the Democratic nomination for mayor of New York in 1973, complained of campaign materials containing distorted statements and appeals to prejudice which were circulated.[86] The most extreme piece was a leaflet, written in Italian with an English translation and circulated in Italian neighborhoods, which included the following accusations:

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84. Affidavit of W. M. Williams, Stewart v. Waller.

85. Ibid.; Affidavit of Billy Frank Broomfield, Stewart v. Waller.

86. U.S. Representative Herman Badillo and Shirley Remeneski, Administrative Assistant to Mr. Badillo, New York City, N.Y., interview, Oct. 4, 1974.

"Abe Beame's opponent is in favor of quotas in hiring and education." "Abe Beame's opponent is supported by the Black Panthers and Young Lords."[87] Another of the unsigned, unidentified leaflets showed a picture of a burned-out slum block with the caption, "Badillo country."[88] There were several other pieces of literature used in the campaign which exploited the fear and frustrations of white urban dwellers toward minority group members.[89]

The October 1973 city council election in Birmingham, Alabama, was infected with "raw racial" campaigning, according to Dr. Richard Arrington, a black member of Birmingham's city council not up for election in 1973.[90] Four blacks and two whites were in the runoff for three positions, guaranteeing victory to at least one black.[91] An organization formed to support white incumbents, the Birmingham Action Group (BAG), sponsored advertising in the newspapers and on radio and television and telephoned voters in predominantly white areas to encourage turnout. One advertisement contained the following material:

> Do you want to let somebody else run Birmingham . . . or do you want to help run it? If you don't vote next Tuesday, somebody else will run Birmingham.

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87. Leaflet provided by Cong. Badillo.

88. Leaflet provided by Cong. Badillo.

89. Badillo and Remeneski Interview. As required by law the Commission has offered Mayor Beame the opportunity to reply to these statements. His reply is included in appendix 7.

90. Dr. Richard Arrington, Birmingham, Ala., interview, July 19, 1974.

91. Ibid.

> And they'll run Birmingham the way they want. Not the way you want it. Next Tuesday's election will determine the future of Birmingham . . . and whether you like it or not: the future of Birmingham is your future. It's entirely up to you.[92]

The advertisement encouraged citizens to vote for the incumbents, the two whites and one black.[93] Because of Birmingham's full-slate requirement voters were required to vote for three candidates for their votes to be counted. Thus, it was necessary for BAG to support one black candidate.[94] This advertising was criticized editorally by a Birmingham newspaper for injecting race into the campaign.[95]

In November 1974 Raul Castro, a Mexican American, defeated Russ Williams to become Governor of Arizona. Some Mexican Americans in Arizona charged that some of Williams' campaign slogans used on television contained racial slurs. Williams urged the voters to "Elect a man who looks like a governor." Another slogan was "Elect a governor you can be proud of."[96]

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92. Birmingham Post-Herald, Oct. 26, 1973, p. B5.

93. Ibid.

94. For a discussion of full-slate voting, see chapter 8, p. 207. For additional discussion concerning full-slate voting in Birmingham, see chapter 8, p. 207.

95. Birmingham Post-Herald, Oct. 27, 1973, p. A4.

96. Salomon Baldenegro, Raul Grijalva, and other community leaders, Tucson, Ariz., interview, Nov. 4, 1974.

PROBLEMS OF INDEPENDENT AND THIRD PARTY CANDIDATES

Because they have traditionally been excluded from the dominant Democratic Party in the South,[97] blacks have often found it necessary or advantageous to form a separate party or to run as independents. While blacks now have a role in the Democratic Party in several Southern States,[98] independent and third party efforts continue.

Third parties have been formed in three States: the Mississippi Freedom Democratic Party, the National Democratic Party of Alabama, and the United Citizens Party in South Carolina.[99] The independent candidates and third parties in Mississippi and Alabama have needed decisions of the Supreme Court of United States and other Federal courts and section 5 objections to counter restrictive measures taken by those

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97. See U.S. Commission on Civil Rights, Political Participation (1968), pp. 133-52 (hereafter cited as Political Participation); William C. Havard, ed., The Changing Politics of the South (Baton Rouge: Louisiana State Univ. Press, 1972); Commission on the Democratic Selection of Presidential Nominees, The Democratic Choice (1968), pp. 54-57; Commission on Party Structure and Delegate Selection to the Democratic National Committee, Mandate for Reform (Washington, D.C., 1970); Washington Post, Nov. 14, 1974, p. A2.

98. Staff interviews in Alabama, Mississippi, South Carolina, and Virginia, July-Sept. 1974. Curtis Harris was an independent candidate for Congress in 1974 in Virginia's Fourth District, which is 37 percent black. He finished third, receiving 16.9 percent of the vote.

99. See generally Hanes Walton, Jr., Black Political Parties; A Historical and Political Analysis (New York: The Free Press, 1972).

States.[100] The South Carolina party has sought court assistance each general election year since 1970, twice successfully and once, in 1974,[101] unsuccessfully.

A recent case from Wilcox County, Alabama, demonstrates the ingenuity of those who resist sharing political power with minorities. The number of blacks who are registered to vote in that county "far exceeds" the number of registered whites.[102] The 1972 county election

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100. Mississippi: Whitley v. Williams, decided sub nom. Allen v. State Board of Elections, 393 U.S. 544 (1969); Evers v. State Board of Election Commissioners, 327 F. Supp. 640 (S.D. Miss. 1971), appeal dismissed 405 U.S. 1001 (1972); objections of May 21, 1969 and April 26, 1974. For a discussion of the April 26, 1974, objection see pp. 273-74. A black candidate attempted in 1974 to run as an independent in the race for Congress in Mississippi's Second District after running in the Democratic primary for the same position. A Federal court denied his claim that he had a right to have his name on the ballot. Meredith v. Mississippi State Bd. of Election Commissioners, Civil No. J 74-253(R) (S.D. Miss. Oct. 30, 1974). Alabama: Hadnott v. Amos, 394 U.S. 358 (1969); Hadnott v. Amos, 320 F. Supp. 107 (M.D. Ala. 1970); objections of Aug. 1, 1969 and Aug. 14, 1972.

101. 1970: United Citizens Party v. South Carolina State Election Commission, 319 F. Supp. 784 (D.S.C. 1970). 1972: Harper v. West, decided sub nom. Toporek v. South Carolina State Election Commission, 362 F. Supp. 613 (D.S.C. 1973). 1974: Fowler v. White, Court of Common Pleas, Allendale Co., S.C., Oct. 22, 1974; Murdock v. Snipes, Order of Chief Justice, S.C. S.Ct., Nov. 1, 1974. A Federal suit is pending. White v. West, Civil No. 74-1709 (D.S.C., filed Oct. 31, 1974). Storer v. Brown, 415 U.S. 724 (1974), and American Party of Texas v. White, 415 U.S. 767 (1974), permit States to place some limitation on the access of third party and independent candidates to the ballot.

102. Complaint, p. 5, Threadgill v. Bomer, Civil No. 7475-72-P (S.D. Ala. Nov. 7, 1973).

was a contest between the predominantly white Democratic Party and the predominantly black National Democratic Party of Alabama (NDPA). The Democratic Party nominated a slate of white candidates and the NDPA a slate of black candidates.

In September 1972, following the primary, however, the Democratic Party added the names of 21 blacks to their slate for the office of constable. This was done without the knowledge or the consent of most of the people involved; in fact, many were active members of the NDPA. The purpose of this action, the NDPA alleged, was to confuse black voters and to split the black vote.[103] According to persons interviewed by Commission staff members, it succeeded in doing this.[104] Some blacks voted for the Democrats because there were blacks on their slate; others stayed home on election day because of the confusion. A lawsuit brought by blacks because of this and other irregularities ended in a consent decree, in which the Democratic Party was enjoined from "nominating and placing any person's name as a candidate on the ballot without first securing the written permission of the proposed candidate."[105]

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103. Ibid., pp. 4-5.

104. Threadgill and McCarthy Interview; Henry Sanders, attorney for plaintiffs in Threadgill v. Bonner, Selma, Ala., interview, Sept. 4, 1974.

105. Consent Decree, Threadgill v. Bonner.

The NDPA also encountered problems in 1974 in Dallas County. Four black candidates of the NDPA for the State legislature sought to run in the November 1974 general election but were prevented by the county probate judge. A fifth, who was white, was the NDPA candidate for district attorney and was also excluded.[106] The judge left the names of the five off the ballot because they had not satisfied the requirement of Alabama law that they inform the county probate judge of the names of the members of their financial committees within 5 days of announcing their candidacies.[107] In a suit brought to require the judge to place the names of the NDPA candidates on the ballot, the Department of Justice alleged that candidates of the Republican, Democratic, and Alabama Prohibition Parties had also not satisfied the notice requirement but that their names were placed on the ballot nevertheless.[108] The court granted temporary relief, requiring that the names be placed on the ballot for the November 5 election.[109]

A problem encountered by independent black candidates in Mississippi is that Mississippi law contains no provisions for poll watchers for independent candidates.[110] During the 1971 general election the State

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106. Complaint, pp. 2-3, United States v. Dallas County, Civil No. 74-459-H (S.D. Ala., filed Nov. 1, 1974).

107. Code of Ala., Tit. 17 § 274.

108. Complaint, p. 3, United States v. Dallas County.

109. Order of Nov. 1, 1974, United States v. Dallas County.

110. Miss. Code § 3267.

agreed to allow independents collectively to have two poll watchers at each polling place, the same number allowed a political party, even though not all the independents might be in alliance.[111]

Nevertheless, the State attorney general declined to inform county election officials of this ruling prior to the November 2, 1971, general election.[112] As a result independent black candidates in Humphreys County were denied the right to have poll watchers. Poll managers ordered the black poll watchers off the premises as soon as the polls opened at 7:00 a.m. They were only permitted to come back after a number of phone calls to the secretary of state and the attorney general.[113] There is no assurance, moreover, that poll watchers for independent candidates will be allowed in the 1975 elections.[114]

MINIMIZING THE IMPACT OF MINORITY SUCCESS

Not all the problems which a minority candidate faces are those of qualifying as a candidate, running an effective campaign, and receiving fair treatment on election day. In some instances legal obstacles have

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111. For a discussion of events leading to this decision, see Shameful Blight, p. 77.

112. James v. Humphreys County Board of Election Commissioners, Civil No. GC-72-70-K (N.D. Miss. Oct. 4, 1974), slip opinion, p. 10.

113. Kermit James Interview.

114. Frank R. Parker, attorney, Lawyers' Committee for Civil Rights Under Law, Jackson, Miss., interview, Nov. 18, 1974.

been placed in the path of candidates successful in the primary or general election. Some minorities who have been elected have found that lack of cooperation from other officials limits their effectiveness. And in some places the prospect of minority success has led communities or States to abolish the office that the minority candidate had a chance to win.

Apache County, Arizona, is 74 percent Native American. Most of the county's population resides on the Navajo Reservation. In November 1972 a Navajo was elected for the first time to the three-member county board of supervisors. He was not allowed to take office, however, without a favorable ruling from the State's supreme court.[115] Tom Shirley received 3,169 votes; his opponent, Thomas E. Minyard, 1,105. Despite this clear margin of victory, Minyard and others sued to prevent Shirley from taking office. Minyard argued principally that Shirley should not be seated because he is immune from civil process while on the Navajo Reservation and he does not own any taxable property. The State supreme court decided in favor of Shirley, finding Minyard's arguments unpersuasive.[116]

Bolton is a majority black town of fewer than 1,000 residents in Hinds County, Mississippi. Prior to the spring 1969 municipal elections no blacks held public office in Bolton.[117] In the May 13 primary

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115. Shirley v. Superior Court in and for County of Apache, 109 Ariz. 510, 513 P.2d 939 (1973), cert. denied, 415 U.S. 917 (1974).

116. Shirley v. Superior Court.

117. Political Participation, pp. 218-19.

three blacks received the Democratic nomination for alderman.[118] The losing white candidates brought an action challenging the result according to a new State procedure which had not received section 5 clearance. The United States Court of Appeals for the Fifth Circuit, therefore, ruled that the challenge proceeding violated the federally protected rights of the defendants.[119] Because the general election had already been held without challenge to the blacks' victory in it, the Fifth Circuit dismissed the case.[120]

Four years later, at the next municipal election in Bolton, blacks had greater success at the polls, winning the positions of mayor, town clerk, and five aldermen.[121] Again, defeated whites challenged the result. They filed with the Bolton Democratic executive committee a complaint alleging various irregularities. The white-controlled committee decided in favor of the contestants, declaring that the black candidates were not the nominees. The black-dominated municipal election committee went ahead with the general election and the black candidates won.[122]

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118. Thompson v. Brown, 434 F.2d 1092 (5th Cir. 1970).

119. Ibid., pp. 1095-96.

120. Ibid., p. 1096. The case had been removed from a State court to the Federal court system, which is allowed in civil rights cases under 28 U.S.C. § 1443.

121. Mashburn v. Daniel, Civil No. 73J-138(R) (S.D. Miss. Aug. 20, 1973), slip opinion, p. 1.

122. Ibid., pp. 3-4.

The party executive committee then brought suit in two Hinds County courts to set aside the election and to prevent the blacks from taking office.[123] The blacks were vindicated, however, by the Federal district court, which decided in their favor. The most important irregularity which the Federal court could find was that ballots of voters receiving assistance had been initialed on the wrong side.[124]

In some instances minorities have been elected to office only to find that the powers and responsibilities of the office have been reduced, either formally or in practice.

A 1974 election in Lake Providence, Louisiana, resulted in a black's being elected mayor and blacks winning control of the town council. Before the white council members of the 60 percent black town left office they attempted to transfer control of a municipal power plant to a newly created power commission, whose members would all be white. The power plant is the town's sole source of revenue.[125] The new government filed

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123. Mashburn v. Daniel, Cause No. 6518 (Chancery Court of the 2d Jud. Dist. of Hinds Co., Miss., filed June 13, 1973); Mashburn v. Thompson, Cause No. 3683 (Circuit Court of the 2d Jud. Dist. of Hinds Co., Miss., filed June 14, 1973). The two cases were removed by the defendants to the Federal district court, following the procedures used 4 years earlier.

124. Mashburn v. Daniel, slip opinion, pp. 9-10. The defendants in Mashburn brought a separate action in Federal court also. This was decided by consent following the decision in Mashburn. Thompson v. Bolton Municipal Democratic Executive Committee, Civil No. 73J-131 (N) (S.D. Miss., Order of Sept. 14, 1973).

125. Dr. Thomas E. Smith, Southern University, Baton Rouge, La., telephone interview, Dec. 5, 1974; Joint Center for Political Studies, Focus, Aug. 1974, p. 8.

for relief in the Federal district court, which enjoined the action of the deposed white council.[126]

In Wilcox County, Alabama, in the November 1972 general election, six black candidates of the National Democratic Party of Alabama were elected to the office of constable. It was reported to a Commission interviewer that the county probate judge, Roland Cooper, had failed to give these constables their cards of commission, as the judge is required to do by law. Numerous requests for the cards did not result in their issuance.[127] This reportedly has proved to be a handicap to the performance of the duties of constable.[128]

Whites attempted to circumvent the authority of the black-controlled Democratic Party county executive committee in Sumter County, Alabama, in 1974. Under Alabama law candidates in a party primary file their qualifying papers with the chairperson of the county party executive committee. The chairperson then certifies the names of candidates to the probate judge of the county.[129] In Sumter County the chairperson of the party committee is black, while the secretary is white. Black candidates filed their papers with the chairperson and white candidates (and one black) with the secretary. Both

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126. Jackson v. Town of Lake Providence, Civil No. 74-599 (W.D. La. July 11, 1974).

127. As required by law the Commission has offered Mr. Cooper the opportunity to reply to these statements. His reply is included in appendix 7.

128. Threadgill and McCarthy Interview.

129. Code of Ala., Tit. 17 §§ 344, 348.

party officials submitted lists to the probate judge, who announced that he would put both lists on the ballot. The black candidates and the county committee brought suit in Federal district court, claiming that the probate judge was depriving them of their rights as voters and candidates and that the certification of names by the secretary was a new practice not approved under section 5 of the Voting Rights Act.[130]

When a suit is filed alleging violation of section 5, it is the responsibility of the district court judge to convene a three-judge court. Neither the single judge nor the three-judge court is to decide whether the change is discriminatory. This question is reserved for the District Court for the District of Columbia or for the United States Attorney General. The duty of the three-judge court is simply to decide whether there has been a change in a practice or procedure with respect to voting and, if the court finds that there has been a change, to determine whether the requirements of section 5 have been satisified. If not, the court enjoins the change or gives other appropriate relief.[131]

Nevertheless, the single judge declined to call a three-judge court and decided the case on the merits himself, finding that the certification

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130. Brief for Appellants, pp. 3-4, Sumter County Democratic Executive Committee v. Dearman, appeal docketed, No. 74-2124, 5th Cir., Apr. 30, 1974.

131. Perkins v. Matthews, 400 U.S. 379, 383-85 (1971).

responsibility had been delegated to the secretary and denying plaintiffs any relief.[132] The case is on appeal.[133]

When an office is abolished or changed from elective to appointive in response to growing black electoral strength or when such changes would have the effect of reducing black voting effectiveness, the Attorney General has objected under section 5 of the Voting Rights Act.

In 1973 the Attorney General objected after Clarendon County, South Carolina, abolished the office of superintendent of education. The abolition came at a time when blacks had become 49 percent of the registered voters in the county.[134] The Attorney General also objected in 1973 when the offices of city clerk in Hollandale and in Shaw, Mississippi, both of which are 70 percent black, were changed from elective to appointive.[135] Earlier the Attorney General objected to Alabama's abolishing the office of justice of the peace[136] and to

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132. Brief for Appellants, p. 4, Sumter County Committee v. Dearman.

133. W. E. Still, Jr., counsel for plaintiffs, Tuscaloosa, Ala., letter to David H. Hunter, U.S. Commission on Civil Rights, Nov. 1, 1974. The court took the same action in Maples v. City of Tuscaloosa, Civil No. 73-M-663-W (N.D. Ala. Aug. 7, 1973), in which the change of date for the Tuscaloosa city election had not been cleared under section 5.

134. Objection letter, Nov. 13, 1973. Objection not withdrawn, March 22, 1974.

135. Objection letters, July 9 and Nov. 21, 1973.

136. Objection letter, Dec. 26, 1972.

Mississippi's changing the office of superintendent of education from elective to appointive in 11 counties generally having in common a predominantly black population.[137]

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As more and more minority group members have become registered and begun to vote since the passage of the Voting Rights Act, minorities have become an important political force. This has resulted in a diminution of racial appeals in political campaigns and greater influence of minority votes in deciding elections between whites. It also has resulted in many more minority group members deciding to become candidates. While many minority candidates have been successful, many among them have not been. Often their lack of success has been because of race or ethnic background, not because of any qualities that are relevant to their performance if elected. Some would-be minority candidates have been unable to qualify, either because of formal requirements or because of uncooperative local officials. Others have been unable to mount an effective campaign because of discriminatory actions taken against them. Some have been defeated by racial prejudice. Still others have been cheated. Finally, in some instances the prospect of minority success has led to changes in the rules of the game to try to prevent such success.

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137. Objection letter, May 21, 1969. See Bunton v. Patterson, decided sub nom. Allen v. State Board of Elections, 393 U.S. 544 (1969).

7. PHYSICAL AND ECONOMIC SUBORDINATION

Blacks, Mexican Americans, Puerto Ricans, and Native Americans, throughout their history in the United States, have been subordinated socially, economically, and physically by the white majority. While recent decades have witnessed an improvement in the treatment and status of all these groups, their subordinate position, its causes, and its effects persist.

Examination of the political participation of these minorities reveals the effects of this history. Although physical violence appears no longer to be commonly used to prevent blacks in the South from registering and voting, such episodes still occur. More common are economic reprisals against minority political activity. Fear of both violence and economic reprisals remains, especially in the rural South and among the older members of the black population. The events of 5, 10, or even 20 years ago and the experience of generations are not easily forgotten or discounted. An isolated recurrence of violence or economic reprisal can nullify years of progress.

Underlying many of the abuses reported here is the economic dependence of these minorities. People whose jobs, credit, or housing depend on someone who wishes to keep them politically powerless are not likely to

risk retaliation for asserting or acting on their views.[1]

MISSISSIPPI

Acts of violence against blacks involved in the political process still occur often enough in Mississippi that the atmosphere of intimidation and fear has not yet cleared.

In 1970 John Buffington, who is black, was a candidate for mayor in West Point, Mississippi.[2] During the campaign he received so many threatening telephone calls that it was necessary to get three additional lines in order to conduct the campaign. He recalled:

> Some of the callers threatened my life, others told me that I should not start the ignition of the car. Many were obscene or racial in nature. Frequently, my car was tailgated during the campaign by cars driven by whites. On several occasions white West Point police officers called obscenities to me as they drove by in their patrol cars.[3]

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1. See Lester Salamon and S. Van Evera, "Fear, Apathy, and Discrimination: A Test of Three Explanations of Political Participation," American Political Science Review, vol. 67 (1973), p. 1288; Lester Salamon, "The Time Dimension in Policy Evaluation: The Case of the New Deal Land Reform Experiments" (paper presented at the 1974 Annual Meeting of the American Political Science Association, Chicago, Ill., Aug. 29-Sept. 2, 1974); Washington Research Project, The Shameful Blight: The Survival of Racial Discrimination in Voting in the South (Washington, D.C., 1972) pp. 17-21, 89-92 (hereafter cited as Shameful Blight).

2. Affidavit of John Buffington, Stewart v. Waller, Civil No. EC-73-42-S (N.D. Miss., filed May 3, 1973).

3. Ibid.

Despite the threats and intimidation Buffington placed second in the first primary and resumed campaigning for the runoff. On August 15, 1970, John Thomas, Jr., a "key campaign worker" was murdered as he sat parked in a campaign van. "A white man approached the van and shot Johnnie Thomas five times and killed him."[4]

Although a white factory worker was disarmed at the scene of the crime and subsequently tried for the murder, he was acquitted by an all-white jury.[5]

The murder of John Thomas frightened Buffington's campaign workers. Some withdrew from the campaign. Buffington was also frightened:

> The killing also made me apprehensive about my own welfare. Following the shooting I never went anywhere alone; I campaigned only with a group of people. At night friends and campaign workers guarded my house.[6]

One campaign worker commented on the political effect:

> It caused me to stop attending political meetings held at night. The Thomas killing also scared many black persons in West Point and Clay County. After the killing attendance at black political meetings fell off substantially. At black political meetings after the incident many blacks tried to persuade John Buffington not to run. I was myself afraid that he might be assassinated, and I said so to many of my friends.[7]

Clearly the murder impeded the campaign of John Buffington, who was defeated in the runoff. More important than the political fate of

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4. Ibid.

5. Ibid.

6. Ibid.

7. Affidavit of Minnie Mae Johnson, Stewart v. Waller.

one candidate, however, is the long-lasting deterrent effect of the murder. Not only did a man lose his life, but blacks in West Point are still reluctant to participate actively in politics.

Fear of physical or economic harm inhibits black residents of Noxubee County also from taking an active role in politics. This fear is not an irrational reminder from an era long passed but has a rational basis in events preceding the most recent municipal and county elections.

A local black minister, who was active in voter registration from 1969 to 1971 and actively campaigned for a black candidate in 1972, described threatening telephone calls received during the former period:

> These anonymous callers threatened to bomb and burn my church, they threatened to run me off the highway in my automobile. In most instances the callers told me to get out of town. They alsc threatened to bomb Miller's Chapel where we were holding community meetings.[8]

The minister had reason to take these threats seriously. On two occasions in 1971 bottles were thrown at his house, and on another occasion bottles were thrown in front of his car while he was driving.[9]

A Noxubee County white has been threatened, harassed, and "completely ostracized by the white community" because he actively campaigned for the black candidate for alderman in Macon in 1972 and engaged in other civic activities in the black community. On one occasion a brick

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8. Affidavit of the Rev. John W. Hunter, Stewart v. Waller.

9. Ibid.

was thrown through the windshield of his car while his wife was driving. She was unhurt though the windshield was "completely destroyed." During the political campaign he was stopped by a Macon policeman for a burned-out headlight. Initially the officer did not give him a ticket, but as the policeman returned to his car he noticed the black candidate's bumper sticker on the man's car. He returned and gave him a ticket.[10]

The same man also received numerous threatening telephone calls:

> On several occasions callers told me that they were going to have to get me because I didn't catch on to what goes and what does not go around Noxubee County. On another occasion a caller said that he and others were going to have to kill me. [11]

Garfield Triplett, the black candidate in Macon stated that "widespread fear throughout the black community" deters participation in politics.[12] Albert Walker, a black candidate for sheriff of Noxubee County in 1971, said "many blacks expressed concern" that he "would be physically harmed."[13] He acknowledged receiving threatening phone calls and also stated that many blacks in the county "felt that if they registered or voted they might lose their jobs."[14]

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10. Affidavit of Larry Miller, Stewart v. Waller.

11. Ibid.

12. Affidavit of Garfield Triplett, Stewart v. Waller.

13. Affidavit of Albert Walker, Stewart v. Waller.

14. Ibid.

Physical violence against blacks occurred during the most recent general election in Humphreys County on November 2, 1971. According to Kermit James, who was a candidate for county supervisor in that election, several incidents took place at polling places. In the town of Midnight, a white farmer struck James and a fight ensued. At Isola whites pushed and shoved blacks who were trying to go in to vote. At another polling place several blacks were "slapped around."[15] Another report indicated that a number of whites were riding around with guns in their trucks, which frightened many blacks away from the polls.[16]

Because of these and other irregularities James and others filed suit in a Federal district court to set aside the election.[17] They alleged that "poll watchers for certain black candidates, at several election precincts, were either assaulted, physically abused, or threatened with physical abuse."[18]

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15. Kermit James, Belzoni, Miss., interview, Sept. 4, 1974. For a more detailed description of violent incidents at the polls, see Shameful Blight, pp. 89-91.

16. Staff interviews, Humphreys County, Miss., Sept. 1974.

17. James v. Humphreys County Board of Election Commissioners, Civil No. GC-72-70-K (N.D. Miss. Oct. 4, 1974).

18. James v. Humphreys County, slip opinion, p. 4.

Although the court declined to order a new election it found three instances of physical abuse--two at Isola, one at Putnam--which were directed at three black attorneys who were poll watching for black candidates. According to the court's description, one attorney was pushed from behind by two election managers as he was leaving the poll. The attorney noted that the election officials uttered racial slurs as they ejected him from the polling place. The election officials claimed that the attorney's presence inside the polling place was improper, since the black candidates who were running as independents already had two challengers on duty.[19]

On entering the Isola polling place the second attorney was seized by an election bailiff and shoved out of the building. Again racial slurs were uttered. He appealed to the poll manager and was permitted to reenter the building as a poll watcher.[20]

The third attorney was physically attacked as he watched the vote count at Putnam. He was knocked to the floor and sustained injuries to his teeth and head. His assailant, the court said, was a drunken white man with no election responsibilities.[21]

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19. Ibid, p. 16.

20. Ibid.

21. Ibid.

The court noted the "occasional verbal altercations and isolated acts of physical abuse involving poll watchers," but concluded that "from the credible evidence the election was unattended by harassment, intimidation or coercion directed at the black citizens of Humphreys County who sought to vote in the election."[22]

The violence in the general election of 1971, against the background of black economic dependence, has left a legacy of fear, according to blacks in Humphreys County. Kermit James feels that the incidents in that election kept a lot of blacks away from the polls in the 1972 election.[23] Others expressed the view, moreover, that blacks will still be afraid to vote in the next election, in 1975, because of what happened in 1971.[24]

Fear deters black political participation in Oktibbeha County as well. A woman active in a 1971 voter registration drive in Starkville "encountered substantial fear and reluctance" among blacks, many of whom refused to register. "I was told by several blacks that if we continued to participate in the registration drive that white folks would kill us."[25]

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22. Ibid.

23. James Interview.

24. Staff interviews, Humphreys Co., Miss., Sept. 1974.

25. Affidavit of Maggie Yvonne Henry, Stewart v. Waller.

A black physician who ran for local office in Starkville in 1973 reported that both he and his wife had received anonymous threatening and obscene telephone calls.

> These callers have stated, for example, that if I did not withdraw from the election I would be run out of town. I have received numerous telephone calls in which the callers used obscene language and have stated such things as "You know better than to be running for office in Starkville." 26

In Jackson County the violence of the recent past continues to inhibit black political participation. A young black girl was shot and critically wounded at a Moss Point voter registration rally about 10 years ago.

> This had a great impact on members of the black community and generated concern that other similar acts of violence might also occur. This incident also created a great deal of fear within the black community which, to some extent, still exists. Because of this fear some blacks are still reluctant to participate in voter registration rallies, workshops, etc. 27

More recently in Moss Point an anonymous caller threatened an unsuccessful black candidate after a newspaper reported his intent to seek a recount of the 1973 primary vote. "He knew where my little girl went to school and ... who picked her up and what time she got out of school and ... I had best not cause any trouble." 28

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26. Affidavit of Dr. Douglas L. Conner, Stewart v. Waller.

27. Affidavit of Ennis Millender, Stewart v. Waller.

28. Affidavit of Billy Frank Broomfield, Stewart v. Waller.

Blacks in a number of counties who are active in voter registration or political activities told a Commission interviewer that the dependent economic position of blacks hinders their political activity. Some blacks are afraid to register and vote, fearing that their employers will check the registration books,[29] or they fear that they will be fired or evicted if they vote.[30] Some workers cannot take time off to vote; others can vote on their lunch hour but lack transportation to the polls.[31] Some blacks receive instructions from their employers or landlords about the proper candidates to support when they go to the polls.[32] Many blacks receiving welfare or social security payments fear losing this income if they vote.[33]

LOUISIANA

As is the case in Mississippi, the economically dependent and insecure position of blacks in much of Louisiana acts as a brake on the political activity of blacks in that State. While force and violence are mainly things of the past as means to prevent black participation,

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29. David Jordan, Greenwood Voters League, Greenwood, Miss., interview, Aug. 8, 1974.

30. James Interview.

31. Staff interviews, Rolling Fork, Miss., Sept. 1974.

32. Clarence Hall, Mississippi Delta Council for Farmworkers, Greenville, Miss., interview, Sept. 5, 1974.

33. Staff interviews, Warren Co., Miss., Sept. 1974.

occasional incidents still reinforce the fears that are the result of decades of suppression.

One such incident occurred in Madison Parish early in 1974. A fight involving the registrar of Madison Parish, Myrtis Bishop, and a black woman attempting to register occurred on February 19, 1974. Arnicey Tyson, accompanied by her husband Ramon and their 3-year-old son, went to the courthouse in Tallulah to register. According to an account of the incident sent to the Department of Justice by Mr. Tyson, Mrs. Bishop, after exchanging angry remarks with Mrs. Tyson over the lack of information concerning previous registration, refused to register her. Mrs. Tyson questioned this refusal, and the registrar slapped her in the face. Mrs. Tyson then slapped Mrs. Bishop several times, at which point Mr. Tyson intervened to separate the two women. Mr. Tyson was then attacked by three men including a deputy sheriff and in the ensuing struggle thrown to the floor, beaten and had his clothes torn. The Tysons were then taken to jail and subsequently released on bond.[34]

The following day the Tysons went before a justice of the peace to have warrants issued against the four persons who had assaulted them. According to Mr. Tyson, the justice of the peace refused to issue warrants

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34. Ramon E. Tyson, letter to Michael Shaheen, Voting Rights Section, U.S. Department of Justice, Feb. 20, 1974 (copy in Commission on Civil Rights files). Sworn statements and complaints about this incident have been made by Ramon E. Tyson and Arnicey Tyson to State and Federal officials. See also statement of Myrtis Bishop in appendix 7 regarding this incident.

against two of the persons involved because they were "peace officers."[35]

Criminal charges were subsequently filed against the Tysons.[36]

The defendants, on the ground that the criminal prosecution violates their civil rights, have removed the case to the Federal district court.[37] The case has not yet been brought to trial.[38]

The Madison Voters League, as a result of the Tyson incident, petitioned the board of registrars on June 11, 1974, asking for the dismissal of Myrtis Bishop.[39] As of December 18, 1974, no response from the board had been received.[40]

A Commission interviewer was told that the Tyson incident has brought back many of the old fears to the black community.

> It is not easy nowadays to find incidents of intimidation as we used to find in years past, but the beating of Mr. Tyson and his wife in the court-

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35. Ramon E. Tyson, letter to William J. Guste, Jr., attorney general, State of Louisiana, Baton Rouge, La., Feb. 20, 1974 (copy in Commission on Civil Rights files).

36. State v. Ramon Elwood Tyson, Jr., State v. Arnicey Tyson (Sixth Judicial District Court, La., filed March 18, 1974).

37. Petition for Removal to the U.S. District Court, (W.D. La., filed June 26, 1974).

38. Walter C. Dumas, attorney for the Tysons, Baton Rouge, La., telephone interview, Nov. 15, 1974.

39. Zelma Wyche, chief of police, Tallulah, La., interview, Sept. 3, 1974.

40. Moses Williams, vice president, Madison Voters League, Tallulah, La., telephone interview, Dec. 18, 1974.

> house proved to many of the older folks that things haven't changed that much, and they have plenty to fear in going to the courthouse. 41

Other events have reinforced the fear of participation in the political process that many blacks in Madison Parish have. According to Zelma Wyche, during the last election the head of a city department in Tallulah told all his black employees that they should vote for the white candidates in the municipal elections if they wanted to keep their jobs.[42] Black domestics also were under severe pressure from their employers. They were unable to say openly for whom they intended to vote or show that they supported a black candidate, for example, with campaign buttons or bumper stickers. On the other hand, their employers advised and urged them to vote for white candidates.[43]

Economic pressure against blacks does not cease when they have been elected to public office. In Tallulah the newly elected mayor, Adell Williams, and two of the three black aldermen work for the school system as teacher and principals, respectively. The third alderman may be less dependent economically on local whites because he is manager of the town's largest department store. Since the new administration has

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41. Bruce Baines, Madison Voters League, Tallulah, La., interview, Sept. 3, 1974.

42. Wyche Interview.

43. Ibid.

taken office, the superintendent of schools has appeared at almost all council meetings and has served on several committees bringing petitions before the city council. His presence alone puts pressure on the three blacks who work for him.[44] Ramon Tyson made this comment on the situation:

> When the man controls your paycheck he controls you. We can see the pressure on them already. And the most likely to be intimidated are people like the principals who to a large extent have made it and are not willing to risk losing something that has taken them so long to get.[45]

The economic intimidation of blacks is reportedly still in evidence in many other rural areas of Louisiana. In a polling place in East Feliciana Parish a Commission staff member heard a white poll manager comment to an elderly black man: "Why, Mr. Brooks, Mr. Lesley let you come here?" The remark was made in what seemed to be a joking manner.[46] However, according to a black educator familiar with the area, Brooks has worked on the Lesley plantation for a long time and rarely does anything without Lesley's approval. The white woman's attitude toward Brooks seemed to be one of patronizing benevolence,[47] but how it appeared to the elderly black farmworker may have been another matter.

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44. Baines Interview.

45. Ramon E. Tyson, Tallulah, La., interview, Sept. 3, 1974.

46. Election day observations by Commission on Civil Rights staff, East Feliciana Parish, La., Aug. 17, 1974.

47. Dr. Malcolm Byrnes, professor of political science, Southern University, Baton Rouge, La., interview, Aug. 17, 1974

In East Carroll and Tensas Parishes a Commission interviewer also heard that economic pressure has been applied by whites to curtail or control the black vote. During a recent registration drive among blacks in East Carroll Parish, a black principal very active in the drive encountered at the registrar's office a white school board member and the superintendent of schools, neither of whom was there to register.[48] He felt their presence was not coincidental.

The school board member, Lloyd Clement, is an employee of the firm that supplies the city's gas and, according to the principal, "has a way of getting to certain blacks, especially if some of them may have trouble paying their bills." Clement, he said, claims to be extremely nice to blacks and says that he very seldom cuts off their gas even when he should. Nevertheless, the principal alleged, people have had their gas cut off without warning after certain elections, whereas prior to the election it had been left on for quite some time without full payment of the bill. There is no doubt in his mind that "blacks going to register would feel tremendous pressure in front of Lloyd Clement."[49]

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48. Theodore Lane, president, East Carroll Citizens for Progress, Lake Providence, La., interview, Sept. 4, 1974. As required by law the Commission has offered Mr. J. T. Herrington, Superintendent, East Carroll Parish Schools, the opportunity to reply to these statements. His reply is included in appendix 7.

49. Ibid. As required by law the Commission has offered Mr. Clement the opportunity to reply to these statements. His reply is included in appendix 7.

In Waterproof, in Tensas Parish, according to police juror Woodrow Wiley, in many instances employers have tried to talk their employees, mostly domestics and farmworkers, out of voting. They tell their employees, "There is no use wasting time voting," or "No need to go vote, the elected officials are going to do what they please anyway, so it doesn't matter who gets elected." This type of pressure on employees, according to Wiley, is probably the biggest reason for low voter turnout.[50]

Wiley also said that other more direct types of economic and social pressure are used on black voters. Whites frequently have been known to tell blacks that their food stamps are going to be taken away if they vote for black candidates. Although these whites may actually have no power to do anything about food stamps, the effect is still one of intimidating blacks, who fear that they may really lose their stamps. According to Wiley, many people in Waterproof are on some sort of welfare program, so any threat to restrict welfare benefits can be a very powerful factor in limiting the black vote.[51]

The Rev. P.N. Germany, a black minister and city alderman, told a Commission interviewer that he heard from several blacks in Waterproof that the town's only doctor, a white, had recently been telling black patients

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50. Woodrow Wiley, Waterproof, La., interview, Sept. 5, 1974.

51. Ibid.

that if they kept voting for and electing blacks, he would leave. Germany believes that the possibility of the doctor's departure could keep many blacks from the polls.[52]

Black candidates in Tensas Parish were also subjected to various kinds of pressure during the 1974 elections, according to Wiley. An elementary school principal who was a candidate for city alderman in Newellton reportedly had a confrontation with his supervisor, the superintendent of schools. According to Wiley, the principal was told by the superintendent that he could work with him very well as a principal, but not as a principal and councilman. The principal stayed in the race but lost the election. A council member in Waterproof told a Commission interviewer that she has been refused promotion since 1970 despite excellent academic qualifications and 12 years of seniority. She attributed this lack of promotion to reaction to her political activity.[53]

ALABAMA

In Talladega County incidents of violence as well as threats of economic retaliation against economically dependent blacks marred the electoral process in 1974. As a result, there were 54 Federal observers present in the county for the November general election, the most sent

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52. The Rev. P.N. Germany, Waterproof, La., interview, Sept. 5, 1974.

53. Staff interviews, Tensas Parish, La., Sept. 1974. As required by law the Commission has offered the Superintendent of Tensas Parish Schools the opportunity to reply to these statements.

to any county for an election in 1974.[54]

During the June 1974 Democratic primary runoff the incumbent sheriff, who is considered antiblack by many persons in the black community, is said to have deputized black police officers who then struck, shoved, and handcuffed blacks at the polls who were known to favor the sheriff's opponent. It was also reported that the sheriff had used city police and county deputies in his campaign, having them perform such tasks as putting up posters and handing out leaflets. This further intimidated black voters. Moreover, some blacks who receive welfare and food stamps believed that they would no longer be eligible for assistance if they voted for the sheriff's opponent.[55]

Elsewhere in rural Alabama the economically dominant position of whites gives them a role in politics that their numbers alone would not provide. In some instances economic pressure was actually applied to discourage black political activity.

A Commission interviewer was told of threats to discharge employees if they voted the wrong way. For example, the white principal of a Wilcox County high school called the black teachers, cooks, janitors,

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54. Gerald W. Jones, Chief, Voting Section, Civil Rights Division, U.S. Department of Justice, letter to David H. Hunter, U.S. Commission on Civil Rights, Dec. 6, 1974, attachment 2.

55. Staff interviews, Talladega Co., Ala., Sept. 1974. As required by law the Commission has offered the sheriff, Mr. H.E. Mitchell, the opportunity to reply to these statements. His reply is included in appendix 7.

and bus drivers on his staff and told them: "You vote for these folks [white candidates] or you lose your job."[56]

The white owner of a lumber mill who was running for mayor of a town in Monroe County threatened his black employees with dismissal if they did not vote for him.[57]

During the 1972 election in one county the superintendent of schools reportedly told blacks who worked for the school system that he would not hire them again in the next school year if they did not vote for him.[58] They included many of the custodial and kitchen workers. The assistant superintendent further informed them that he had people watching them and their jobs were in jeopardy if they did not vote the expected way.[59]

Agricultural workers are in an especially vulnerable position. They often depend on one person for employment, housing, and credit. Sometimes the white farm owners use their position directly. For example, a black attorney who headed a recent voter registration drive

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56. Albert Gordon, 1974 candidate for State senate, Camden, Ala., interview, Sept. 5, 1974.

57. The Rev. K.L. Buford, Alabama Field Director, NAACP, and Rufus C. Huffman, NAACP Education Field Director, Tuskegee Institute, Ala., interview, Sept. 4, 1974.

58. Buford Interview.

59. Staff interviews, Sept. 1974.

in Dallas County told a Commission staff member that the owner of one large farm told his workers they would have to get off his land if they registered. Moreover, the owner informed them that, if they even went to a meeting on registration called by the attorney, they would have to leave the farm immediately. One black farmer who registered anyway was promptly evicted. Later he was arrested and charged with stealing a hog. The grand jury failed to indict him, but such incidents create enough fear among farmworkers to make it that much more difficult to get them out to register, much less to vote.[60]

More often such explicit pressure is not considered necessary. A farmer may be dominant enough that he can take his workers to register and rely on their voting the way he directs, as was reported in Lowndes County.[61] Since farmworkers frequently will need assistance, they have reason to fear that how they vote will be reported back to their employers.

Dependence on whites for credit is also a problem in Alabama. Sometimes the problem is presented directly. For example, in Wilcox County a black needed tires for his delivery truck, the use of which was necessary for his livelihood. According to one account, the white

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60. Henry Sanders, attorney, Selma, Ala., interview, Sept. 4, 1974.

61. Buford Interview.

owner of an auto supply store from whom he usually bought tires refused him credit because he had supported a black candidate in a previous election.[62]

In other situations the economic relationship does the damage without any direct pressure. In Wilcox County, for example, a number of polling places are in small, white-owned stores. Many blacks, primarily poor ones, are reluctant to go to such stores to vote. They need credit for the goods they buy and feel they will not get it if they vote, or unless they vote the way the whites want them to. "You see, they are going to go there and get groceries [on credit] until they get their checks or food stamps."[63]

GEORGIA

As is true elsewhere in the rural South blacks in an economically dependent position in rural Georgia are reluctant to vote or to vote the way they want. For example, one civic leader in Taliaferro County told a Commission interviewer that many black voters in the county are reluctant to vote their true feelings for fear of losing welfare or credit. Many of these voters need assistance in voting, which is given by the person in charge of welfare or by people connected with a finance

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62. The Rev. Thomas L. Threadgill and Charles McCarthy, community leaders and former candidates, Wilcox Co., Ala., interview, Sept. 5, 1974.

63. Gordon Interview.

company. By law voters could bring persons of their own choosing along to help, but they are afraid to do this.[64]

Blacks have interpreted some specific events in Georgia as direct pressure to prevent political activity. For 40 years J.B. King was a teacher and principal in the schools of Talbot County, Georgia. For the last 17 he was a high school principal. In June 1973 he ran unsuccessfully for county school superintendent in a special election held after the previous superintendent resigned.[65] On March 22, 1974, he was informed by his election opponent that his contract for the following year would not be renewed.[66] King believes that he was fired because he ran for the office of superintendent. This conclusion, it was reported, is widely accepted in the black community.[67]

The Professional Practices Commission of the State of Georgia upheld the Talbot County school board, finding that the board had sufficient cause for terminating the contract.[68] The Professional

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64. Calvin Turner, civic leader, Taliaferro Co., Ga., interview, Sept. 7, 1974. See Turner v. Fouche, 396 U.S. 346 (1970).

65. J.B. King, Jr., Woodland, Ga., and Tyrone Brooks, Southern Christian Leadership Conference (SCLC), Atlanta, Ga., interview, Sept. 3, 1974.

66. King v. Rowe, Case No. 73/74-028, Professional Practices Commission, State of Georgia (Sept. 23, 1974), Report of the Hearing Examiner, p. 1.

67. King and Brooks Interview.

68. King v. Rowe, Findings of Fact and Recommendations.

Practices Commission, however, criticized the board's timing. It stated that the board had knowledge of King's "purported deficiencies... at least as early as 1970."[69]

In June 1973 Julian Davis was fired from his job as principal of an elementary school in Sandersville, Georgia, in Washington County. In the same month Eloise Turner was fired from her job as teacher in the same school system. Both had actively campaigned for a black candidate the previous year and believe that they were fired because of their political activity.[70] The National Education Association has agreed to support a suit on their behalf.[71]

Against the background of the generally dependent economic position of blacks in rural Georgia, incidents such as the dismissals of King, Davis, and Turner--whether claims of discrimination are ultimately upheld or not--deter other blacks from more active participation in the political process.

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69. King v. Rowe, Special Presentment.

70. Julian Davis, community leader, Sandersville, Ga., interview, Sept. 4, 1974, and Richard Turner, husband of Eloise Turner, Sandersville, Ga., interview, Sept. 4, 1974.

71. Bernice Turner, attorney, Macon, Ga., telephone interview, Oct. 3, 1974.

NORTH CAROLINA

Older blacks in rural northeastern counties are still afraid to register or vote, a Commission interviewer was told.[72] What appears to be apathy is the result of "oppression," which "has them whipped down,"[73] according to a long-time black leader in Bertie County.

Some younger blacks also believe they must be cautious about participating too actively in politics. A Commission staff member was told that blacks in Halifax County fear disapproval from their employers if they become involved in politics.[74]

Dock Brown was both a teacher and a coach in the Weldon, North Carolina, school system for 18 years. His basketball and baseball teams were quite successful during the 1973-74 school year, he reported, and he was named "coach of the year" in basketball. The high school's 1974 yearbook was dedicated to him and he was president-elect of the teacher's association in Weldon.[75]

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72. James Gilliam, community leader, Windsor, N.C., interview, July 10, 1974, and Earl Lewis, county commissioner, Hertford Co., N.C., interview, July 9, 1974.

73. Gilliam Interview.

74. Horace Johnson, Sr., candidate in 1974 for Halifax County commission, Hollister, N.C., interview, July 11, 1974.

75. Dock M. Brown, Halifax, N.C., interview, July 11, 1974.

Brown ran for but failed to win the Democratic nomination for Halifax County clerk in the May 1974 primary.[76] After the athletic season ended in the spring of 1974 the superintendent relieved Brown of all his coaching duties. Brown believes that this was in retaliation for his political activity. He said he had campaigned throughout the county on the issue of county employment for blacks. He thought the "white power structure" saw him as a threat.[77]

Myron Fisher, superintendent of the Weldon public schools, denied that Brown's removal was related to his political activity. He said that the school system encourages political involvement. For example, another black teacher, Robert Knight, was a candidate for State representative in 1974. Also, the chairman of the county election board, an appointed position, is a Weldon teacher. According to Fisher, Brown's removal was the result of various derelictions of duty as a coach and friction between Brown and another coach. Both coaches were dismissed.[78]

Nevertheless, Brown's removal is well known among blacks in the county, and Brown feels that it will deter other blacks from being politically active.[79]

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76. Roanoke Rapids (N.C.) Daily Herald, May 8, 1974, sec. 1, p. 1.

77. Brown Interview.

78. Myron L. Fisher, Jr., superintendent, Weldon Public Schools, Weldon, N.C., interview, July 12, 1974. Brown's job as teacher was not affected but he chose to teach for the Halifax County school system instead for the 1974-75 school year. Brown Interview.

79. Brown Interview.

SOUTH CAROLINA

Some employers in rural areas, it was reported to a Commission staff member, set working hours on election day to prevent blacks from voting. Others reportedly "herd" their workers to the polls, specifying who the right candidate is.[80] One black candidate for a State house seat in 1974 charged that economic pressure from her opponent contributed to her defeat.

Albert Kleckley, who is white, and Juanita White, who is black, were opponents for the Democratic nomination for State house seat 122 (composed of Jasper County and part of Beaufort County) in the July 30, 1974, primary runoff election. The Kleckley family's gas company provides most people in the district with butane for heating and cooking. About 75 percent of the district's voters, a Commission interviewer was told, have credit with the Kleckley Gas Co. Some people were reportedly told that if they did not vote for Kleckley they would not have gas for the winter. At the Sheldon polling place a black driver for the company was present all day in his company uniform identifying customers of the company.[81]

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80. John R. Harper II, attorney, Columbia, S.C., interview, July 31, 1974.

81. Juanita White, Hardeeville, S.C., interview, Sept. 6, 1974. As required by law the Commission has offered Mr. Kleckley the opportunity to reply to these statements. His reply is included in appendix 7.

The defeated candidate, Juanita White, charged:

> Mr. Albert Kleckley and several other persons took photographic pictures inside and outside of the Sheldon precinct polling building. Pictures were taken of cars, license tags, voters and other persons at the poll in general. This produced an atmosphere of fear, frustration, coercion and tyranny. 82

A Commission staff member also heard an allegation that Kleckley had threatened one black, telling him that he "had better not" enter a polling place again. The man allegedly refused to testify about this event for fear of physical harm to himself or to his business.[83]

VIRGINIA

According to the Rev. Curtis Harris, independent candidate for Congress in the Fourth Congressional District, overt intimidation to keep people from registering and voting is now no longer a common practice in Virginia. Instead, pressure is more subtle. "They let people know they just might lose their jobs if they register and vote. If they work at a factory or on a farm, they are never given time off to go and register."[84]

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82. Juanita White, letter to Don Fowler, chairman, South Carolina Democratic Party, Columbia, S.C., Aug. 2, 1974 (copy in Commission on Civil Rights files).

83. Staff interview, Frogmore, S.C., Sept. 1974. As required by law the Commission has offered Mr. Kleckley the opportunity to reply to these statements. His reply is included in appendix 7.

84. The Rev. Curtis Harris, Hopewell, Va., interview, July 9, 1974.

There is considerable fear about registering and voting among blacks in Petersburg, according to the Rev. Clyde Johnson, a city council member. He said that blacks have been threatened with economic reprisal if they registered or voted. Such tactics, Johnson believes, are particularly effective against people in domestic service and in low-paying factory jobs. For example, two manufacturers in the area hire many blacks in low-paying jobs. Supervisory help, he alleges, often tell such workers who the "right" candidate is.[85]

Florence Farley, a former Petersburg council member, thinks there are now more blacks than whites registered in her ward. In her opinion black turnout is lower than white because many blacks, particularly the older ones, believe they have to own property or pay a poll tax in order to vote, or that they will be penalized for voting by losing their social security. It is very difficult to convince them otherwise, she said.[86]

A Commission interviewer was told in Southampton County also that economic fear keeps blacks away from the polls or influences their vote. According to a former commissioner in the county, many domestics and farmworkers fear they will lose their jobs if they register and vote. Their employers do not tell them this outright but suggest which candi-

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85. The Rev. Clyde Johnson, council member, Petersburg, Va., interview, July 8, 1974.

86. Florence Farley, former council member, Petersburg, Va., interview, July 9, 1974.

date would be preferable. A black farmer in the same county told a Commission interviewer that he had been told by a white farmer that if any blacks working on his farm "ever get to the point of registering and voting he is going to let them go."[87]

The black chairman of the board of supervisors in Surry County told a Commission interviewer that he obtains all necessary bank loans elsewhere. He does this because he believes that if he were to fall behind in his payments, the white-controlled bank would foreclose more quickly on him than on someone else. This is, he believes, because he is an elected official in an area where whites previously held power.[88]

MONTEREY COUNTY, CALIFORNIA

The subordinate economic position of Mexican Americans in Monterey County, California, deters them from greater political participation. Part of the problem is widespread fear, the cause of which cannot be grounded in any recent incident. A Commission staff member was told that people who have been scared away from registering or voting in the past are reluctant to try now. Often this fear takes the form of

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87. Staff interviews, Southampton County, July 1974.

88. M. Sherlock Holmes, Surry, Va., interview, July 9, 1974.

Chicanos' being unwilling to ask their employers for time off to vote. Some Mexican Americans are afraid they will lose their jobs. Some also feel coerced to vote in accordance with the wishes of landlords and creditors. In addition, a common fear among them is that their votes can be traced.[89]

According to a number of people active in politics in Monterey County, some whites take advantage of their economic dominance to make political participation more difficult for Chicanos. For example, at one farm it was reported that the workers were given more work than normal to do on election day in the hope that this would prevent them from casting their ballots. At another farm two tractor drivers declined to register when solicited by a registration worker because, they said, their boss would not give them time off to vote anyway. It was also alleged that Mexican Americans who work in voter registration drives sometimes lose their jobs and are blackballed from alternative employment.[90]

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89. John Saavedra, mayor, Soledad, Cal., interview, Nov. 6, 1974; B.J. Jimenez, chief of police, Soledad, Cal., interview, Nov. 5, 1974; and other staff interviews, Monterey Co., Cal., Nov. 1974.

90. Ibid.

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For minority group members in many areas the decision to register, to vote, or to become involved in politics requires careful weighing of what are believed to be substantial costs and speculative benefits. The deliberations are unlikely to take into account abstract rights found in amendments to the United States Constitution or in the United States Code. Instead, the potential participants' view of the openness of the political process will be formed by their own experiences and those of their friends and relatives. In many instances the collective wisdom of minority group members in a community is that participating in politics is risky, sometimes even dangerous. While incidents of violence against minorities attempting to participate have declined, they have not altogether disappeared, and memories of them are still vivid. The possibility of economic retaliation against people who are economically dependent on political opponents is seen as very real. The end product is fear: fear that results in nonparticipation or that leads the minority citizens to vote the way considered safe. They do not wish to take the chance that economic reprisals or violence against them and their families will result.

8. FAIR REPRESENTATION IN STATE LEGISLATURES AND CONGRESS

INTRODUCTION

If a person is not permitted to register, or if registered, not allowed to vote, that person is obviously denied full participation in the political process. The same result occurs when a candidate whom a voter might support is kept from running. But these blatant examples are not the only barriers obstructing equal opportunity for political influence. This chapter and the next deal with the question of representation, that is, the rules and procedures by which voting strength is translated into political success. The central problem is that of dilution of the vote--arrangements by which the vote of a minority elector is made to count less than the vote of a white. There are two kinds of decisions which affect the fairness of representation. These concern the formation of boundaries for voting units and the selection of voting rules.

Boundary Formation

Consider a town of 1,000 people, 600 of whom are white and 400 of whom are black; the town has a 10-member city council. Assume also that everybody is of voting age and registered to vote. Further assume that whites will almost never vote for blacks and blacks will almost always vote for a black running against a white, which is a reasonable assumption for many of the places to be discussed in this chapter.

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The city council might be chosen in a number of ways. The city could be divided into 10 wards, or single-member districts, with each ward selecting one member of the council. Each ward might have in it 60 whites and 40 blacks, in which case none of the 10 members elected is likely to be black. Or there could be four wards 100 percent black and six 100 percent white, in which case there would be four black council members. Or there could be percentages somewhere in between. All wards must have approximately the same number of people residing in them in order to satisfy the one person, one vote rule,[1] but the number of different ways in which the lines can be drawn is practically infinite. Line drawing that unfairly reduces the number of districts controlled by minority voters is called racial gerrymandering.[2]

While this example is of the selection of city council members, the same principles apply to the selection of members of county councils and school boards, State legislatures, and the United States House of Representatives.

Instead of dividing the town into 10 wards, the town governing body or the State legislature might decide that all council members should be chosen by the entire electorate, or elected at large. As a result the white majority could control the selection of all the members. Intermediate arrangements are also possible. The town might be divided

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1. See Reynolds v. Sims, 377 U.S. 533 (1964), and its progeny.

2. See Frank R. Parker, "County Redistricting in Mississippi: Case Studies in Racial Gerrymandering," Mississippi Law Journal, vol. 44 (1973), pp. 402-03.

into two multi-member districts, with each electing five members. Or two members might be elected at large and the other eight from single-member districts.

County councils and school boards can also be elected at large or with the use of multi-member districts as well as from single-member districts. State legislators in many of the States under consideration have been elected from multi-member districts.

Voting Rules

A second problem considered in this chapter and the next is the selection of voting rules. Suppose there are three candidates for a position--a white Democrat, a white Republican, and a black third party or independent candidate. The black receives the most votes, winning 40 percent of the total, and the two whites share the remainder. If the candidate receiving the most votes is the winner, then the black has won. But if a majority rather than a plurality is required, then the black must face a runoff election with one of the two white candidates.[3] If voting is split along racial lines, the white will win.

Consider again the town of 600 whites and 400 blacks with an at-large election to choose four council members. Each voter is able to cast four votes. Suppose there are eight white candidates, with the votes of the whites split among them approximately equally, and one black candidate, with all the blacks voting for him and no one else. The

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3. For other consequences of plurality voting see Douglas W. Rae, The Political Consequences of Electoral Laws, rev. ed. (New Haven: Yale Univ. Press, 1971), pp. 25-28.

result is that each white candidate receives about 300 votes and the black candidate receives 400 votes. The black has probably won a seat. This technique is called single-shot voting. Single-shot voting enables a minority group to win some at-large seats if it concentrates its vote behind a limited number of candidates and if the vote of the majority is divided among a number of candidates.

There are a number of voting rules which have the effect of frustrating single-shot voting. The simplest is the anti-single-shot, or full-slate, requirement. This requires a voter to vote for as many candidates as there are positions available in order for the ballot to be counted. With this rule each of the black voters in the example would have had to vote for three white candidates in addition to the black candidate. This would probably give the white candidates enough additional votes to prevent the black from being elected.

Second, instead of having one race for four positions, there could be four races, each for only one position. Thus for post no. 1 there might be one black candidate and one white, with the white winning. The situation would be the same for each post, or seat--a black candidate would always face a white in a head-to-head contest and would not be able to win. There would be no opportunity for single-shot voting. A black still might win if there were more than one white candidate for a post, but this possibility would be eliminated if there were also a majority requirement.

Third, each council member might be required to live in a separate district but with voting still at large. This--just like numbered posts--separates one contest into a number of individual contests.

Fourth, the terms of council members might be staggered. If each member has a 4-year term and one member is elected each year, then the opportunity for single-shot voting will never arise.

Fifth, the number of council members might be reduced. If the council only has three members rather than four, a higher proportion of the votes will be needed to acquire one seat.

Other changes in voting rules are similar. If the terms of white incumbents are extended, the opportunity for a black to be elected is delayed. To give a more extreme possibility, considered in the final section of chapter 6, if an office is changed from elective to appointive or is abolished altogether, a black cannot be elected to it.

It should be noted that in some circumstances, nonpartisan elections can be less advantageous to blacks than partisan elections. With partisan elections, it is possible that a voter will consider the party of a candidate more important than the race of the candidate. Thus, a white Democrat might vote for a black Democrat over a white Republican. If party labels were removed, however, the voter would be more likely to use race as a criterion for choice.

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In general, if voting district boundaries or election rules discriminate against minorities, the courts will forbid their use or the

Attorney General will object to their use under section 5 of the Voting Rights Act.[4] The courts, however, have not yet developed clear legal rules indicating which situations are remediable and which are not.[5] Thus in the examples that follow in this chapter and the next different courts have applied different standards, and minority litigants have often been dissatisfied with a court's analysis of a particular situation.

One voting rule that is court-endorsed despite its potential for discrimination is the residence requirement.[6] Under this system each council member must live in a separate district, but voting is at large. The Fifth Circuit appears to favor this requirement because it makes more likely the election of a minority candidate where there is a predominantly minority district than would straight at-large election. The disadvantage of the residence requirement is that the minority candidate chosen is the choice of the entire--white dominated--electorate and not of the voters of the predominantly minority district. Moreover, the candidate elected could be a white resident of a predominantly black

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4. See discussion of section 5, pp. 25-31 above.

5. See White v. Regester, 412 U.S. 755 (1973), further proceedings sub nom. Graves v. Barnes, 378 F. Supp. 640 (W.D. Tex.), prob. jur. noted sub nom. White v. Regester, 412 U.S. ____, 94 S.Ct. 2601 (1974) (No. 73-1462); Beer v. United States, 374 F. Supp. 363 (D.D.C.), prob. jur. noted 95 S.Ct. 37 (1974), (No. 73-1869); Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973), petition for cert. filed sub nom. East Carroll Parish School Board v. Marshall, 43 U.S.L.W. 3055 (U.S. Dec. 3, 1973) (No. 73-861).

6. Zimmer v. McKeithen, note 5 above; Turner v. McKeithen, 490 F.2d 191, 194 (5th Cir. 1973). The use of staggered terms has also been upheld. Cherry v. County of New Hanover, 489 F.2d 273 (4th Cir. 1973).

district. The Attorney General, on the other hand, has frequently objected to residence requirements.

An analysis of the impact of any change in boundaries or in voting rules must consider that the total population of white and minority groups is not a completely accurate indication of the group's actual or possible political strength. The average age among minority groups tends to be younger than the average age of whites. Thus, the minority percentage of the voting age population of a district will be less than the minority percentage of the total population. In addition, for reasons discussed in chapters 4 and 7, the percentage of minorities who are registered is generally lower than the percentage of whites who are registered. Therefore, if the minority percentage of the total population of a district is between 50 and 60 percent one should not conclude without further inquiry that minorities will have a controlling voice in the election.

Each of the nine States which will be discussed in this chapter has redistricted its legislature since the 1970 census. For each State, either a court has found all or part of the redistricting plan discriminatory, or the Department of Justice has objected to it under section 5 of the Voting Rights Act. Also, in two States--Georgia and New York--congressional district lines were found objectionable by the Attorney General. These court holdings and section 5 objections have covered the use of multi-member districts, the way that boundaries between districts are drawn, and the voting rules that are used.

The districting process is now complete in all but two of the nine States, Mississippi and South Carolina. All of the States, however, will face the problems of redistricting again following the 1980 census.[7]

MISSISSIPPI

In the spring of 1971, the Mississippi legislature adopted a new districting plan for both houses, using population data from the 1970 census.[8] The plan, as revised by a Federal district court,[9] respected county lines, used multi-member districts, and imposed numbered post and residence requirements.[10] The result of the use of the plan in 1971 was to keep the number of blacks in the Mississippi legislature at one.[11]

Prior to the 1971 election the plan was attacked in court as discriminatory against blacks.[12] The district court decided that the

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7. See generally on fair representation and dilution of the vote Armand Derfner, "Racial Discrimination and the Right to Vote," Vanderbilt Law Review, vol. 26 (1973), pp. 552-55 and 572-81, and Washington Research Project, The Shameful Blight: The Survival of Racial Discrimination in Voting in the South (Washington, D.C., 1972) pp. 93-169 (hereafter cited as Shameful Blight).

8. Miss. Code §§ 5-1-1, 5-1-3 (1972).

9. Connor v. Johnson, 330 F. Supp. 506 (S.D. Miss. 1971). The court had earlier redistricted the legislature. Connor v. Johnson, 265 F. Supp. 492(S.D. Miss.), affirmed, 386 U.S. 483 (1967).

10. Connor v. Johnson, 330 F. Supp. 506, 507-20.

11. U.S. Commission on Civil Rights, Political Participation, (1968), p. 218 (hereafter cited as Political Participation); Joint Center for Political Studies, National Roster of Black Elected Officials (Washington, D.C., 1973), p. 95 (hereafter cited as 1973 Roster).

12. Conner v. Johnson, 330 F. Supp. 506. See Appellant's Jurisdictional Statement, pp. 4-13, Conner v. Williams, 404 U.S. 549 (1972).

three largest counties in the State should be divided into single-member districts, but the court allowed this division to await the 1975 election.[13] The Supreme Court of the United States upheld the use of the 1971 plan in the election for that year and gave the lower court a chance to reconsider the entire plan before it ruled on the charges that the plan was racially discriminatory and failed to meet the requirements of the one person, one vote rule.[14]

In April 1973 the legislature adopted a new plan.[15] This plan was similar to the one used in 1971 in that again county lines were respected, multi-member districts used, and numbered post and residence requirements imposed. Though the district court had required single-member districts to be used in the State's three largest counties in 1975, the plan does not divide any of these counties.

The 1973 plan has been submitted to the Federal district court in Mississippi, but that court has not decided whether the plan is acceptable.[16] The 1973 plan has not been submitted to the Attorney General

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13. Ibid., pp. 518-19, reversed as to Hinds County, 402 U.S. 690, 692-93; original decision adhered to because of "insurmountable difficulties," 330 F. Supp. 506, 521, 523; further stay denied, 403 US. 928 (1971).

14. Connor v. Williams, 404 U.S. 549 (1972). For a more detailed discussion of the 1971 court-ordered plan and the proceedings surrounding its use, see Shameful Blight, pp. 151-54.

15. Miss. Code §§ 5-1-1, 5-1-3 (Supp. 1974).

16. Frank R. Parker, attorney, Lawyers' Committee for Civil Rights Under Law, Jackson, Miss., interview, Nov. 18, 1974.

under section 5 of the Voting Rights Act.[17] While the 1971 plan was exempted from section 5 review because it was a plan prepared by the Federal court, the 1973 plan is entirely a legislative effort. The new plan, therefore, cannot be legally implemented until section 5 clearance has been obtained.[18]

The use of single-member districts through the subdivision of counties would have created a much larger number of majority black districts than did the legislature's plan, which does not subdivide counties. Single-member districts would especially facilitate the creation of districts in which the black percentage is high enough to enable the black electorate to have a chance to determine who is elected. Also, the smaller size and population of single-member districts would place a more manageable burden on black candidates.

For example, Hinds County, which is 39 percent black, elects 12 representatives countywide. In the past no blacks had been elected under this arrangement. With single-member districts blacks would have a good chance of winning from two to four seats. In the senate plan Hinds County is a five-member district. Again, single-member districts would give blacks a better chance to be influential.

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17. Deposition of J. Stanley Pottinger, Assistant Attorney General, Nov. 13, 1974, p. 33; Connor v. Waller, Civil No. 3830 (S.D. Miss.) (Connor v. Waller is the continuation of Connor v. Johnson and Connor v. Williams.)

18. On Dec. 20, 1974, the Department of Justice requested the State of Mississippi to submit the 1973 plan. J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, letter to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Dec. 23, 1974.

The house plan submerges three majority black counties with populations greater than the ideal district size into majority white, multi-member districts.[19] Each of these counties could stand alone as one (or more) single-member districts. Four majority black counties with populations over half the ideal size are placed in multi-member districts with white majorities, although the use of single-member districts would result in some majority black districts.[20] Fifteen other majority black counties are in majority black, multi-member districts.[21] Here also single-member districts would offer a more realistic possibility for black success at the polls by providing smaller districts in which the black percentage is higher.

SOUTH CAROLINA

The November 1974 general election resulted in an increase from 4 to 13 in the number of black members of the South Carolina State house. While this increase is significant, it came only after substantial litigation in the Federal courts and action by the Department of Justice under section 5 of the Voting Rights Act in the years since the State legislature's

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19. Marshall, Panola, and Madison.

20. Noxubee, Jefferson Davis, Kemper, and Claiborne.

21. Coahoma, Quitman, Tunica, Sunflower, Bolivar, Issaquena, Washington, Holmes, Humphreys, Leflore, Carroll, Copiah, Jefferson, Wilkinson, and Amite.

adoption in 1971 of new plans for both the State house and the State senate.[22]

In the house plan each county was a separate district, with one or more representatives elected at large.[23] Full-slate and majority vote requirements were imposed.[24] On April 7, 1972, the Attorney General declined on procedural grounds to object to the house plan.[25] The features of the plan that might have been considered objectionable--the multi-member districts, and full-slate and majority requirements--did not, in his view, constitute a change from past practice.[26]

The plan also survived an attack in court which challenged it on the ground that it discriminated against blacks. The court was not troubled by the use of multi-member districts but struck down the full-slate requirement, though not on racial grounds.[27] Because the court expressed a preference for numbered posts rather than a full-slate requirement to remedy the same "obvious difficulty,"[28] the legislature,

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22. Senate: Act 932, [1971 Reconvened Sess.] Stat. at Large of S.C. 2071-2078. House: Act 380, [1971] Stat. at Large of S.C. 509.

23. See Stevenson v. West, Civil No. 72-45 (D.S.C. April 7, 1972), slip opinion, p. 3.

24. S.C. Code Ann. § 23-357 (1962); David L. Norman, Assistant Attorney General, letter to Daniel L. McLeod, attorney general, State of South Carolina, April 7, 1972.

25. Norman letter.

26. Ibid.

27. Stevenson v. West, slip opinion, pp. 7, 10-12.

28. Ibid.

in May of 1972, required the use of numbered posts in the house[29] and also in all other multi-member districts in the State, whether State or local.[30] The numbered post requirement for the house was enjoined by the Federal court on June 14, on the ground that it had not yet received section 5 clearance.[31] This clearance did not come; the Attorney General objected on June 30.[32]

This did not end the judicial or Justice Department review of the house plan, for the original court decision which had upheld all aspects of the plan except the full-slate requirement was appealed to the Supreme Court of the United States. The Supreme Court rejected the house plan for its failure to satisfy one person, one vote requirements.[33]

The Supreme Court's action required the legislature to adopt a new plan, which it did in October 1973.[34] The Attorney General objected to the new plan saying that the plan adopted the features which had been

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29. Act 1205, [1972] Stat. at Large of S.C. 2384-2390.

30. Act 1204, [1972] Stat. at Large of S.C. 2383.

31. Johnson v. West, Civil No. 72-680 (D.S.C. June 14, 1972).

32. Objection letter, June 30, 1972.

33. Stevenson v. West, 413 U.S. 902 (1973).

34. Act 836, [1973 Extra Session] Stat. at Large of S.C. 1874.

found objectionable in earlier plans--multi-member districts that submerged "significant concentrations" of black voters combined with numbered posts and majority requirements.[35]

Finally, on April 26, 1974, the legislature passed a single-member district plan for the house,[36] which was not objected to by the Attorney General on June 21, 1974. Under the new plan, the November 1974 general election increased the number of blacks in the house from 4 to 13.[37]

The legislature in 1971 provided alternative plans for the senate, plans A and B.[38] These plans used multi-member districts, a majority vote requirement, residence requirements, and numbered posts.[39] The plans were promptly challenged in court on the ground that they discriminated against blacks.[40]

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35. Objection letter, Feb. 14, 1974.

36. H-2275, adopted April 26, 1974, as received by the U.S. Department of Justice for section 5 preclearance, May 2, 1974.

37. Joint Center for Political Studies, National Roster of Black Elected Officials (Washington, D.C., 1974), p. 199 (hereafter cited as 1974 Roster). Washington Post, Nov. 7, 1974, p. 6A. Armand Derfner, attorney, Charleston, S.C., letter to Debbie Snow, United States Commission on Civil Rights, Jan. 8, 1975.

38. See Harper v. Kleindienst, 362 F. Supp. 742 (D.D.C. 1973).

39. Objection letter, March 6, 1972.

40. See Twiggs v. West, Civil Nos. 71-1106, 1123 and 1211 (D.S.C. April 7, 1972) and Stevenson v. West.

Before the court could pass on the plans, however, the Attorney General objected to the combined use of multi-member districts, numbered posts, and a majority requirement.[41]

A month later the court found the senate plans unconstitutional because they did not satisfy one person, one vote requirements. It also struck down the use of residence requirements in the multi-member districts of the senate plan because their use was inconsistent in identical situations. On the other hand, the court did not find the use of multi-member districts, numbered posts, or a majority requirement discriminatory.[42]

On May 5, 1972, the legislature adopted new alternative plans for the senate.[43] The plans retained the features previously found objectionable by the Attorney General--the combination of multi-member districts, numbered posts, and a majority vote requirement.[44] On May 23, 1972, the court approved the plans, without opinion.[45] Subsequently, the Attorney General accepted the plans out of deference to the court, not because he had found the new plans to be nondiscriminatory.[46]

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41. Objection letter, March 6, 1972.

42. Twiggs v. West, note 40.

43. Act 1205, note 29 above.

44. Plaintiffs' Brief, p. 29, Harper v. Kleindienst.

45. Twiggs v. West, Order of May 23, 1972, cited in Harper v. Kleindienst, 362 F. Supp. 742, 744.

46. Norman, letter to McLeod, June 30, 1972.

This section 5 nondetermination was challenged in court on August 10, 1972, by attorneys representing black voters in South Carolina.[47] On May 16, 1973, Judge June L. Green of the United States District Court for the District of Columbia found that the Attorney General had acted improperly and ordered him to make a "reasoned decision" concerning the senate plans.[48] In response to this order the Attorney General admitted that the senate plan was discriminatory but again refused, for his original reason, to object under section 5.[49] On July 19, 1973, the court again ordered the Attorney General to consider the senate plans without regard to the South Carolina district court decision upholding them.[50] The next day the Attorney General notified the State of his objection.[51] However, since the next senate election is not until 1976 and since the Attorney General has appealed the district court's ruling,[52] the legislature has taken no action to replace or modify the senate plans.[53] The South Carolina Senate has no black members.[54]

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47. Harper v. Kleindienst.

48. Ibid. p. 746.

49. Ibid.

50. Ibid.

51. Objection letter, July 20, 1973.

52. Appeal docketed, No. 73-1766, D.C. Cir., July 13, 1973. As of Dec. 20, 1974 the court of appeals had not ruled on the case.

53. Office of the Clerk of the South Carolina Senate, Columbia, S.C., telephone interview, Dec. 30, 1974.

54. 1974 Roster, p. 199.

NEW YORK

Three New York counties--the New York City boroughs of Manhattan (New York County), Brooklyn (Kings County), and the Bronx (Bronx County)--were covered by the Voting Rights Act after its extension in 1970.[55] In anticipation of new reapportionment legislation, the State sued for and the Justice Department consented to exemption of the three counties from the act's special coverage.[56] The legislature adopted plans which were used for the 1972 election.[57]

Late in 1973, however, the Justice Department moved to reopen the New York case,[58] and on January 10, 1974, the court rescinded the exemption.[59] New York was then required under section 5 to submit its

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55. 36 Fed. Reg. 5809 (March 27, 1971).

56. New York v. United States, Civil No. 2419-71 (D.D.C., Order of April 13, 1972). The NAACP sought unsuccessfully to intervene in this case. The lower court's denial of the NAACP's motion was upheld on appeal. NAACP v. New York, 413 U.S. 345 (1973).

57. Ch. 11 [1st Extraordinary Session 1971] Laws of New York 49-135, and Ch. 76, 77, 78 [1972] Laws of New York 221-257.

58. On Oct. 23, 1973, the Justice Department moved to reopen on the ground that the Sept. 26, 1973, order in Torres v. Sachs, 381 F. Supp. 309 (S.D.N.Y. 1974), constituted a finding that New York had employed a test or device (conducting elections only in English) with a discriminatory purpose or effect and therefore should not be exempted from the act.

59. New York v. United States, Civil No. 2419-71 (D.D.C., Order of Jan. 10, 1974). On April 30, 1974, the court denied New York's motion to be exempted again. Both district court orders were affirmed, 95 S.Ct. 166 (1974) (Nos. 73-1371 and 73-1740.)

districting plans to the Attorney General. On April 1, 1974, the Attorney General objected to certain State legislative and congressional district lines in New York and Kings Counties. The new plans adopted by the legislature[60] received section 5 clearance from the Attorney General on July 1, 1974,[61] and were used in the 1974 election.

According to the 1970 census, 35.5 percent of Brooklyn's population is minority (about 25.5 percent black and 10 percent Puerto Rican.)[62] The minority population is concentrated in central Brooklyn, with the black population heavily concentrated in the Bedford-Stuyvesant and Brownsville areas and the Puerto Rican population generally located on the fringes of the black areas roughly along a line paralleling the "hump" formed by the western, northern, and eastern boundaries of Kings County. Brooklyn also has well-defined white ethnic communities.

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60. Ch. 588, 589, 590, 591 [1974 Extraordinary Session] Laws of New York 811-33.

61. U.S. Department of Justice, Civil Rights Division, In the Matter of Chapters 588, 589, 590, and 591 of the Laws of 1974 Amending New York State Law in Relation to Certain Congressional, Assembly, and Senate Districts in Kings and New York Counties, New York, Memorandum of Decision, July 1, 1974 (hereafter cited as Memorandum of Decision).

62. The parties differ on exact percentage figures. For the sake of consistency, population statistics for the boroughs are taken from the State's figures in Memorandum in Support of Chapters 11, 76, 77, and 78 the New York Laws of 1972 (March 19, 1974) and Comment on NAACP's Memo in Opposition to Chapters 11, 76, 77, and 78 of the 1972 Laws of New York (n.d.) (hereafter cited as New York Memorandum).

Under the 1972 reapportionment, Brooklyn lost 0.2 senators, 1.9 assemblymen, and part of a congressional district.[63] The 1972 plan gave Brooklyn 8 senatorial districts and 21 assembly districts.[64] One black senator and 5 black assemblymen were elected under the plan, and one of five congressional districts elected a black representative.[65]

The NAACP charged,[66] and the Attorney General agreed, that all the districting in Brooklyn followed a pattern of creating overwhelmingly minority districts in the heart of the ghetto and then dispersing the balance of the minority population among a number of other districts.[67] The only minority senator came from the heavily minority 18th district. (See map no. 1.)

Among the smaller assembly districts the pattern was the same, though the number of minority seats was greater. Three assembly districts

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63. Figures on changes in the number of seats apportioned to the boroughs are taken from Interim Report of the Joint Legislative Committee on Reapportionment to Accompany Uni-bill (S. 1, A. 1) (Dec. 14, 1971 (hereafter cited as Joint Committee Report 1972). Population equalization among districts requires that some districts be shared by two or more counties. The State of New York calculates to three decimal places the number of representatives to which a county is entitled.

64. Ibid. Brooklyn also shares one assembly and two senate districts with other counties.

65. New York Memorandum, p. 9.

66. The NAACP's contentions are contained in Memorandum in Opposition to Approval of Chapters 11, 76, 77, and 78 of the New York Laws of 1972 and Eric Schnapper, attorney, NAACP Legal Defense Fund, New York, N.Y., letter to J. Stanley Pottinger, Assistant Attorney General for Civil Rights, March 21, 1974 (hereafter jointly cited as NAACP Memorandum).

67. Ibid. pp. 23-24, and New York Memorandum (Comment). Objection letter, April 1, 1974, p. 2.

BROOKLYN, KINGS COUNTY



Map No. 1. The 1972 plan for Brooklyn senate districts concentrates much of the minority population in a few districts and divides the remainder among majority white districts.

encompassed the heart of the ghetto, and all had black assemblymen (as did two other districts). Two districts with a majority black and Puerto Rican population but majority white electorates elected white assemblymen. Other districts included some of the minority area in overwhelmingly white districts.

After the Attorney General objected to these lines, the State developed lines that redistributed population among assembly districts to create five districts with minority population over 75 percent and two additional districts with minority population over 65 percent.[68] With respect to the senate districts, north-south lines with appropriate adjustments on the southern boundaries permitted three minority-dominated districts (all with a black majority). Another senate district, shared by Brooklyn and Manhattan, is 44 percent minority with Puerto Ricans the predominant minority group. Italians of Green Point and Hasidic Jews of Williamsburg (both in North Brooklyn) vigorously but unsuccessfully protested the new lines.[69] With the use of the new plan another black was elected to the senate from Brooklyn.[70]

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68. Unless otherwise noted figures on the racial composition of the new districts are taken from the Interim Report of the Joint Legislative Committee on Reapportionment to Accompany Uni-bill (S.1, A.1) and (S.2, A.2), May 27, 1974 (hereafter cited as Joint Committee Report 1974).

69. The Justice Department received petitions with more than 7,000 signatures opposing the lines (Memorandum of Decision, p. 2) and a suit charging racial gerrymandering was filed. After the Justice Department did not object to the plan, the court dismissed the complaint. United Jewish Organizations of Williamsburgh v. Wilson, 377 F. Supp. 1164 (E.D.N.Y. 1974). As of Dec. 20, 1974, this case was on appeal.

70. New York Times, Nov. 7, 1974, p. 40.

The minority population of Brooklyn had been fragmented among a number of congressional districts until the first minority district, the 12th, was created in the court-ordered reapportionment of 1968.[71] The 1970 and 1972 redistrictings further concentrated the minority population in the 12th district. Under the 1972 plan, it included all but one of Brooklyn's 45 census tracts 90 percent or more black in the 1970 census. Its population was 89.4 percent minority (75.9 percent black and 13.5 percent Puerto Rican).[72] The adjoining 14th district had a 46 percent minority population (22 percent black and 24 percent Puerto Rican).[73] (See map no. 2.)

After the Attorney General objected to these lines, New York drew a plan that created minority congressional districts in Brooklyn. Essentially, the plan combined the territory of the previous 12th and 14th districts and divided it in half by a line running north-south.[74] The resulting District 12 was 72.2 percent minority (53 percent black and 19.2 percent Puerto Rican) and the new District 14 was 63.3 percent minority (45.1 percent black and 18.2 percent Puerto Rican). (See map no. 3.)

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71. Wells v. Rockefeller, 281 F. Supp. 821 (S.D.N.Y. 1968).

72. Racial composition figures from Memorandum of Decision, p. 14.

73. Ibid.

74. Joint Committee Report 1974.

BROOKLYN, KINGS COUNTY



Map No. 2. The 1972 plan for congressional districts in Brooklyn concentrated minorities in District 12.

BROOKLYN, KINGS COUNTY



Map No. 3. Under the 1974 plan minorities form a majority of the population in both Districts 12 and 14.

The black incumbent in the 12th district was renominated and re-elected handily. In the 14th, a white who had challenged the incumbent in 1972 defeated three opponents--a white, a black, and a Puerto Rican--in the primary and was subsequently elected.[75]

After the 1970 census, Manhattan lost half a senate seat and two assembly seats, leaving 4 senate districts and 12 assembly districts wholly within the borough.[76] The 1970 minority population was 39.0 percent of the total.[77] Blacks are concentrated in Harlem and Puerto Ricans in East Harlem. There is also a smaller area of Puerto Rican concentration on the lower East Side. The borough president in Manhattan is black, and Harlem has had a black representative in Congress for years. Under the 1972 districting plan, Manhattan had three black assemblymen and one black senator.[78] Although most Democrats had voted against the 1972 plan, the three black incumbent assemblymen from Manhattan supported it.[79]

The NAACP argued that redrawing of the lines could produce a fourth minority assembly district in Manhattan because the 1972 lines

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75. New York Times, Sept. 12, 1974, p. 33 and Nov. 7, 1974, p. 40.

76. See note 63 above. Manhattan also shares one assembly and three senate districts with other boroughs.

77. See note 62 above.

78. New York Memorandum, pp. 6-8.

79. Ibid., p. 7.

fragmented or "siphoned off" substantial numbers of minority voters (particularly Puerto Ricans from East Harlem).[80] The Justice Department agreed that the lines appeared to have unnecessary dilutive effect on minority voting strength and found the plan's shift of minority neighborhoods among senate districts to have a similar effect.[81]

Though the State had argued that attempting to draw four minority districts would so disperse the minority votes that election of minority candidates would be endangered,[82] the plan submitted after the objection did create four minority assembly districts. Essentially the difference between the two plans is that the new lines are drawn across the island rather than lengthwise.[83] By drawing the lines in this way, it was possible to create a potentially Puerto Rican district in the 72nd assembly district, where both blacks and Puerto Ricans have slightly more than 40 percent of the population. Previously that district extended far west into Harlem and was a black district.

In the September 10, 1974, primary a Puerto Rican was nominated in the 72nd district; he was subsequently elected. Two black incumbents

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80. NAACP Memorandum, p. 25.

81. Objection letter, April 1, 1974, pp. 2-3.

82. New York Memorandum, pp. 7-8.

83. Joint Committee Report 1974.

were reelected, a third was defeated in the primary by a white, but apparently racial considerations were not involved.[84]

The Attorney General objected to the plan for the senate districts for Manhattan because the concentration of minorities in the 28th district was insufficient to ensure minority representation. The report of the Joint Legislative Committee on Reapportionment protested this approach,[85] but the State drew lines which created a safer district. The old 28th district was 58.5 percent nonwhite and had a black incumbent. The new plan increased the nonwhite population to 64.1 percent.[86]

GEORGIA

In 1972 the Department of Justice objected to the redistricting plans for the Georgia congressional delegation, the State senate and the State house of representatives.[87]

In 1970 the city of Atlanta was 51.6 percent black; its population was also about 38,000 over the ideal size for a Georgia congressional district. The city was divided by the redistricting plan among three different districts. Most of the city was placed in the fifth district,

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84. New York Times, Sept. 12, 1974, p. 33 and Nov. 7, 1974, p. 40.

85. Joint Committee Report 1974.

86. Data on racial composition of new districts taken from Memorandum of Decision, p. 20.

87. Objection letters, Feb. 11 and March 3, 1972.

which was 38.3 percent black.[88] The Department noted in its letter of objection that the plan "cut likely black congressional candidates, including Reverend Andrew Young (who ran a solid race against an incumbent white in 1970) and Maynard Jackson (popular Vice-Mayor of Atlanta) out of the Fifth District by a few blocks...."[89]

A revision of the plan by the State[90] increased the black percentage in the fifth district to 43.8.[91] Although blacks argued in court that this percentage was still too low, the revised plan was accepted by the Attorney General and by the court.[92] It created a district which provided "a more realistic opportunity for victory" for a black candidate than had the earlier plan or the plan in effect in 1970 when a black candidate was defeated.[93] In November 1972 the Rev. Andrew Young became the first black Congressman since Reconstruction from a Southern State covered by the Voting Rights Act.[94]

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88. Bacote v. Carter, 343 F. Supp. 330, 331 (N.D. Ga. 1972).

89. Objection letter, Feb. 11, 1972.

90. Act 871 Ga. L. 1972, 235 (House bill no. 1862 amending Code § 34-1801).

91. Bacote v. Carter, p. 332.

92. Nonobjection letter, April 11, 1972; Bacote v. Carter. See Stuart E. Eizenstat and William M. Barutio, Andrew Young: The Path of History (Atlanta: Voter Education Project, Inc., 1973), p. 11.

93. Eizenstat and Barutio, p. 11.

94. Ibid., p. 1.

With respect to the senate plan the Department thought that the boundaries of two districts--one in Fulton County and one in Richmond County--might dilute the black vote.[95] A revision of the senate plan that remedied this situation was not objected to by the Department.[96] Neither seat is now held by a black. There are now, after the November 1974 general election, two blacks in the 56-member Georgia State Senate, the same number as there were in 1968.[97]

The house plan was turned down by the Department because of its extensive use of multi-member districts combined with numbered post and majority vote requirements and because of discriminatory changes in potential black majority, single-member districts.[98] The plan created 49 multi-member and 56 single-member districts.[99] After minor revision by the legislature the plan was again turned down by the Department.[100]

The Georgia legislature then "resolved that it would take no further steps to enact a plan," and the Department went to court to enjoin the State "from conducting elections for its House of Repre-

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95. Objection letter, March 3, 1972.

96. Nonobjection letter, April 11, 1972.

97. Political Participation, p. 216; Washington Post, Nov. 7, 1974, p. 6A.

98. Objection letter, March 3, 1972.

99. Ibid.

100. Objection letter, March 24, 1972.

sentatives under the 1972 legislative reapportionment law."[101] The Supreme Court of the United States agreed to stay the order of the district court[102] and allowed the 1972 election to proceed under the plan objected to by the Attorney General. But the Court stated that any future elections for the State house of representatives must be held under a plan which has received section 5 clearance.[103]

In 1974 the legislature adopted a plan that relies substantially less on the use of multi-member districts.[104] The configuration of this plan was the result of negotiations between the State and the Department that increased the number of districts black voters might control.[105] For example, district 83 in Burke and Jefferson Counties was altered from 43.60 percent black to 60.38 percent black.[106]

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101. Georgia v. United States, 411 U.S. 526, 527 and 530 (1973).

102. The district court order is found in United States v. Georgia, 351 F. Supp. 444, 446-47 (N.D. Ga. 1972).

103. Georgia v. United States, 411 U.S. 526, 541.

104. Act 769, as received by the U.S. Department of Justice for section 5 preclearance, Feb. 26, 1974. The 1974 plan calls for 180 members to be elected from 154 districts.

105. Former staff member, Voting Section, Department of Justice, telephone interview, Nov. 23, 1974.

106. Ibid. and section 5 file.

This plan was not objected to by the Department.[107] Its use in the 1974 elections facilitated an increase in the number of blacks in the State house from 14 to 20.[108]

LOUISIANA

Before 1971 only one black served in the Louisiana legislature, a house member from New Orleans.[109] A new legislative districting plan was adopted in 1971, but it would not have facilitated the election of additional blacks. The Attorney General objected to it[110] and a Federal judge would have rejected it on the grounds of discrimination if the Department had not.[111]

The dilutive effect of the plan came from a combination of gerrymandered district lines,[112] frequent use of multi-member districts,

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107. Nonobjection letter, April 29, 1974.

108. Stanley Alexander, research director, Voter Education Project, Inc., Atlanta, Ga., telephone interviews, Nov. 22 and 25, 1974.

109. Stanley A. Halpin, Jr. and Richard Engstrom, "Racial Gerrymandering and Southern State Legislative Redistricting: Attorney General Determinations Under the Voting Rights Act," Journal of Public Law, vol. 22 (1973) p. 37 (hereafter cited as Halpin and Engstrom). Stanley A. Halpin, Jr. was counsel for Dorothy Taylor et al. in the case cited in note 111 below.

110. Objection letter, Aug. 20, 1971.

111. Bussie v. Governor of Louisiana, 333 F. Supp. 452, 454 (E.D. La. 1971).

112. Objection letter, Aug. 20, 1971.

and use of numbered posts in certain multi-member districts.[113] The plan placed as many blacks as possible into--and, indeed, over-populated--the district of the State's only black legislator to prevent the formation of another majority black district.[114] It split up three majority black rural parishes that together could have formed a house district that was majority black.[115] It used multi-member districts to dilute the political effectiveness of concentrations of black population,[116] and it also submerged black voters by creating noncontiguous districts.[117]

The Federal court did not revise the State's plan but promulgated its own, single-member district plan.[118] The use of the Steimel plan (named for the district court's special master)--modified in one major respect by the United States Court of Appeals for the Fifth Circuit--led to an increase from one to eight in the number of black legislators elected in the February 1972 election.[119] (See map no. 4.)

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113. Stanley A. Halpin, Jr., attorney, New Orleans, La., letter to David L. Norman, Acting Assistant Attorney General, July 28, 1971, cited in Halpin and Engstrom, p. 54.

114. Objection letter, April 20, 1971. House district 43.

115. Ibid. Madison, East Carroll, and Tensas.

116. Ibid. New Orleans, district 48 in Iberia Parish, and De Soto Parish.

117. Ibid. House district 48 and De Soto Parish.

118. Bussie v. Governor of Louisiana, p. 455.

119. Voter Education Project, Inc., Atlanta, Ga., "Black Elected Officials in the South," Feb. 3, 1972.



Map No. 4. The Steimel Plan departs from the traditional lakefront to river alignment, creating substantial black majorities in Districts 2 and 4.



Map No. 5. The Senator's Plan for lakefront to river senate districts in New Orleans follows traditional ward lines and cuts across black neighborhoods, dividing the black population among the four districts.

The court of appeals rejected the configuration of four New Orleans senate districts in the Steimel plan and substituted for it a plan developed by New Orleans senators. These boundaries followed more faithfully the city's traditional ward boundaries, and would preserve the seats of the incumbent senators.[120] In rejecting the senators' plan (see map no. 5) the district court had stated that it "would...operate to diversify the Negro [sic] voting population throughout the four districts and thus significantly dilute their vote. Their plan practically eliminates the possibility of a negro being elected from any of the four districts, while the court approved plan at least gives them a fair chance in two out of the four districts."[121] (See table 10.)

Table 10. BLACK PERCENTAGES CREATED BY ALTERNATIVE PLANS FOR SENATE DISTRICTS IN NEW ORLEANS

District	Steimel plan	Senators' plan
2	64.0%	42.6%
3	16.0	43.7
4	70.2	54.4
5	21.7	42.0

Source: Bussie v. Governor of Louisiana, 333 F. Supp. 452, 457 (E.D. La. 1971).

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120. Bussie v. McKeithen, 457 F.2d 796 (5th Cir. 1971) and Taylor v. McKeithen, 499 F.2d 893 (5th Cir. 1974).

121. Bussie v. Governor of Louisiana, 333 F. Supp. 452, 457.

Because the court of appeals did not explain its action in rejecting the Steimel plan, the Supreme Court of the United States did not review the case but returned it to the court of appeals for a discussion of the legal issues involved.[122] Over two years later, in August 1974, the court produced an opinion justifying its earlier action.[123] "Considering the shrinking white population, the increasing black population, and the accelerating black registration in New Orleans," the court explained, "the Senators' plan gave black voters in the four districts better access to participation in the election of State legislators than the Steimel plan."[124]

ALABAMA

In January 1972, a Federal court ordered into effect a districting plan for the Alabama legislature which used single-member districts exclusively.[125] Under the old plan multi-member districts were extensively used, and largely because of this the State senate had no black members and the State house only two.[126] The court, however, did not require new elections to be held in 1972 but allowed the incumbent legislators to remain in office until replaced through the regular

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122. Taylor v. McKeithen, 407 U.S. 191 (1972).

123. Taylor v. McKeithen, 499 F.2d 893 (5th Cir. 1974).

124. Ibid. p. 896.

125. Sims v. Amos, 336 F. Supp. 924, 935-36 (M.D. Ala.), affirmed, 409 U.S. 942 (1972).

126. See Sims v. Amos, p. 931 and Shameful Blight, pp. 112-13. An additional black was elected to the house in a 1972 special election. New York Times, Dec. 1, 1974, sec. 1, p. 33.

election scheduled for November 1974.[127] The court subsequently told the legislature that if it could enact an acceptable plan the legislature's plan would be substituted for the court's.[128]

On May 16, 1973, a new plan adopted by the legislature was submitted to the court.[129] The court rejected the new plan 2 1/2 months later for two principal reasons. First, the requirements of the one person, one vote rule were not satisfied.[130] Second, the court was not convinced that the plan was not racially discriminatory.[131]

The court explained that it was the duty of the State to show that the plan was not discriminatory. This is required by section 5 of the Voting Rights Act, but even without section 5 "the history of racial gerrymandering in Alabama would...create a presumption that defendant's plan is discriminatory and impose upon the State the burden of proving that its present plan, unlike past plans, does not dilute minority votes."[132]

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127. Sims v. Amos, pp. 940-41.

128. Order of Feb. 26, 1973, quoted in Sims v. Amos, 365 F. Supp. 215, 217 (M.D. Ala. 1973), affirmed sub nom. Wallace v. Sims, 415 U.S. 902 (1974).

129. Act No. 3, House Bill 2, 1973 Special Session of the Alabama Legislature, cited in Sims v. Amos, 365 F. Supp. 215, 217.

130. Sims v. Amos, pp. 221-23.

131. Ibid., pp. 219-20.

132. Ibid., p. 220, n. 2.

In 1970 only two blacks had been elected to the State legislature, with none from Alabama's three largest cities.[133] In 1974, under the new single-member plan, 15 blacks won legislative seats. Birmingham, the State's largest city, which is 42 percent black, now has two black senators and six black representatives. Mobile, which is 36 percent black, now has one black representative, and Montgomery, 34 percent black, has two.[134]

VIRGINIA

In 1971 the Attorney General objected to the use of multi-member districts in the Virginia house in Hampton, Newport News, Norfolk, Portsmouth, and Richmond.[135] With respect to the senate plan, which used single-member districts, the Attorney General objected to two districts in the Norfolk area that divided a concentration of black population.[136]

These objections led to districting unsatisfactory to blacks. The assembly objection was withdrawn[137] after a decision by the Supreme Court of the United States that the Attorney General interpreted as

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133. 1973 Roster, p. 1.

134. Office of Speaker of the Alabama House of Representatives, telephone interview, Nov. 22, 1974; David Aiken, Joint Center for Political Studies, Washington, D.C., telephone interview, Nov. 25, 1974.

135. Objection letter, May 7, 1971.

136. Ibid.

137. John N. Mitchell, Attorney General, telegram to Hon. Linwood Holton, Governor of Virginia, June 10, 1971, quoted in section 5 summary.

removing the legal justification for the objection.[138] Court review of the plan[139] did not lead to more favorable districting for blacks. Although the legislature remedied the boundary which the Attorney General had found objectionable,[140] in court review of the senate plan the legislative remedy was nullified. The court combined the two districts in controversy with another district to form a majority white, three-member district. This was necessary, according to the court, because of the distortion caused by counting "home ported" sailors in one of the districts.[141]

Partly as a result of these districting plans there are only two blacks in the State legislature, one in each house.[142]

ARIZONA

In 1970 the Federal court in Arizona allowed the State of Arizona to hold its election for members of the State legislature using a plan

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138. Whitcomb v. Chavis, 403 U.S. 124 (1971).

139. Howell v. Mahan, 330 F. Supp. 1138 (E.D. Va. 1971). Probable jurisdiction was noted by the Supreme Court in the appeal of the black plaintiff-intervenors against the use of multi-member districts. Thornton v. Prichard, 405 U.S. 1063 (1972). On appellant's motion this appeal was dismissed. 409 U.S. 802 (1972).

140. Ch. 246 [1971] Acts of Va. Assembly 499-506. The Attorney General did not object to this revision, nonobjection letter, Aug. 13, 1971.

141. Howell v. Mahan, p. 1146-47, affirmed with respect to senate districts, 410 U.S. 315, 331 (1973).

142. 1974 Roster, p. 223.

which it found to be constitutionally deficient.[143] (See map no. 6.) It expected the legislature, however, to prepare a new plan for use in 1972 when 1970 census data became available.[144] The Supreme Court of the United States upheld this arrangement.[145]

The 1970 plan--besides failing to meet one person, one vote standards--discriminated against minorities in two ways. First, the plan used a discriminatory method of determining population.[146] Because no population data were available for local voting precincts--the building block of the plan--it was assumed that each precinct had the same percentage of a county's population as it did of the county's registered voters.[147] In a concurring opinion Justice Douglas observed that blacks, Mexican Americans, and Native Americans are less likely to be registered than whites. Furthermore, the Arizona literacy test weighed more heavily on these groups. As a result, "one district in the Phoenix ghetto had approximately 70,000 residents while an affluent all-white district in another area of Phoenix had only 27,000 residents."[148] Thus, there were fewer districts that had a predominantly minority population than the requirement of equal population size dictated.

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143. Klahr v. Williams, 313 F. Supp. 148 (D. Ariz. 1970).

144. Klahr v. Williams, p. 154.

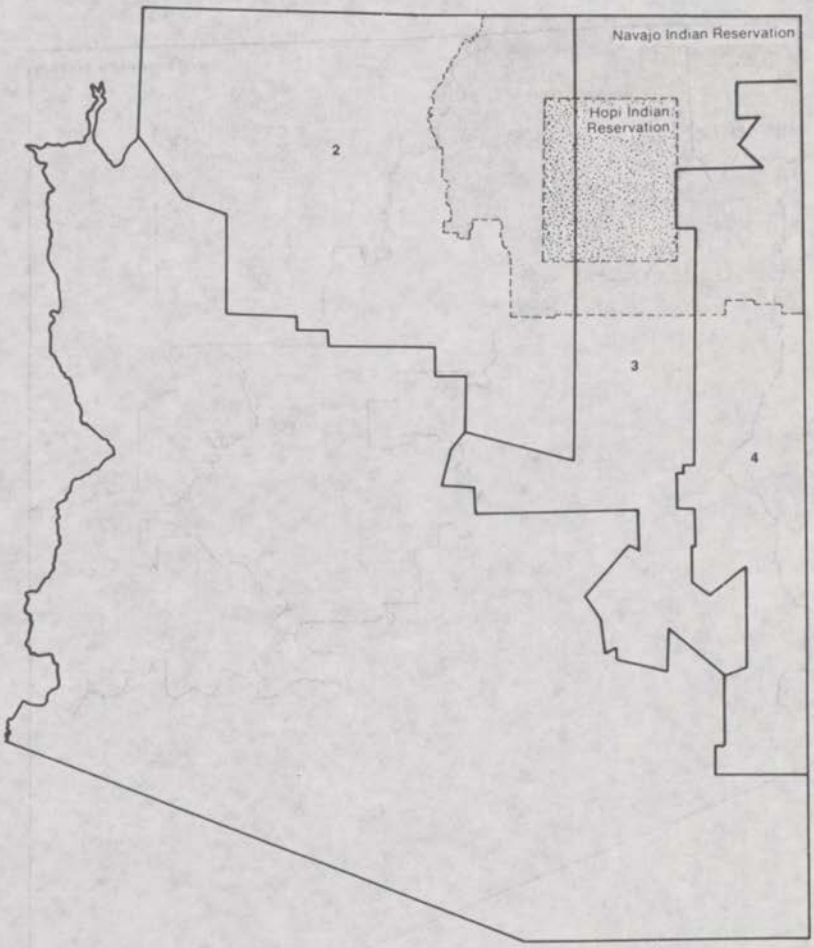
145. Ely v. Klahr, 403 U. S. 108 (1971).

146. Ibid., pp. 118-19.

147. Ibid.

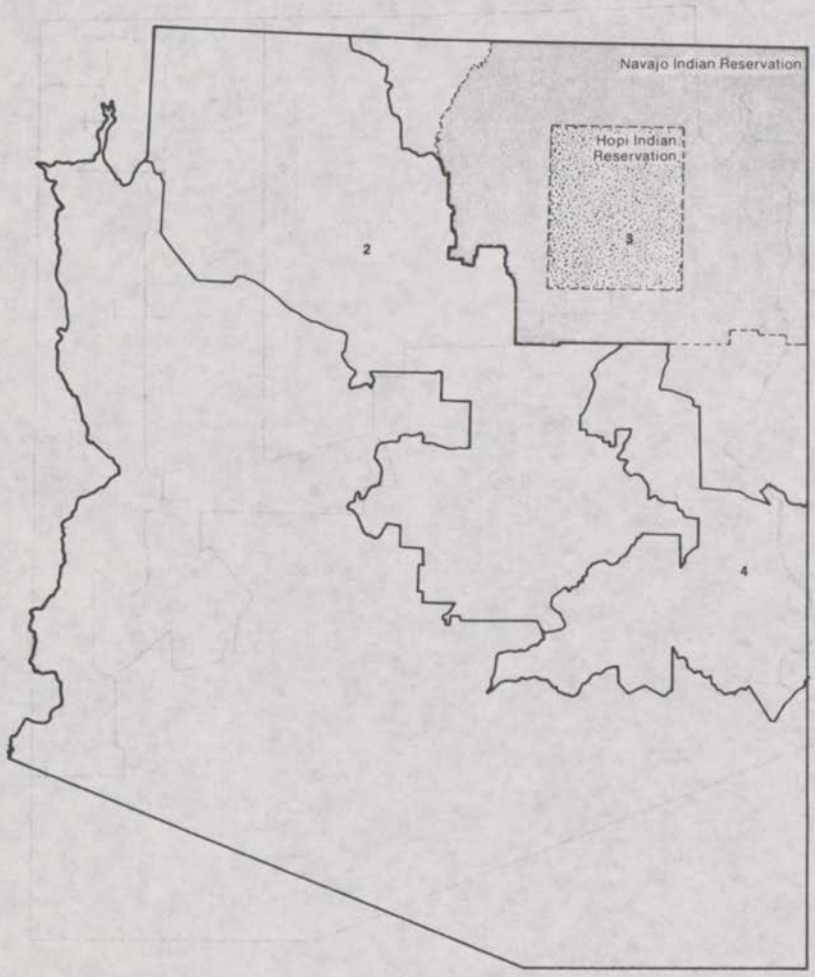
148. Ibid.

ARIZONA



Map No. 6. Both the 1970 plan for Arizona legislative districts and the 1971 plan (shown above) divide the Navajo Reservation among three different districts.

ARIZONA



Map No. 7. The plan ordered by the court in 1972 for Arizona legislative districts places the Navajo Reservation within one district.

Second, the computer used in fashioning the plan was instructed to preserve the seats of incumbent legislators and to make districts politically homogeneous.[149] When these factors are combined, Justice Douglas observed, "an incumbent had not only the natural benefits of incumbency, but also the benefits (where possible) of a one-party district, his own fiefdom."[150] The effect of this is shown in the treatment of the Navajo Reservation in Northeastern Arizona.

> While it had sufficient numbers of Indians to justify a separate district which could undoubtedly elect Indian representatives in the State legislature, the Indians were done in. At the time of this suit there were no Indians elected to either the State House or Senate. But just to the south of the area two State senators lived 10 miles apart. Hence, the incumbency rule was invoked to split the Indian area so as to accommodate the two white senators.[151]

In the plan adopted by the legislature in 1971 using 1970 census data the Navajos were "done in" again.[152] The 1971 plan created 30 single-member senate districts, each of which served as a two-member house district.[153] As originally introduced in the legislature the plan placed the reservation entirely within a single legislative district.

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149. Ibid.

150. Ibid.

151. Ibid.

152. Klahr v. Williams, 339 F. Supp. 922, 927 (D. Ariz. 1972). No appeal was taken to the Supreme Court.

153. Ibid., p. 924.

"Thereafter, and at the insistence of an incumbent House member who resides in the district as proposed, the bill was so amended that the reservation was divided among three legislative districts."[154]

The court found that the division of the reservation "was made in order to destroy the possibility that the Navajos, if kept within a single legislative district, might be successful in electing one or more of their own choice to the legislature."[155] The court adopted a revision of the plan which restored the reservation to a single district.[156] (See map no. 7.)

In 1972, the State senator and one of the two State representatives elected from this district were Navajos.[157] In 1974, Navajos were elected to all three offices.[158]

NORTH CAROLINA

North Carolina uses a combination of single- and multi-member districts in its senate and house.[159] In many of the multi-member

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154. Ibid., p. 927.

155. Ibid.

156. Ibid., p. 928.

157. Benjamin Hanley, Member of the Arizona House of Representatives for District 3, Window Rock, Ariz., interview, July 19, 1974.

158. Robert Miller, attorney, Dinebeiina Nahiilna Be Agaditahe (DNA), Tuba City, Ariz., telephone interview, Nov. 13, 1974.

159. House plan: Ch. 483 [1971] Session Laws of N.C. 412-414.
Senate plan: Ch. 1177 [1971] Session Laws of N.C. 1743-1744.

districts it has used either numbered posts or an anti-single-shot law.[160] In 1971 the Attorney General objected to the use of numbered posts in North Carolina counties covered by the Voting Rights Act.[161] In 1972, a Federal court struck down the use of numbered posts in the remaining counties and struck down the anti-single-shot law throughout the State.[162] Although these practices had been challenged as racially discriminatory, the court was able to dispose of them without dealing with the issue of race.[163]

* * * *

The final section of chapter 6, "Minimizing the Impact of Minority Success," described various methods used by politically dominant whites to frustrate minority aspirations when success at the polls appeared imminent or had been achieved. The barriers described in this chapter and in the final chapter are similar in their effect. The difference is that the barriers described here are generally not the result of an ad hoc attempt to deal with a particular situation. Here the concern is with the general rules of the political process. The U.S. Department of Justice, and increasingly the courts, look not only at the purpose of these rules but also their effect. For example, the use of numbered

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160. Dunston v. Scott, 336 F. Supp. 206, 208-10 (E.D.N.C. 1972).

161. Objection letters of July 30 and Sept. 27, 1971.

162. Dunston v. Scott, pp. 211-13.

163. Ibid. For further discussion see Shameful Blight, pp. 128-29.

posts can disadvantage minorities whether this implements a discriminatory purpose or not. The effect is no less discriminatory even if numbered posts are used solely to make a complex ballot easier for the voter.

The trend in the States that have been considered has been away from the use of multi-member legislative districts--with the accompanying use of numbered posts and related voting rules--to the use of single-member districts. This trend has not been the result of voluntary action by the States but has been imposed upon the States by the Federal courts and by the Attorney General. The result has been a substantial increase in the number of black legislators in these States. There were in 1968, in the Alabama, Georgia, and Louisiana legislatures and the South Carolina house, a total of only 12 blacks. Following the 1974 general elections there were 59 blacks in these same bodies.

On the other hand, all attempts to require the State of Mississippi to use single-member districts for the election of its legislators have been unsuccessful. As a result the Mississippi legislature has only one black member. Likewise, senators in South Carolina are not yet required to be elected from single-member districts. There are no blacks in the South Carolina senate.

9. FAIR REPRESENTATION IN LOCAL GOVERNMENTS

The boundary formation and voting rule problems that were described in chapter 8 are as relevant for local governments as they are for State legislative and congressional districts. In many instances these changes in voting district boundaries or voting rules have been objected to by the Attorney General under section 5 of the Voting Rights Act or attacked as discriminatory in court. Use of at-large elections and multi-member districts and of voting rules that can have a discriminatory effect such as numbered posts or candidate residence requirements, majority vote requirements, anti-single-shot requirements, and staggered terms, in particular, have been the subject of many section 5 objections or court cases.[1]

Other boundary problems are described in this chapter that did not arise in chapter 8. Suppose that a town has a population of 1,000 and is 60 percent black and 40 percent white, and that the rest of the county in which the town is located has a population of 1,000 and is all white. The town might decide to annex some of the surrounding white area, giving the town a white majority. The town might consolidate with the county, giving the white voters a dominant

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1. See chapter 8, pp. 206 ff. for a detailed description of the various arrangements or procedures mentioned here.

position in the new jurisdiction. The white part of the town might secede, creating a new, white-dominated town. Or the town might constrict its boundaries, thereby reducing the number of black voters. Changes such as annexation or incorporation can have a discriminatory effect and have been scrutinized by the Department of Justice and the courts.

Section 5 objections have been numerous in Georgia, Louisiana, Mississippi, South Carolina, and Alabama. In these five States and in Arizona also, there have been important court cases on practices that dilute the vote of minorities at the local level. In Virginia section 5 objections have been made to annexations by two cities. Practices exist in some North Carolina counties that apparently have the effect of diluting the vote of minorities.

APACHE COUNTY, ARIZONA

Apache County, Arizona, is governed by three supervisors, each elected from a single-member district.[2] Although approximately three-quarters of the county population is Native American residing on the Navajo Reservation, the district the reservation is in, the third, elects only one of the three supervisors.[3] This districting plan was adopted by

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2. A.R.S. §§ 11-211 to 11-213 (1974).

3. Pretrial Order, p. 3, Goodluck v. Apache County, Civil No. 73-626-Pct-WEC, (D. Ariz., filed Oct. 15, 1973).

the county board of supervisors in April 1972 for use in the 1972 election, when a Navajo was elected from district 3.[4] (See map no. 8.) The plan was not submitted to the District Court for the District of Columbia or to the Attorney General before implementation as required by section 5 of the Voting Rights Act.[5] The county's population is distributed among the districts as follows:

Table 11. POPULATION OF SUPERVISORS' DISTRICTS IN APACHE COUNTY, ARIZONA

District 1	1,700
District 2	3,900
District 3	26,700
TOTAL	32,300

Source: Pretrial Order, p. 3, Goodluck v. Apache County, Civil No. 73-626-Pct-WEC, (D. Ariz., filed Oct. 15, 1973)

If all districts were approximately equal, as required by the 14th amendment,[6] each would have about 10,767 people. The explanation for this disparity, which could not be the result of ignorance of the constitutional standard and is probably the greatest for any districting plan adopted since the Supreme Court of the United States began

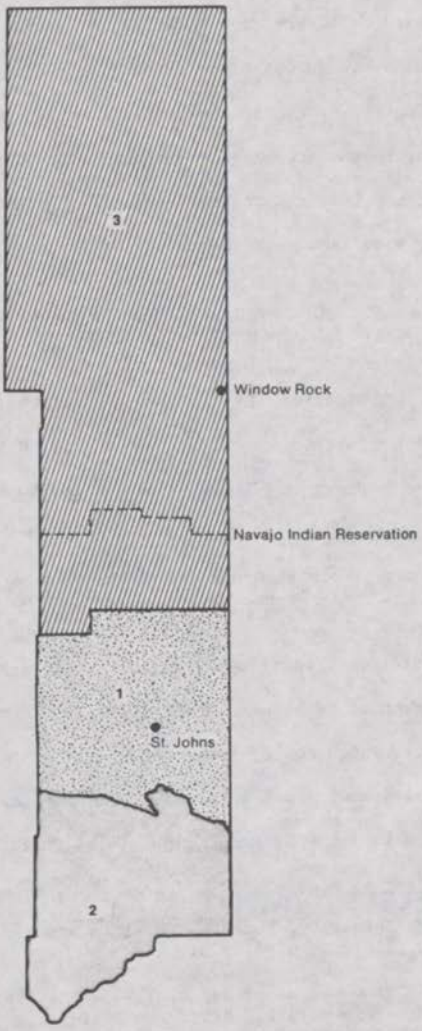
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4. Ibid. See Shirley v. Superior Court in and for County of Apache, 109 Ariz. 510, 513 P.2d 939 (1973).

5. Section 5 Printout, as of May 8, 1974. The district boundaries have not changed since 1952. Brief for Plaintiffs Goodluck et al., p. 2, Goodluck v. Apache County.

6. See Reynolds v. Sims, 377 U.S. 533 (1964) and Abate v. Mundt, 403 U.S. 182 (1971).

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Map No. 8. Apache County, Arizona, is divided into three supervisors' districts. District 3 contains all of the Navajo Reservation located within the county and 83 percent of the county's population. The broken line indicates the southern boundary of the reservation.

enforcing standards for district equalization in 1964, is that the county did not count Native Americans. Of the population of district 3, 23,600 are Native Americans.[7] The county's justification for not counting Native Americans in drawing the plan is that Native Americans residing on a reservation are not United States citizens, should not be allowed to vote, and should not be counted for the purpose of political apportionment. This, according to the county, is because Native Americans are immune from certain kinds of taxation and, to some extent, immune from judicial process.[8] The legality of the Apache County districting plan was, as of December 2, 1974, before a Federal district court.[9]

GEORGIA

Few blacks serve on county commissions or city councils in Georgia. One reason for this is the use of methods of election which dilute black voting strength. Although there have been more objections under section 5 to election methods in Georgia counties and cities than to those of the units of local government of any other State, practices remain which dilute the vote of blacks.

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7. Pretrial Order, p. 4, Goodluck v. Apache County.

8. Brief for Defendants, Goodluck v. Apache County.

9. Goodluck v. Apache County; United States v. Arizona, Civil No. 74-50 Pct WEC (D. Ariz., filed Jan. 23, 1974). The two cases have been consolidated. The defendants (the county and various county officials) have counterclaimed against the plaintiffs and other county, State, and Federal officials, asking that Navajos residing on the reservation no longer be allowed to vote or be counted for apportionment. See Pretrial Order, p. 2, Goodluck v. Apache County.

Counties

Of Georgia's 159 counties, 23 have a black majority. (See map no. 9.) As of January 1975 five blacks served as county commissioners in these counties.[10] Only in Hancock County, which is 74 percent black,[11] were a majority of the commissioners black.

In the nine black majority counties in which school boards are elected[12] there were only six black members.[13] Of these, four are in Hancock County.[14]

Twenty-two other Georgia counties are between 40 and 50 percent black.[15] In these counties there are no black commissioners.

There are a number of structural reasons for the lack of black commissioners and school board members. First is the small size of commissions and--but to a lesser extent--school boards in Georgia counties. Of the 23 black majority counties, 10 have five commissioners each; 10 have three commissioners; and 3 have only one commissioner apiece.[16] Clearly it will be harder for a black to be

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10. Stanley Alexander, research director, Voter Education Project, Atlanta, Ga., telephone interview, Dec. 5, 1974.

11. Ibid.

12. These counties are Baker, Calhoun, Dooly, Greene, Hancock, Macon, Marion, Stewart, and Terrell. Information provided by officials in the 23 counties.

13. Alexander Interview and Joint Center for Political Studies, National Roster of Black Elected Officials (Washington, D.C., 1974) pp. 57-58 (hereafter cited as 1974 Roster).

14. Ibid.

15. Alexander Interview and 1974 Roster, p. 52.

16. Information provided by officials in the 23 counties.



Map No. 9. Georgia racial composition.

elected to the governing body in Warren County, Georgia, which is 59 percent black and has a sole commissioner, than it will be in East Carroll Parish, Louisiana, which is also 59 percent black but which has nine police jurors.[17]

The extreme form of this problem lies in the Georgia counties where the school board is appointed: there no blacks can be elected. Appointment is made by the county grand jury.[18] It was frequently reported to Commission interviewers that the grand jury in counties with a high black percentage had very few black jurors and that few blacks were appointed to school boards. Those who were appointed are often, because of their advanced age or their economically dependent position, unable to represent adequately the interests of the black community.[19]

The second reason for the lack of black voting success is the use of at-large elections. In only 2 of the 20 majority black counties having more than one commissioner are commissioners elected from single-

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17. Theodore Lane, president, East Carroll Citizens for Progress, Lake Providence, La., interview, Sept. 4, 1974.

18. Ga. Const. Art. VIII § 2-6801 (1945). In Turner v. Fouche, 396 U.S. 346 (1970), the Supreme Court examined the system of grand jury selection and school board appointment in Taliaferro County. The Court found that the selection process has been used to discriminate against blacks and that the requirement that school board members own real property violated the equal protection clause of the 14th amendment.

19. Sarahjane Love, attorney, American Civil Liberties Union, Atlanta, Ga., interview, Aug. 12, 1974, and staff interviews, Monroe, Peach, Taliaferro, and Washington Counties, Ga., Aug.-Sept. 1974). Persons interviewed in Virginia, where school board members are also appointed, were concerned with similar problems. Staff interviews, Petersburg and Southampton and Surry Counties, Va., July 1974. See Va. Code Ann. §§ 22-57.1, 22-61, 22-79.1, 22-89 (1973).

member districts.[20] McIntosh County has five commissioners elected from five districts.[21] Although McIntosh has the lowest black percentage of any of Georgia's majority black counties, it has one black commissioner.[22] A second black reached the primary runoff in 1974 but was defeated.[23] In 1971 Twiggs County adopted at-large elections with residence requirements.[24] The Attorney General objected to this change under section 5 of the Voting Rights Act,[25] and private plaintiffs and the Department of Justice went to court to enforce the objection and require the use of single-member districts.[26] As a result of the court's favorable ruling, one of the five commissioners in the 60 percent black county is now black.[27] A second black candidate made the primary runoff in 1974.[28]

Only one of the nine elected school boards in the majority black counties is elected entirely from single-member districts.[29] One of the

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20. Information provided by officials in the 23 counties.

21. Judge of Ordinary, McIntosh Co., Ga., telephone interview, Aug. 15, 1974.

22. Alexander Interview.

23. Ibid.

24. Ga. 1971, p. 3564.

25. Objection letter, Aug. 7, 1972.

26. Bond v. White, 377 F. Supp. 514 (M.D. Ga. 1974).

27. Macon Telegraph, Aug. 15, 1974, p. 1A.

28. Macon Telegraph, Sept. 4, 1974, p. 6A.

29. Information provided by officials in the nine counties.

five members from that county--Stewart--is black.[30] Two other counties use a combination of at-large, multi-member, and single-member district election.[31] The others elect all board members at large.

The third reason for the lack of black success is the use of other structural devices along with at-large elections that prevent minority voting power from being used effectively. All 18 majority black counties that have more than one commissioner and that have at-large election of commissioners use either numbered posts or candidate residence requirements.[32] Both devices eliminate the effective use of single-shot voting by minorities and both lead, if there is a black candidate, to head-to-head contests between a black and a white.[33] In five of these counties the use of staggered terms[34] further highlights the candidacy of a black by limiting the number of positions available in any election year. Residence requirements or numbered posts and staggered terms are generally used for school board elections also.[35]

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30. 1974 Roster; Charles L. Rodgers, Richland, Ga., interview, Aug. 15, 1974.

31. Calhoun and Terrell Counties.

32. Information provided by officials in the 18 counties.

33. See pp. 206-08 above.

34. Dooly, Macon, Peach, Randolph, and Talbot. Information provided by the county officials. In Talbot County the three commissioners have 3-year terms, with the term of one expiring each year. Elections, however, are held bienially. The result was that in 1974 a commissioner was elected whose term does not begin for over a year from the time of the election. Joe S. Johnson, Judge of Ordinary, Talbot Co., Ga., interview, Aug. 13, 1974.

35. Information provided by officials in the 18 counties.

In addition, majority requirements for election can prevent blacks from being elected by a plurality in a contest with more than two candidates.[36]

The Attorney General has objected to the introduction by Georgia counties of at-large elections and anti-minority-representation devices in a number of instances.

Because its single-member districts were malapportioned, Sumter County, which is 46 percent black, adopted at-large elections for its school board starting with its June 5, 1973, election. This election was held despite the absence of section 5 clearance. The Department objected on July 13, 1973,[37] to the use of at-large elections along with residence requirements and a majority requirement.

On May 30, 1974, the Attorney General objected to the at-large election with numbered posts and a majority vote requirement of the school board in 20 percent black Clarke County.[38] The switch to at-large elections was in response to the 1971 section 5 objection to a single-member district plan that reduced the board's membership from what it had been with appointment of board members and resulted in

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36. See Ga. Code Ann. § 34-1513 (1970).

37. Section 5 summary, July 13, 1973.

38. Section 5 summary, May 30, 1974.

underrepresentation for a majority black district.[39] Earlier in the same month the Attorney General objected to the use of numbered posts and a majority vote requirement for the three at-large seats of the Fulton County board of commissioners.[40] Four other commissioners under the new plan are elected from single-member districts in the 39 percent black county.[41] In 1971 the Attorney General had also objected to the at-large election of the Bibb County school board.[42]

A serious problem for black voters in Georgia is that changes made in the method of election of county commissions and school boards are frequently not submitted to the Attorney General or to the District Court for the District of Columbia as required by the Voting Rights Act. Between 1964 and 1973 four majority black counties--Calhoun, Dooly, Macon, and Peach--and one county that is over 40 percent black--Jenkins--made changes in the method of electing their commissioners which were not submitted.[43] In each case the new method has features

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39. Section 5 summary, Aug. 6, 1971, cited in Washington Research Project, The Shameful Blight: The Survival of Racial Discrimination in Voting in the South (Washington, D.C., 1972) pp. 108, 109 (hereafter cited as Shameful Blight).

40. Section 5 summary, May 22, 1974.

41. In Pitts v. Carter, 380 F. Supp. 8 (N.D. Ga. 1974), the Federal district court devised a plan for the 1974 election taking the May 22, 1974, objection into account.

42. Objection letter, Aug. 24, 1971.

43. Calhoun, Ga. L. 1967, p. 3068; Dooly, Ga. L. 1967, p. 2586; Macon, Ga. L. 1972, p. 2322; Peach, Ga. L. 1968, p. 2473; Jenkins, Ga. L. 1968, p. 2960. Submission information: Section 5 Printout, as of May 8, 1974.

that are often discriminatory. All combined the use of at-large elections with either residence requirements, numbered posts, staggered terms, or several of these.

During the same period four majority black counties--Greene, Marion, Stewart, and Terrell--and four 40 percent or more black counties--Jenkins, Mitchell, Pike, and Screven--changed from appointed school boards to elected boards.[44] Six of the counties--excluding Stewart and Screven--elect all their board members at large, with numbered posts, residence requirements, staggered terms, or a combination of these. In addition, Dooly County (50 percent black) added residence requirements to its at-large election system,[45] and Putnam County (49 percent black) added numbered posts to its.[46] None of these changes was submitted[47] to the U.S Department of Justice for section 5 preclearance.

Eighteen other Georgia counties that are less than 40 percent black have made changes between 1964 and 1973 in the method of selecting school board members, usually a change from appointment to election at large. None have attempted to obtain section 5 clearance

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44. Ga. Const. § 2-6801 (1945): Greene, Ga. L. 1964, p. 969 (ratified Nov. 3, 1964); Ga. L. 1973, p. 3853 (staggered terms introduced); Marion, Ga. L. 1965, p. 742; Stewart, Ga. L. 1969, p. 2264; Terrell, Ga. L. 1965, p. 746; Jenkins, Ga. L. 1968, p. 2965; Mitchell, Ga. L. 1970, p. 2239; Pike, Ga. L. 1967, p. 3152 (single-member districts), Ga. L. 1972, p. 3003 (change to at-large election); Screven, Ga. L. 1964, p. 400 (ratified Nov. 3, 1964).

45. Ga. L. 1967, p. 2922.

46. Ga. L. 1972, p. 2678.

47. Section 5 Printout, as of May 8, 1974.

for the new method.[48]

Cities

Black voters in municipal elections in Georgia have often faced or been threatened with the same kind of changes in method of election. During the 3 years from October 1971 through September 1974 the Attorney General objected to changes in the method of election in 14 different Georgia cities.[49] (See map no. 10.) Five of these cities resubmitted the same or a similar change and received a renewed section

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48. Chattooga, Ga. L. 1968, p. 1764; Clinch, Ga. L. 1970, p. 1111; Colquitt, Ga. L. 1964, p. 893 (ratified Nov. 3, 1964); Cowetta, Ga. L. 1968, p. 1452; Fayette, Ga. L. 1970, p. 979; Floyd, Ga. L. 1968, p. 1798; Forsyth, Ga. L. 1964, p. 975 (ratified Nov. 3, 1964); Hall, Ga. L. 1964, p. 845 (ratified Nov. 3, 1964); Ga. L. 1972, p. 1379; Henry, Ga. L. 1966, p. 919; Madison, Ga. L. 1964, p. 885 (ratified Nov. 3, 1964); Oglethorpe, Ga. L. 1966, p. 764; Paulding, Ga. L. 1964, p. 832 (ratified Nov. 3, 1964); Polk, Ga. L. 1966, p. 1092; Rockdale, Ga. L. 1964, Extra Sess., p. 369 (ratified Nov. 3, 1964); Ware, Ga. L. 1964, Extra Sess., p. 335 (ratified Nov. 3, 1964); White, Ga. L. 1963, p. 670 (ratified Nov. 3, 1964); Whitefield, Ga. L. 1964, p. 978 (ratified Nov. 3, 1964); Wilkes, Ga. L. 1972, p. 1518. Submission information: Section 5 Printout, as of May 8, 1974.

49. Cochran, Jan. 29, 1973; Conyers, Dec. 2, 1971; Cuthbert, April 9, 1973; East Dublin, March 4, 1974, June 19, 1974; Fort Valley, May 13, 1974; Hinesville, Oct. 1, 1971, Jan. 11, 1974; Hogansville, Aug. 2, 1973; Jonesboro, Feb. 4, 1974; Louisville, June 4, 1974; Newnan, Oct. 13, 1971, July 31, 1972; Ocilla, June 22, 1973; Perry, Aug. 14, 1973, Oct. 18, 1973; Thomasville, Aug. 24, 1972, Aug. 27, 1973; Thomson, Sept. 3, 1974. Information from section 5 summaries and Section 5 Printout, as of May 8, 1974. In addition the Attorney General objected on Oct. 30, 1974, to the use of numbered post and majority requirements in Wadley.



Map No. 10. Since October 1971 there have been section 5 objections to the method of election in 14 Georgia cities. In several other cities the method of election has been attacked in court or criticized for being discriminatory.

5 objection.[50] The Justice Department went to court to enforce its objection against two of the cities.[51] Each of the 14 cities had previously elected their city councils at large. They added majority requirements, numbered posts, residence requirements, staggered terms, or a combination of these to the at-large system.[52]

The city of Thomson's first black candidate had come within 88 votes of winning a city council seat in 1970. Immediately after this the leaders of the 37 percent black city began planning the new election procedure, which was adopted within the year. The new procedure included staggered terms, a majority requirement, and numbered posts and changed the terms of councilmen from 2 to 4 years. The plan was not submitted to the Attorney General until July 5, 1974, at which time the Department found that these changes "appeared to be racially discriminatory in both purpose and effect."[53]

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50. East Dublin, Hinesville, Newnan, Perry, Thomasville.

51. Hinesville: United States v. Cohan, Civil No. 2882 (S.D. Ga., Oct. 29, 1971). (request for three-judge court denied); reversed and remanded, 470 F.2d 503 (5th Cir. 1972); 358 F. Supp. 1217 (S.D. Ga. 1973) (objection upheld, new election required). Jonesboro: United States v. Garner, 349 F. Supp. 1054 (N.D. Ga. 1972) (new election required).

52. See sources cited, note 49 above.

53. Section 5 summary, Sept. 3, 1974.

Like the 14 cities whose changes in the method of electing their city councils were objected to by the Attorney General, Dublin in 1968 adopted numbered posts and a majority requirement for election for its at-large elected council.[54] Dublin, however, did not submit this change to the Attorney General.[55] A week before the municipal election held on Monday, November 4, 1974, a suit was filed against the city to enjoin the use of the electoral system adopted in 1968.[56] The district court denied temporary relief because it saw no excuse for the plaintiffs' delay in filing the suit, but the court retained the case for further proceedings after the election.[57]

At-large elections have also led to the underrepresentation of blacks in several of Georgia's largest cities. Macon is 37 percent black and elects 15 city council members.[58] The 15 must reside in separate districts but are elected at large.[59] None is black.[60]

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54. Sheffield v. Cochran, Civil No. CV374-14 (S.D. Ga., Order of Nov. 4, 1974), slip opinion, p. 1.

55. Section 5 Printout, as of May 8, 1974, and Weekly Lists to Oct. 18, 1974.

56. Sheffield v. Cochran, slip opinion, p. 3.

57. Ibid., pp. 3-6.

58. Complaint, p. 4, Walton v. Thompson, Civil No. 74-77 (M.D. Ga., filed May 10, 1974).

59. Ibid.

60. 1974 Roster, pp. 53-56. No black has ever been on the Macon city council. Complaint, p. 4, Walton v. Thompson.

Macon elects to the State house from single-member districts three representatives by itself and shares in the selection of four others.[61] Since blacks have been elected to two of these seven seats,[62] one might expect blacks to be elected to some of the 15 positions on the city council. A suit has been filed challenging the Macon voting system.[63] In their complaint plaintiffs allege that "[r]ace is a constant and dominant factor in elections in Macon...that whites do not vote for black candidates and that where black candidates oppose white candidates, the whites consistently vote for the white candidates, irregardless [sic] of the relative qualifications" of the candidates.[64]

Albany, which is 39 percent black, has a seven-member, at-large elected city council, with council members required to reside in separate districts.[65] No blacks are on the council.[66]

Augusta elects 16 city council members.[67] Since 1948 their election has been at large, with two council members required to reside

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61. See chapter 8, p. 233, n.104.

62. Stanley Alexander, telephone interview, Nov. 22, 1974.

63. Walton v. Thompson.

64. Complaint, p. 5, Walton v. Thompson.

65. Alexander Interview.

66. Ibid. A suit challenging the method of election in Albany has been filed. David Walbert, attorney, Georgia Legal Services, Atlanta, Ga., telephone interview, Dec. 20, 1974.

67. Rachel Brewer, deputy city clerk, Augusta, Ga., telephone interview, Dec. 4, 1974.

in each of eight wards.[68] Although 50 percent of the city's population is black, only 4 of the 16 council members are black.[69] Savannah, which is 45 percent black, has one black on its seven-member city council, which is elected at large.[70]

Although Marietta elects its seven-member city council from single-member districts, a suit was brought by blacks in 1973 attacking the districting plan as discriminatory against blacks. They alleged that the February 1964 plan for the 14 percent black city divided a concentration of blacks previously in one ward among three wards, thus preventing the election of a black member to the council.[71] The attorney for plaintiffs expects a favorable settlement of the case.[72]

MISSISSIPPI

Each of Mississippi's 82 counties has five supervisors, traditionally one from each of five beats or districts.[73] Although the

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68. Ibid.

69. Ibid.

70. Clerk of city council, Savannah, Ga., telephone interview, Nov. 22, 1974.

71. Complaint, p. 4, Grogan v. Hunter, Civil No. 19587 (N.D. Ga., filed Dec. 20, 1973).

72. Elizabeth R. Rindskopf, attorney, Atlanta, Ga., telephone interview, Dec. 6, 1974.

73. Miss. Code § 19-3-1 (1972).

State as a whole is 37 percent black, and has 25 majority black counties (see map no. 11), there were in January 1975 only 10 black supervisors from a total of nine counties.[74]

Many of the reasons for this lack of progress have been discussed in preceding chapters. Perhaps the most important reason, however, is the actions taken by the State of Mississippi and by many of its counties. These actions have had the effect--and often have been taken with the purpose--of diluting the voting strength of blacks.

Counties--At-large Election

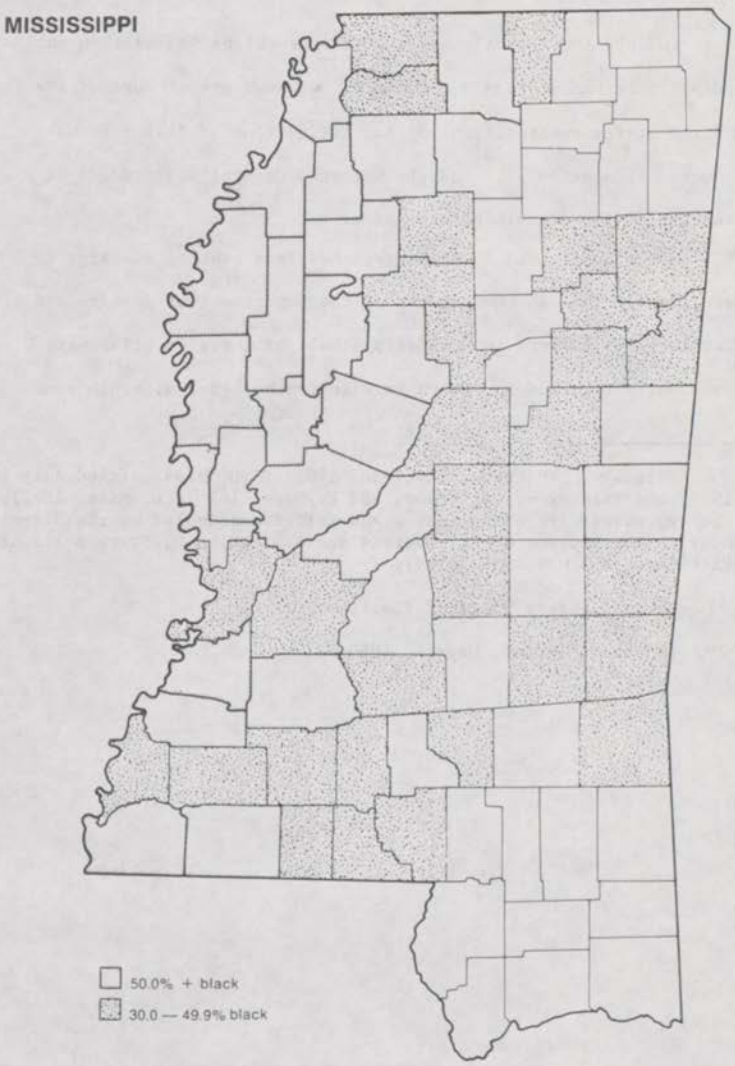
In 1966 the legislature passed legislation allowing supervisors to be elected at large, with residence in the traditional beats still required.[75] Although passed to comply to the one person, one vote requirement there was evidence that the legislation was motivated by the desire to prevent black political success.[76] In any event, at-large elections threatened the political effectiveness of the newly enfranchised black voters. Because of this, civil rights lawyers filed

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74. Adams, Bolivar, Claiborne, Coahoma, Issaquena, Jefferson (2), Marshall, Noxubee, and Wilkinson. 1974 Roster, p. 117, updated with results of special elections in 1974 in Adams and Marshall Counties.

75. House Bill 223, Miss. Laws, 1966, ch. 290, amending Miss. Code § 2870 (Recomp. 1956), approved, May 27, 1966, codified as Miss. Code § 19-3-7 (1972).

76. See U.S. Commission on Civil Rights, Political Participation (1968), pp. 21-23 (hereafter cited as Political Participation), and Frank R. Parker, "County Redistricting in Mississippi: Case Studies in Racial Gerrymandering," Mississippi Law Journal, vol. 44 (1973) pp. 393-401 (hereafter cited as Parker Article).



Map No. 11. Mississippi racial composition.

suit in July 1967 to enjoin use of this enabling legislation until it had received section 5 clearance.[77] The Supreme Court of the United States eventually held that legislation of this type was covered by section 5,[78] and the Attorney General objected to it because of its discriminatory potential.[79]

Nevertheless, 13 counties switched from beat to at-large elections. Through the efforts of the Department of Justice and of civil rights lawyers in Mississippi, all of these counties were eventually required to return to election by beat, although some

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77. Marsaw v. Patterson, Civil No. 1201W (S.D. Miss., filed July 14, 1967) and Fairley v. Patterson, 282 F. Supp. 164 (S.D. Miss. 1967). The two cases were consolidated and relief was denied by the district court. The Supreme Court reversed sub nom. Allen v. State Board of Elections, 393 U.S. 544 (1969).

78. Allen v. State Board of Elections.

79. Objection letter, May 21, 1969.

were allowed to hold elections at large in 1971.[80]

While 1971 was the last year of at-large election of county supervisors, on November 1, 1974, the Department of Justice filed suit to prevent Kemper County, which is 56 percent black, from conducting a school board election at large. The election was scheduled to be held at large with some board members required to reside in separate districts pursuant to 1968 Mississippi legislation which had not received section 5 clearance.[81]

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80. Adams, enjoined, April 23, 1969, Marsaw v. Patterson, note 77 above; Attala, section 5 objection, June 30, 1971; Carroll, submission under section 5, May 10, 1971, advised by the Department of Justice that at-large elections were unauthorized, June 7, 1971; Coahoma, allowed, Williams v. Hughes, Civil No. 7076-S (N.D. Miss. Supp. Judgment of March 1971), enjoined in Henry v. Coahoma County Bd. of Supervisors, Civil No. D.C. 71-50-S (N.D. Miss. July 7, 1971); Forrest, enjoined, April 23, 1969, Fairley v. Patterson, note 77 above (see Fairley v. Patterson, 493 F.2d 598 (5th Cir. 1974)); Grenada, objection, June 30, 1971; Hancock, court ordered for 1971 only (according to Section 5 Printout, as of May 8, 1974), no objection, July 29, 1971; Issaquena, approved, Hall v. Issaquena County Bd. of Supervisors, Civil No. 1357 (S.D. Miss. June 30, 1971), modified to allow use in 1971 only, 453 F.2d 404 (5th Cir. 1971); Itawamba, advised by the Department of Justice that at-large elections were unauthorized, April 16, 1970, enjoined, Sheffield v. Robinson, Civil No. EC6745-S (N.D. Miss. June 25, 1970), affirmed, Sheffield v. Itawamba Co. Bd. of Supervisors, 439 F.2d 35 (5th Cir. 1971); Leflore, allowed for 1971 only, Moore v. Leflore County Bd. of Election Commissioners, 351 F. Supp. 848 (N.D. Miss. 1971); Lowndes, allowed for 1971 only, Keller v. Gilliam, Civil Nos. E.C. 7185-S, 7195-S (N.D. Miss. April 7, 1971), modified to require new election after approval of new plan, 454 F.2d 55 (5th Cir. 1972); Tishomingo, section 5 submission, May 12, 1970, advised by Department of Justice that at-large elections were unauthorized, July 7, 1970; Washington, not allowed, Dyer v. Love, 307 F. Supp. 974 (N.D. Miss. 1969).

81. United States v. Kemper County, Civil No. E74-65C (S.D. Miss., filed Nov. 1, 1974). Summary judgment was granted to the Department of Justice on Nov. 20, 1974, with a new election scheduled for Dec. 17, 1974.

The Open Primary Law

There is no evidence that the Mississippi legislature passed the Open Primary law in 1970[82] as a direct result of the legal difficulties the use of at-large elections had encountered. But there is considerable evidence that the motivation behind that legislation--and its effect if implemented--was to reduce the political power of black voters.[83] Because only a plurality was required in the general election, a black independent candidate in theory could win with less than a majority vote if the white vote were divided between a Democrat and a Republican. The Open Primary law eliminated this possibility by throwing all candidates--Democrats, Republicans, and independents--together in an "open primary," followed by a runoff between the two getting the most votes if no one received a majority.

This electoral system has never been put into effect. Although the Attorney General failed to object under section 5,[84] a Federal court in 1970 ruled that the Attorney General had acted improperly and enjoined the law until it had been resubmitted and cleared under section 5.[85] The State of Mississippi took no further action until

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82. House Bills 362 and 363 (1970 Regular Session), codified as Miss. Code § 23-5-133 et seq. (1972).

83. See Shameful Blight, pp. 139-43 for more information concerning the open primary law controversy.

84. Jerris Leonard, Assistant Attorney General, letter to A. F. Summer, attorney general, State of Mississippi, Sept. 21, 1970.

85. Evers v. State Board of Election Commissioners, 327 F. Supp. 640 (S.D. Miss. 1971), appeal dismissed, 405 U.S. 1001 (1972).

1974, when it asked the court to withdraw its injunction. This request was turned down on February 7, 1974,[86] and the law was again submitted to the Attorney General on February 25, 1974.[87] Sixty days later he objected.[88] The letter mentions evidence that "one purpose of the legislation is to deny independent black candidates the opportunity to run for and be elected to office in the general election with a plurality of the votes cast."[89] But the letter continues, "irrespective...of the purpose of the acts, the effect of their implementation likely will be to minimize the opportunity of black voters to elect a candidate of their choice for a substantial number of district and county-wide offices."[90] The letter noted that 195 blacks ran as independents in the 1971 general elections.[91]

Counties--Single-Member Plans

Because of population changes revealed by the 1970 census and because of the need to replace the abortive at-large election systems, many counties prepared new single-member district plans for the election of supervisors in the early 1970's. The Attorney General

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86. Frank R. Parker, attorney, Lawyers' Committee for Civil Rights under Law, Jackson, Miss., letter to David H. Hunter, U.S. Commission On Civil Rights, Nov. 8, 1974, p. 3.

87. Objection letter, April 26, 1974, p. 1.

88. Ibid., p. 4.

89. Ibid., p. 2.

90. Ibid., p. 3.

91. Ibid.

objected under section 5 to the plans for nine of the counties.[92] Suits have been filed against two of these counties--Warren and Hinds--to enforce section 5 objections.[93] The Federal courts rejected the plan of another county--Leflore.[94] The plans for two other counties--Adams and Oktibbeha--were attacked in court as discriminatory by civil rights lawyers but were upheld.[95] Eight counties are using

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92. Attala, Sept. 3, 1974; Copiah, March 5, 1970; Grenada, Aug. 9, 1973, not withdrawn, April 2, 1974; Hinds, July 14, 1971 (see Parker Article, p. 406); Leake, Jan. 8, 1971, section 5 submission required by court; Scott v. Burkes, Civil No. 4782 (S.D. Miss., filed Nov. 13, 1970) (see Parker Article, p. 405); Marion, May 25, 1971; Tate, Dec. 3, 1971, Nov. 28, 1972; Warren, April 4, 1971, Aug. 23, 1971 (see Parker Article, pp. 404-05); Yazoo, July 19, 1971 (see Parker Article, p. 404).

93. Warren County: United States v. Warren County, Civil No. 73W-48(n) (S.D. Miss., filed Oct. 31, 1973) (suit to enjoin use of plan objected to). For a description of the plan see Parker Article, pp. 404-05, 420. Hinds County: after the August 1971 primaries were held using the plan which had been objected to the Department of Justice filed suit, United States v. Hinds County Bd. of Supervisors, Civil No. 4983 (S.D. Miss., filed Sept. 17, 1971). The November election was nevertheless held using the same districts. A private suit was filed against the plan on July 25, 1971. Kirksey v. Hinds County Bd. of Supervisors, Civil No. 4939-N (S.D. Miss.). The Kirksey court ordered the county to prepare a new plan, Dec. 26, 1972. The United States suit was dismissed as moot, March 6, 1974. As of Nov. 18, 1974, final decision is awaited in Kirksey. Frank R. Parker, attorney, Lawyers' Committee for Civil Rights Under Law, Jackson, Miss., interview, Nov. 18, 1974. See Parker Article, p. 406.

94. Moore v. Leflore County Bd. of Election Commissioners, 351 F. Supp. 848 (N.D. Miss. 1971), 361 F. Supp. 603 (1972); subsequent redistricting plan by special master approved. 361 F. Supp. 609 (1973), affirmed, No. 73-3090 (5th Cir. Oct. 10, 1974). This case is discussed in detail in the text that follows.

95. Adams County: Howard v. Adams County Bd. of Supervisors, 453 F.2d 455 (5th Cir.), cert. denied, 407 U.S. 925 (1972), modification of plan upheld, 480 F.2d 978 (1973), cert. denied 415 U.S. 975 (1974). Oktibbeha County: plan adopted, Page v. Oktibbeha County Bd. of Supervisors, Civil No. EC 6642 (N.D. Miss. June 7, 1967), suit brought under section 5 and 15th amendment dismissed, Connor v. Oktibbeha County Bd. of Supervisors, 334 F. Supp. 280 (N.D. Miss. 1971).

plans which were not submitted to the Attorney General under section 5 because they were court ordered.[96] Although county elections will be held again in 1975, four counties still do not have approved plans. No new plans have been submitted to the Attorney General following section 5 objections to the old plans from Attala and Yazoo Counties.[97] Warren and Hinds Counties are in litigation concerning their plans.[98]

Under the plan adopted by the Leflore County Board of Supervisors but rejected by a Federal district court, the Kellum plan, each district in the 58 percent black county has a black majority.[99] The court said, "The extent of each majority, however, is diluted in all

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96. Coahoma and Forrest. Parker letter to Hunter, Nov. 8, 1974, p. 2. (See suits cited note 80 above). Clay, Harrison, Lincoln, Pike, Wayne, and Winston. Appellant's Jurisdictional Statement, p. 12, n. 7, Connor v. Williams, 404 U.S. 549 (1972). In Connor v. Johnson, 402 U.S. 690 (1971), an earlier stage of the same case, the Court held that "a decree of the United States District Court is not within reach of section 5 of the Voting Rights Act." Ibid., p. 691. Court-ordered plans for 11 other counties have been submitted to the Attorney General and no objection has been made: Bolivar, De Soto, Hancock, Issaquena, Itawamba, Jackson, Lauderdale, Monroe, Rankin, Sunflower, and Washington. Section 5 Printout, as of May 8, 1974; Jurisdictional Statement in Connor case, above.

97. Review of section 5 files, as of Dec. 5, 1974. In addition, the Department declined in April 1974 to withdraw its 1973 objection to Grenada County's plan. The county submitted a new plan Nov. 9, 1974.

98. See note 93 above.

99. Moore v. Leflore County Bd. of Election Commissioners, No. 73-3090 (5th Cir. Oct. 10, 1974), slip opinion, p. 339. For prior judicial history see note 94 above.

but one of the districts when compared to pre-redistricting figures. Significantly, it also appears in terms of registered voters, blacks would have exceedingly slim majorities in some of these districts and minorities in others".[100]

With the Kellum plan whites would have a good chance of retaining all five seats (see map no. 12). Instead of the Kellum plan the court adopted the plan prepared by the court-appointed special master, the Holland plan, which provides larger black majorities in four beats by creating one 75 percent white district (see map no. 13).[101]

Table 12. HOLLAND PLAN FOR SUPERVISORS' DISTRICT, LEFLORE COUNTY, MISSISSIPPI

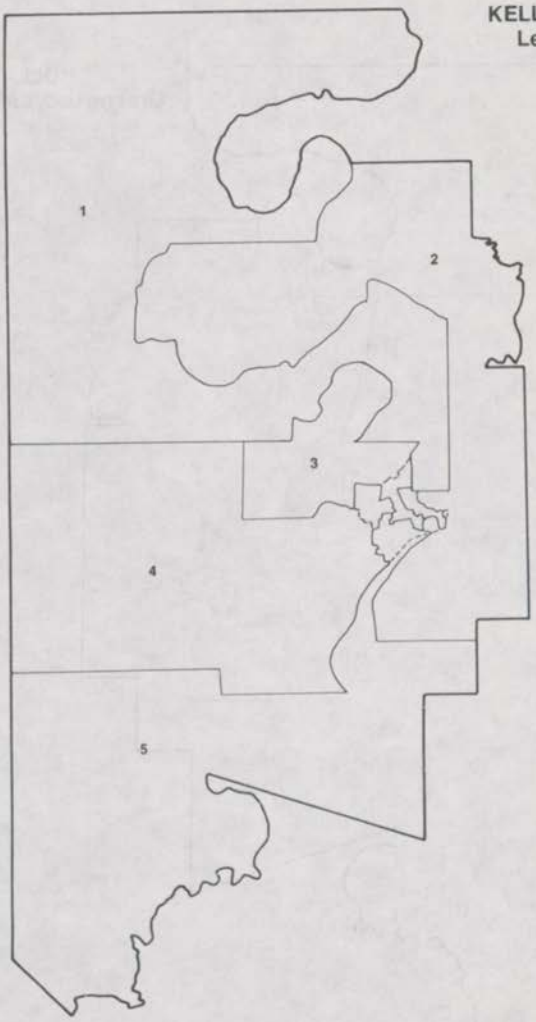
Beat	Total Population	Voting Age Population	Registered Voters
	Percent Black	Percent Black	Percent Black
1	25 %	19 %	12 %
2	61	55	51
3	67	62	58
4	64	59	50
5	75	70	66

Source: Moore v. Leflore County Board of Election Commissioners, No. 73-3090 (5th Cir. Oct. 10, 1974), slip opinion, pp. 342, 343.

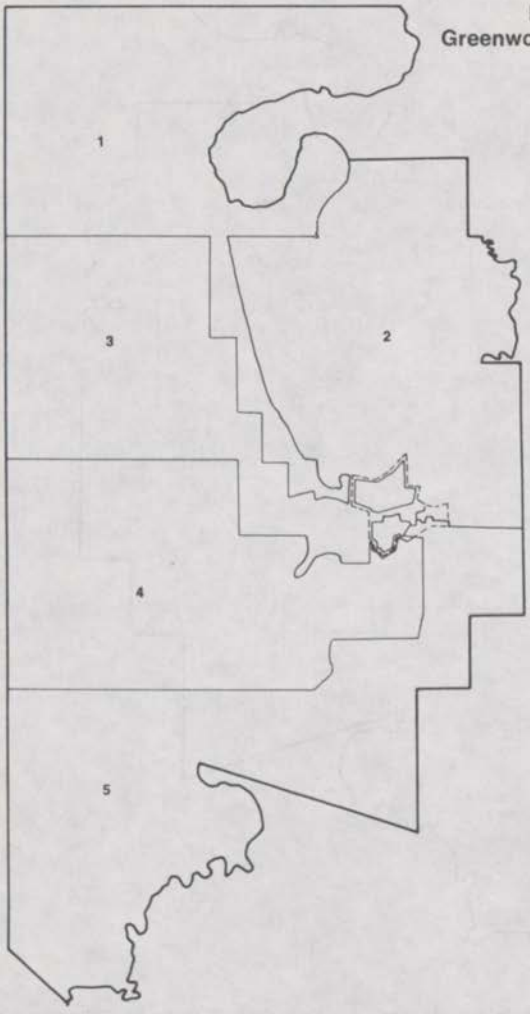
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100. Moore v. Leflore County, slip opinion, pp. 339-40 (footnotes omitted).

101. Ibid., pp. 337, 342.



Map No. 12. The Kellum Plan for districts in Leflore County does not create any districts where black candidates would have a reasonable chance of success.



Map No. 13. Under the Holland Plan for the districting of Leflore County all beats reach into the city of Greenwood. The black concentration in the southern part of the city is divided among four beats.

Although the Holland plan was preferred by black plaintiffs to the Kellum plan, the plaintiffs would have preferred a plan that would not have fragmented the black concentration in the southeast section of Greenwood, the principal city in the county (see map no. 14).[102] The court considered it necessary to segment the black population of south Greenwood into four districts to satisfy the doctrine--created by the court--that the land area and road mileage of the different districts should be equalized.[103] This is important, according to the court, because "each district is allotted the same amount of public funds for road and bridge maintenance."[104]

This doctrine had previously been followed by the Fifth Circuit in approving a plan for Adams County, which is 48 percent black.[105] The plan provides only one majority black district (67.8 percent).[106] Under the previous districting there was a 75 percent black district that, according to the plaintiff's arguments, could have--consistently with one person, one vote rules--been divided into two new districts having black majorities.[107] Rather than doing this the supervisors fragmented the black district, creating only one district with

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102. Ibid., p. 343; Parker, letter to Hunter, Nov. 15, 1974, p. 1.

103. Moore v. Leflore County, slip opinion, pp. 343-44.

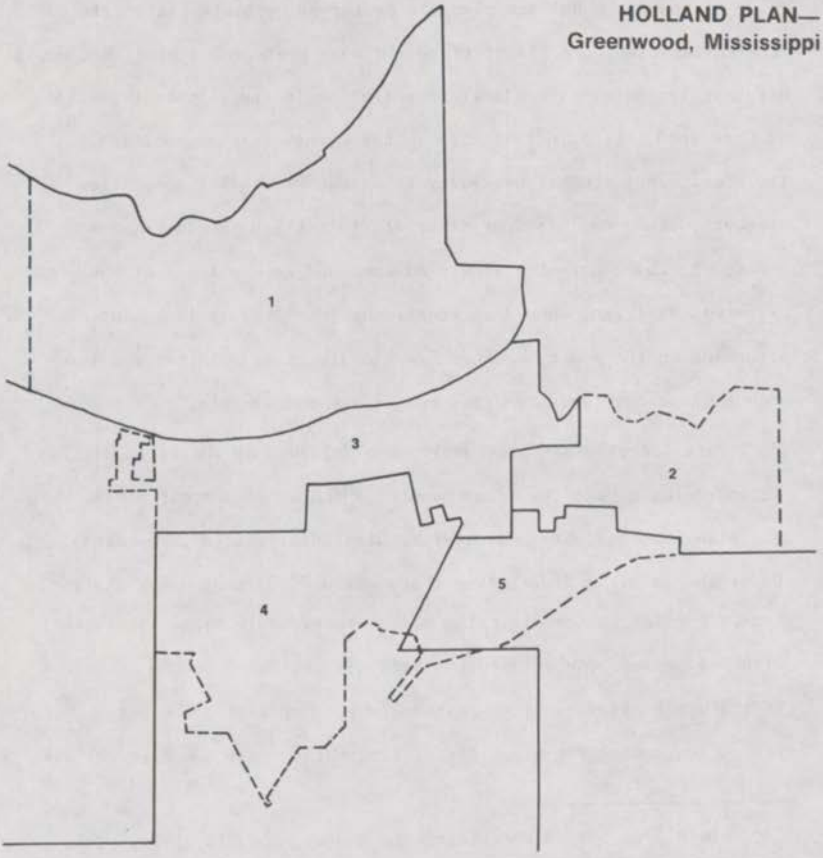
104. Ibid., p. 341.

105. Howard v. Adams County Bd. of Supervisors, 453 F.2d 455 (5th Cir. 1972). For subsequent judicial history see note 95 above.

106. Ibid., p. 458.

107. Ibid., p. 457.

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Map No. 14. The Holland Plan leaves north Greenwood, which is practically 100 percent white, intact in District 1, while the southern part of Greenwood is fragmented among Districts 2, 3, 4, and 5.

a black majority (67 percent).[108] The justification for doing this, which was accepted by the courts, was the need to equalize county-maintained road mileage and area.[109] The result was that each new district contained both rural (predominantly white) and urban (predominantly black) territory.[110]

As the Leflore and Adams County cases show, the discrimination worked by the so-called "equi-beat" concept is subtle, but it can prevent blacks from obtaining the electoral strength that they might otherwise have. The doctrine could be an invitation to racial gerrymandering in the future.[111]

On September 3, 1974, the Attorney General objected to the redistricting plan for Attala County, which is 40 percent black, because the plan unjustifiably reduced from 64 to 52 the black percentage in the district with the highest black percentage and divided other majority black neighborhoods among three majority white districts.[112]

In August of 1973 the Attorney General objected to the Grenada County plan. The Department found that the lines for the 44 percent black county "were drawn in such a way as to fragment the principal area

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108. Ibid., p. 458.

109. Ibid., p. 456.

110. Parker Article, pp. 409-10.

111. See Parker Article, pp. 408-18.

112. Section 5 summary, Sept. 3, 1974.

of black political activity in the county, located in the City of Grenada."[113] Although the Department determined that "small alterations" in the plan could remedy this problem,[114] the county resubmitted the same plan rather than make the necessary adjustment. The Attorney General refused to withdraw his objection.[115]

Cities

Blacks have had as little success in electing representatives to city councils as they have to county boards of supervisors. Except for very small towns in which blacks are a large majority, almost no blacks have been elected to city councils in Mississippi.[116] The primary reason for this is legislation passed by the Mississippi legislature that was intended to prevent blacks from being elected to city councils and that has generally been effective in doing this.[117]

The legislation required the cities to elect their council members at large. The cities were given the option of requiring their council members to live in separate wards.[118] The prohibition of single-shot voting[119] and the requirement of a majority vote for

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113. Section 5 summary, Aug. 9, 1973.

114. Ibid.

115. Section 5 summary, April 2, 1974.

116. See appendix 2.

117. Miss. Code, Title 16, sec. 3374-36 (1962), codified as Miss. Code § 21-3-7 (1972).

118. Ibid.

119. Miss. Code § 21-11-15, 23-5-137 (1972).

election[120] further frustrated black political potential.

In 1962 the Mississippi legislature adopted a number of bills designed to prevent blacks from registering to vote and voting.[121] One of these was the law requiring at-large voting. Because of the renewed black interest in voting and because of continuing shift of the black population in Mississippi from farm to city, there was concern that wards in many cities would become predominantly black and that these blacks would be able to elect their own aldermen. Therefore the bill's sponsor argued that the change was needed in order "to maintain our southern way of life."[122] Contemporary newspaper accounts were unanimous about the bill's purpose. The February 23, 1962, Jackson Daily News headlined an Associated Press story about the pending legislation, "Bill Would Make It Harder For Negroes To Win Election." The Delta Democrat began its March 1, 1962, story: "The Senate today approved a bill designed to prevent the election of Negroes as city aldermen." The headline read "House Bill Bars Negroes from Aldermen Boards." Similar stories were carried by the Memphis Commercial Appeal and the Jackson Clarion-Ledger.[123]

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120. Miss. Code, Title 16, sec. 3374-36 (1962), codified as Miss. Code § 21-3-7 (1972).

121. See United States v. Mississippi, 380 U.S. 128, 143-44 (1965).

122. Statement of Sen. William J. Caraway, quoted in Plaintiffs' Brief, Stewart v. Waller, Civil No. EC 73-42-S (N.D. Miss., filed May 3, 1973), pp. 4-5.

123. Copies of these and other articles are included at pp. A-43 to A-54 of Stipulations of Fact Between Plaintiffs and Defendants, Stewart v. Waller. The parties agreed that the articles "were written by newspaper reporters who attended the 1962 term of the Mississippi legislature ...." Stipulation 23.

The effect of the law is as clear as its purpose. In the 1973 municipal elections, considering those of the affected cities whose populations are less than two-thirds black, only two-thirds of 1 percent of the aldermen elected were black in a State that is 37 percent black.[124] In ward 2 in Macon, 61.1 percent of the registered voters are black. In ward 2 in Moss Point, 54.2 percent of the registered voters are black. In ward 6 in Starkville, 72.3 percent are blacks; in ward 1 in West Point, 86.4 percent.[125] No blacks have been elected to the city councils of any of these cities.[126] In Moss Point, Starkville, and West Point in the 1973 primary and in West Point in the 1969 primary a black candidate received a majority in each of these wards but lost to a white opponent citywide.[127] In Macon's history the only known black aldermanic candidate ran in a 1972 special election. Since balloting was all conducted at one polling place using one ballot box, results for the majority black ward are not known. There were, however, more blacks than whites voting from that ward. The black candidate lost.[128]

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124. Ibid., Stipulation 26.

125. Ibid., Stipulation 30.

126. Ibid., Stipulation 36 (proposed by plaintiff but not agreed to by defendant). See Political Participation, pp. 218-19 and 1974 Roster, pp. 119-24.

127. Stipulation 31, Stewart v. Waller.

128. Ibid., Stipulation 32 (proposed by plaintiff but not agreed to by defendant).

In 1973 a statewide class suit was brought against the at-large voting system of most Mississippi cities.[129] Plaintiffs presented or offered to present evidence on--among other things--the history of racial discrimination in Mississippi, on the purpose and effect of the change to at-large elections, on the failure of whites to slate black candidates, on racial bloc voting, and on the lack of responsiveness of white council members to the needs of the black community.[130] The Department of Justice has intervened in the case on the side of the plaintiffs.[131] On October 24, 1974, a hearing was held on the motions of both sides for summary judgment. Affected by the suit are at least 29 cities and possibly as many as 200, most of which are quite small.[132]

The Attorney General has objected to several more recent changes introduced by Mississippi cities. An objection was entered in 1972 to the introduction of at-large elections with numbered posts and a majority requirement in Grenada.[133] Indianola's attempt to use numbered posts was also objected to,[134] as was the incorporation of Pearl.[135] The incorporation was later allowed after Pearl agreed

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129. Stewart v. Waller.

130. See Plaintiffs' Brief, Stewart v. Waller.

131. Complaint filed, Oct. 18, 1973; amended complaint filed, March 1, 1974.

132. Homer Moyer, attorney for plaintiffs, Washington, D.C., telephone interview, Dec. 5, 1974.

133. Objection letter, March 20, 1972.

134. Objection letter, April 20, 1973.

135. Objection letter, Nov. 21, 1973.

to modifications.[136]

NEW ORLEANS, LOUISIANA

The New Orleans City Council is composed of five members elected from districts and two members elected at large.[137] The electoral system includes majority vote and full-slate requirements.[138] In 1972, the Louisiana legislature attempted to add a numbered post requirement for the at-large seats, but the Attorney General objected to that change under section 5 of the Voting Rights Act.[139]

Although 45 percent of New Orleans' residents are black, few blacks have been elected to public office in New Orleans. The four recent successful black candidates for citywide offices (court of appeals and criminal district court judges, clerk of criminal district court, and parish school board) were either closely allied to white political leaders or unopposed.[140] Court-ordered reapportionment with single-member districts[141] directly resulted in the elec-

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136. Staff memorandum, Voting Section, Department of Justice, Sept. 12, 1974.

137. New Orleans, Charter, art. III, sec. 3-102 (1954).

138. L.S.A.-R.S. 18:358, 351.

139. Objection letter, April 20, 1973.

140. Beer v. United States, 374 F. Supp. 363, 374-75, 397-98 (D.D.C. 1974).

141. Bussie v. Governor of Louisiana, 333 F. Supp. 452 (E.D. La. 1971), affirmed with modifications sub nom. Bussie v. McKeithen, 457 F.2d 796 (5th Cir. 1971), vacated and remanded for opinion sub nom. Taylor v. McKeithen, 407 U.S. 191 (1972), appellate court judgment reinstated, 499 F.2d 893 (5th Cir. 1974).

tion of six black State legislators from New Orleans. No black has ever been elected to the city council, though blacks have in recent elections sought both at-large and district seats. In 1969, a black ran third, defeating five other first primary candidates to at-large seats, but lost the runoff with 48.2 percent of the vote.[142]

Following the 1970 census, the New Orleans city council passed a redistricting plan on March 2, 1972 (Plan I).[143] Many community organizations opposed the plan--particularly blacks[144] and residents of Algiers, the section of the city located on the "west bank" of the Mississippi River and cut off from the rest of the city by the river. Since Algiers is too small for its own district but has its own interests and needs, it is traditionally attached as a whole to one of the other districts.[145] Plan I divided it among three districts.

After Plan I was enacted and before and during its consideration by the Justice Department, the council deliberated on a number of proposals to increase the size of the council. Two were sent to referenda

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142. Election data from Orleans Parish Democratic Executive Committee, Mayoralty First and Second Democratic Primary Elections November 8, 1969 and December 13, 1969 (New Orleans, La., n.d.).

143. New Orleans, Ord. No. 4796 M.C.S. (March 2, 1972).

144. See Allison L. Chapital, Sr., president, New Orleans Branch NAACP, letter to Richard G. Kleindienst, Attorney General, June 20, 1972.

145. See New Orleans States-Item, March 4, 1972, Editorial "Reapportionment Joke," p. 6.

and both were rejected by the voters.[146]

Plan I was submitted to the Justice Department after the first referendum failed, and on January 15, 1973, the Attorney General objected to it because the district lines appeared to "dilute black voting strength by combining a smaller number of black voters with a larger number of white voters in each of the five districts."[147] Even before the Department's objection, the author of Plan I had developed a new plan that, with slight modifications, was passed by the council and submitted to the Justice Department (Plan II).[148] Plan II combined some features of Plan I and a plan developed by the NAACP, but was bitterly opposed by the NAACP and by the one member of the council whose existing district was majority black.[149]

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146. Newspaper accounts and subsequent interviews indicate general agreement that the purpose of expanding the council was to permit election of blacks without endangering the seats of incumbent whites. On Nov. 7, 1972, voters defeated a plan which would have created an 11-member council with 9 districts and 2 at-large seats. In the March 20, 1973, special election, voters rejected a plan which would have created a 9-member council with 7 districts and 2 at-large seats. No proposals which would have eliminated the at-large seats were submitted to the voters. Staff interviews, New Orleans, La., Sept. 1974.

147. Objection letter, Jan. 15, 1973.

148. New Orleans, Ord. No. 5154 M.C.S., May 3, 1973. Plan II was submitted to the Justice Department on May 10, 1973.

149. Dr. Joseph Logsdon and Dr. Raphael Cassimere, New Orleans, La., interview, Sept. 13, 1974. See New Orleans Branch NAACP, "Complaint Against the Reapportionment Ordinance 5475 (MCS 5154) of the New Orleans City Council Passed on April 26, 1973 [sic]," June 1973.

On July 9, 1973, the Attorney General objected to Plan II on the ground that it suffered from the same defects as Plan I.[150] In addition, the Department noted that the infirmity of both plans stemmed from the fact that the district lines were drawn lakefront to river, cutting across black neighborhoods. This inevitably tended to submerge blacks in majority white districts. (See map no. 15.)

The council decided to seek a declaratory judgment from the United States District Court for the District of Columbia that the plan was not objectionable on racial grounds.[151] At the same time, private citizens filed suit in the New Orleans Federal district court asking that a special master be appointed to redistrict the city in light of the second objection and the approaching election season.[152] In late August both courts ordered the elections scheduled for November and December 1973 postponed.[153]

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150. Objection letter, July 9, 1973.

151. Beer v. United States, 374 F. Supp. 363 (D.D.C. 1974), complaint filed July 25, 1973.

152. Jackson v. Council of City of New Orleans, Civil No. 73-1862 (E.D. La., filed July 12, 1973).

153. Jackson v. City Council, Order of Aug. 31, 1973; Beer v. United States, Order of Aug. 14, 1973. Earlier in the month the New Orleans court had decided to hold its proceedings in abeyance until the Washington court had ruled on the substance of the plan. Jackson v. City Council, Order of Aug. 14, 1973.



Map No. 15. District lines for Plan II for the New Orleans City Council run between lakefront and river and thus cut across the predominantly black neighborhoods, dividing the black population among the five districts.

On March 15, 1974, the district court in Washington dismissed the case, ruling that Plan II, particularly in conjunction with the at-large election of two of the council members, had the effect of diluting black voting strength.[154] "The plan tendered by the city will inexorably have the effect of abridging the right to vote in council-manic elections on account of race or color....[I]n consequence, the plan will remain under the continuing restraint of Section 5."[155] The city council appealed the ruling to the Supreme Court of the United States.[156]

LOUISIANA--OTHER PARISHES

In the election of parish police juries (the equivalent of county councils) and school boards in Louisiana, the vote of blacks has frequently been diluted, or parishes have attempted to implement changes that would have had the effect of diluting the black vote. (See map no. 16 for racial composition of parishes.) These changes have included the use of at-large elections, multi-member districts, and majority and full-slate requirements. In 19 parishes

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154. Beer v. United States, 374 F. Supp. 363, 385 (D.D.C. 1974). The New Orleans court declined to "reactivate" the litigation there, which would have reactivated the special master's proceedings. Jackson v. City Council, Opinion and Order of June 24, 1974, affirmed, __F.2d__ (5th Cir. 1974) (order of August 28, 1974).

155. Beer v. United States, p. 402.

156. Beer v. United States, prob. jur. noted, 43 U.S.L.W. 3186 (U.S. Oct. 15, 1974) (No. 73-1869).

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Map No. 16. Louisiana racial composition.

there have been section 5 objections by the Attorney General either to the districting of the police jury or of the school board or of both.[157] Twelve of these parishes have been involved in litigation concerning section 5 or the racial implications of districting.[158]

In an additional 14 parishes courts have required plans that would

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157. Ascension, Parish School Board (PSB hereafter), April 20, 1972; Assumption, PSB, July 8, 1971; Bossier, PSB, July 30, 1971; Caddo, PSB, Oct. 8, 1971; De Soto, Parish Police Jury (PPJ hereafter), Aug. 6, 1971; East Baton Rouge, PPJ, Aug. 6, 1971; East Feliciana, PPJ, Sept. 20, 1971; Dec. 28, 1971, PSB, Apr. 22, 1972; Evangeline, PPJ and PSB, June 25, 1974, July 26, 1974; Franklin, PPJ and PSB, July 8, 1971; Jefferson Davis, PSB, July 23, 1971; Lafayette, PSB, June 16, 1972; Natchitoches, PSB, Sept. 20, 1971; Pointe Coupee, PSB, June 7, 1972; St. Charles, PPJ, July 22, 1971, withdrawn, Sept. 23, 1971; St. Helena, PPJ, Oct. 8, 1971, PSB, Nov. 17, 1972 (objection to staggered terms only); St. James, PPJ, Nov. 2, 1971; St. Mary, PSB, Jan. 12, 1972; Union, PPJ and PSB, June 18, 1971; Webster, PPJ, Aug. 6, 1971, objection withdrawn, Sept. 14, 1971. Orleans Parish is encompassed by the City of New Orleans. See discussion above.

158. Bossier, Bossier Parish Voters League v. Bossier Parish School Board (PSB) and Police Jury (PPJ), Civil No. 17802 (W.D. La. June 13, 1972) (single-member plans ordered for both police jury and school board). Caddo, Hargrove v. Caddo PSB, Civil No. 17630 (W.D. La. June 6, 1972). DeSoto, Clark v. DeSoto PPJ, Civil No. 17266 (W.D. La. Jan. 28 and June 8, 1972). East Feliciana, London v. East Feliciana PPJ, 347 F. Supp. 132, (M.D. La. Aug. 8, 1972). Franklin, Ferrington v. Franklin PPJ, Civil No. 17429, Beach v. Franklin PSB, Civil No. 17469 (W.D. La., consent decree Feb. 1, 1972). Jefferson Davis, Briscoe v. Jefferson Davis PPJ, Civil No. 17392 (W.D. La. April 15, 1972). Lafayette, Black Alliance for Progress v. Lafayette PPJ, Civil No. 19163 (W.D. La. Nov. 7, 1974) (section 5 submission required). Pointe Coupee, United States v. Pointe Coupee PPJ, Civil No. 71-368 (E.D. La., filed Oct. 18, 1971). St. Helena, Baker v. St. Helena PPJ, Civil No. 71-336 (E.D. La. Jan. 11, 1972) (consent decree); Baker v. St. Helena PPJ, Civil No. 71-293 (E.D. La. Dec. 1, 1972). St. James, United States v. St. James PPJ, Civil No. 72-277-H (E.D. La. Feb. 2, 1972). St. Mary, United States v. St. Mary Parish, Civil Nos. 18048 and 18178 (W.D. La., filed Aug. 15, 1972). Union, Whatley v. Union PPJ, Civil No. 17019 (W.D. La., filed and decided July 29, 1971) (approves plan objected to under section 5).

be more favorable to black voting strength.[159] In five other parishes court decisions or section 5 decisions have accepted voting plans that apparently dilute the black vote.[160]

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159. Beauregard, Murrell v. McKeithen, Civil No. 13206 (W.D. La. April 11, 1972) (Parish Police Jury (PPJ) and Parish School Board (PSB)). Catahoula, Zeigler v. Catahoula PPJ, Civil No. 14289 (W.D. La. May 30, 1972) (U.S. intervenor) (no objection under section 5, May 22, 1972 (PSB)). Concordia, Wactor v. McKeithen, Civil No. 12663 (W.D. La. Jan. 18, 1968) (PPJ and PSB). East Carroll, Zimmer v. McKeithen, Civil No. 13927 (W.D. La. 1971), affirmed, 467 F.2d 1381 (5th Cir. 1972), vacated en banc, 485 F.2d 1297 (5th Cir. 1973); petition for cert. filed sub nom. East Carroll PSB v. Marshall, 42 U.S.L.W. 3374 (U.S. Dec. 3, 1973) (No. 73-861) (PPJ and PSB). Madison, Wyche v. Madison Parish, Civil No. 14053 (W.D. La. April 7, 1969) (PPJ and PSB). Morehouse, Collins v. Day, Civil No. 10397 (W.D. La. March 30, 1971); Brass v. Morehouse Parish, Civil No. 17177 (W.D. La. Nov. 18, 1971) (PPJ and PSB). Ouachita, Turner v. McKeithen, Civil No. 15411 (W.D. La. July 1, 1971), affirmed, 490 F.2d 191 (5th Cir. 1973) (PPJ and PSB). Rapides, LeBlanc v. Rapides PPJ, Civil No. 13715 (W.D. La. June 5, 1972); United States v. Rapides PSB, Civil No. 19209 (W.D. La. Oct. 25, 1973); appeal dismissed as moot, 5th Cir., Oct. 29, 1974; Bradas v. Rapides PPJ, 376 F. Supp. 690 (W.D. La. 1974) (PPJ and PSB). Red River, Huckaby v. Red River Parish, Civil No. 16120 (W.D. La. Aug. 30, 1971) (intervention by blacks) (PPJ and PSB). St. Martin, Angelle v. Eastin, Civil No. 14876 (W.D. La. Aug. 11, 1971) (PPJ); Johnson v. St. Martin PSB, Civil No. 16,965 (W.D. La. June 5, 1972) (PSB). Tensas, Bell v. Tensas PPJ, Civil No. 16670 (W.D. La. Aug. 3, 1971), appeal dismissed, No. 71-2782, (5th Cir. Jan. 3, 1972) (PPJ and PSB). Vernon, Hern v. Vernon PPJ, Civil No. 15635-LC (W.D. La. June 24, 1971) (U.S. amicus curiae) (PPJ and PSB). Washington, Bailey v. Washington PPJ, Civil No. 70-2861 (E.D. La. June 19, 1972) (no objection under section 5, June 7, 1972) (PPJ). Winn, Ferguson v. Winn PPJ, Civil No. 18748 (W.D. La. March 29, 1974) (U.S. intervenor, Dec. 28, 1973) (section 5 submission June 18, 1974) (PPJ).

160. Iberia, Bernard v. Iberia PPJ, Civil No. 15117 (W.D. La. Sept. 21, 1971) (multi-member districts allowed; no objection under section 5, Aug. 14, 1973) ((PPJ and PSB). Iberville, no objection, July 30, 1971 (2-member district diluting black vote) (PPJ); Panior v. Iberville PSB, 359 F. Supp. 425 (M.D. La. 1973) (new elections not ordered) (PSB) St. John the Baptist, Troxler v. St. John the Baptist PPJ, 331 F. Supp. 222 (E.D. La. 1971), appeal dismissed, 452 F.2d 1388 (5th Cir. 1972) (multi-member districts allowed) (PSJ). Tangipahoa, Dameron v. Tangipahoa PPJ, 336 F. Supp. 918 (E.D. La. 1971) (multi-member districts allowed) (PSB). West Baton Rouge, no objection, Nov. 19, 1971 (multi-member districts allowed) (PPJ).

Following the passage of the Voting Rights Act of 1965, black political strength in majority black East Carroll Parish grew to the extent that one black was elected to the school board in 1966 and two to the police jury in 1968.[161] The three blacks were elected from single-member districts.[162] As a result, the parish adopted at-large elections for both bodies.[163] The United States District Court for the Western District of Louisiana approved the new at-large system,[164] and section 5 review was not sought.[165] Following the 1970 census the court again approved--over the objection of black intervenors in the suit--the use of at-large elections.[166] Again no section 5 review was sought.[167]

In 1974, the United States Court of Appeal for the Fifth Circuit reversed the lower court's decision.[168] The Fifth Circuit decision

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161. Political Participation, p. 217.

162. Zimmer v. McKeithen, 485 F.2d 1297, 1301 (5th Cir. 1973).

163. Stanley A. Halpin, Jr., counsel for intervenor in Zimmer v. McKeithen, New Orleans, La., letter to Emilio Abeyta, U.S. Commission on Civil Rights, Oct. 2, 1974.

164. 485 F.2d 1297, 1301.

165. Ibid., p. 1302 n. 9.

166. Ibid., p. 1301.

167. Ibid., p. 1302 n. 9.

168. Zimmer v. McKeithen, Civil No. 13927 (W.D. La. 1971), affirmed, 467 F.2d 1381 (5th Cir. 1972), vacated en banc, 485 F.2d 1297 (5th Cir. 1973); petition for cert. filed sub nom. East Carroll Parish School Board v. Marshall, 42 U.S.L.W. 3374 (U.S. Dec. 3, 1973) (No. 73-861).

was based on a number of factors.[169] Foremost was the history of racial discrimination in the parish in voting and in other areas. The court noted that between 1922 and 1962 no black resident of the parish had been allowed to register. The appellate court disagreed with the trial court that the removal of barriers "vitiated the significance of the showing of past discrimination." It recognized that "the debilitating effects of these impediments do persist."[170] The court found that the black vote was diluted by the use of at-large elections with majority and anti-single-shot voting requirements.[171] The court was also influenced by the existence of a "firmly entrenched state policy against at-large elections for police juries and school boards."[172]

Court rulings and section 5 objections have enhanced the voting strength of blacks in a number of other Louisiana parishes and cities.

The Fifth Circuit followed the East Carroll Parish case in upholding a district court ruling that the use of multi-member districts diluted the black vote in 27 percent black Ouachita Parish. The appellate court affirmed the requirement that single-member districts be used.[173] It also upheld the single-member districts required for

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169. See 485 F.2d 1297, 1305.

170. Ibid., p. 1306.

171. Ibid., n. 25.

172. Ibid., p. 1307. That policy was ended by Acts Nos. 445 and 561 [1968] Acts of La. 1001-1002 and 1300-1303. The Attorney General objected to both acts. Objection letter, Sept. 10, 1969.

173. Turner v. McKeithen, 490 F.2d 191 (5th Cir. 1973).

the school board of the Ouachita Parish seat, Monroe, by a district court.[174] Although the board had been elected at large since its creation in 1900, the lower court found that this voting method diluted the vote of the minority residents of this 38 percent black city.[175]

On June 25, 1974, the Attorney General objected to the redistricting plans for the Evangeline Parish school board and police jury. Under the plan concentrations of black voters were submerged in majority white, multi-member districts, especially one six-member district. In addition, the Attorney General found objectionable "the utilization of a majority vote requirement, an anti-single shot requirement, staggered terms for school board members and a numbered post system in the 1974 school board elections."[176] A month later the Attorney General objected to a revision of the plan that carved a single-member, majority black district out of the six-member district but otherwise left the original plan untouched.[177]

A Federal court threw out an at-large election system with a majority requirement and an anti-single-shot voting requirement in

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174. Carroll v. Monroe City School Board, Civil No. 72-2505 (W.D. La.), affirmed without opinion, 483 F.2d 1403 (5th Cir. 1973).

175. Ibid. Suit has also been filed attacking the at-large election of the Monroe City Council. Ausberry v. City of Monroe, Civil No. 74-424 (W.D. La., filed April 29, 1974).

176. Objection letter, June 25, 1974.

177. Objection letter, July 26, 1974.

Ferriday, a small, majority black town in Concordia Parish. The court approved a single-member district plan and ordered elections to be held using the new plan before the incumbents' terms would otherwise have expired.[178] The same court accepted a plan prepared by black plaintiffs which created five single-member districts, with a sixth councilman elected at large,[179] in Opelousas, which is 51 percent black.

In 1973, the city of Bogalusa, which is 34 percent black, added candidate residence requirements to its at-large system of electing a five-member city council. The Attorney General decided that this change would dilute the potential for black voters to elect the candidate of their choice and objected under section 5.[180]

VIRGINIA--ANNEXATIONS

The most significant problems of fair representation for blacks at the local level in Virginia have been the result of annexations in two cities, Richmond and Petersburg. The annexations in both cities

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178. Wallace v. House, 377 F. Supp. 1192, 1200, 1201 (W.D. La. 1974), appeal docketed, No. 74-2654, 5th Cir., June 21, 1974. At-large election in the city of Lafayette is also under attack in Federal litigation. Black Alliance for Progress v. City of Lafayette, Civil No. 74-247 (W.D. La., filed March 11, 1974).

179. Perry v. City of Opelousas, 375 F. Supp. 1170 (W.D. La. 1974). The Department of Justice intervened in this suit.

180. Objection letter, Oct. 29, 1973.

resulted in section 5 objections and in litigation which reached the Supreme Court of the United States.

Richmond

Candidates endorsed by the Crusade for Voters, a black civic organization, were elected to three of nine seats in the city's at-large elected council in 1968 as a result of a slight black majority in population. Late in 1969, Richmond annexed approximately 23 square miles of adjacent Chesterfield County. (See map no. 17.) The population of the annexed territory was nearly 50,000, of whom 97 percent were white. The population of Richmond in 1970 after the annexation was 58 percent white.[181]

On May 29, 1974, the United States District Court for the District of Columbia, in a suit brought by the city of Richmond under section 5 of the Voting Rights Act, found that the annexation discriminated against blacks both in its purpose and in its effect.[182] The court found that as a result of the black success in the 1968 councilmanic election the white political leadership was concerned lest "the black voting bloc would be able to elect a majority to the City Council in the 1970 elections."[183] They were convinced "that annexation of part of Chesterfield County was necessary to keep the black population from

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181. Prior to annexation, the population of Richmond was 52 percent black. Statistics cited in City of Richmond Virginia v. United States, 376 F. Supp. 1344, 1349-51 (D.D.C. 1974).

182. Ibid., p. 1352.

183. Ibid., p. 1349.

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RICHMOND



Map No. 17. Richmond, Virginia annexed 23 square miles of adjacent Chesterfield County, which changed the population of the city from majority black to majority white.

gaining control of the city...."[184] The negotiations with Chesterfield County during 1969 were conducted by Richmond's white mayor, Phil J. Bagley. Council members endorsed by Richmond Forward, a white organization, were invited to attend conferences concerning the progress of the negotiations; the Crusade-endorsed councilmen were excluded.[185]

Mayor Bagley was quoted on one occasion as saying, "As long as I am the Mayor of the City of Richmond the niggers won't take over this town." On another occasion he is reported to have stated "that niggers are not qualified to run the city."[186]

The court noted that the concerns expressed during the negotiations confirm the theory that the motivation behind the annexation was to prevent blacks from taking over the city politically:

> Richmond's focus in the negotiations was upon the number of new white voters it could obtain by annexation; it expressed no interest in economic or geographic considerations such as tax revenues, vacant land, utilities, or schools. The mayor required assurances from Chesterfield County officials that at least 44,000 additional white citizens would be obtained by the city before he would agree upon settlement of the annexation suit. 187

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184. Ibid.

185. Ibid., p. 1350.

186. Ibid., p. 1350, n. 29. As required by law the Commission has offered Mr. Bagley the opportunity to reply to these statements. His reply is included in appendix 7.

187. Ibid., p. 1350.

Finally, acceptance of the agreement was conditioned "on the annexation going into effect in sufficient time to make citizens in the annexed area eligible to vote in the City Council election of 1970."[188]

In 1970 Richmond held its city council election without having submitted the annexation to the Attorney General for review under section 5. The election was thus held illegally. The result of the election was that candidates supported by the white organization continued to hold six of the nine seats.[189]

After the Supreme Court of the United States said explicitly in the Canton, Mississippi, case,[190] that annexations are covered by section 5, Richmond, on March 8, 1971, submitted the annexation for section 5 review.[191] Two months later the Attorney General objected to it. Nevertheless, in 1972 Richmond attempted to hold elections using the illegal procedure of 1970. These elections were enjoined by the Supreme Court of the United States only a week before they were to be held.[192]

The litigation concerning the annexation has been complex and

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188. Ibid.

189. Ibid., p. 1351.

190. Perkins v. Matthews, 400 U.S. 379 (1971).

191. Objection letter, May 7, 1971.

192. Holt v. City of Richmond, 406 U.S. 903 (1972).

continues.[193] The Supreme Court of the United States has noted probable jurisdiction of the city's appeal from the ruling of the District of Columbia court that the annexation is discriminatory.[194] The United States District Court for the Eastern District of Virginia has before it the question of whether the proper remedy for the illegal annexation is deannexation (which is urged by some blacks) or the use of single-member districts without deannexation (which is urged by the black Crusade for Voters, the Department of Justice, and the city of Richmond).[195]

Petersburg

Unlike the Richmond annexation, the 1971 Petersburg annexation did not present evidence of a purpose to discriminate against black voters.[196] However, the clear discriminatory effect of the annexation led to a section 5 objection by the Attorney General and to a ruling against

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193. There have been three related suits. Holt v. City of Richmond, 334 F. Supp. 228 (E.D. Va. 1971), reversed, 459 F.2d 1093 (4th Cir.), cert. denied, 408 U.S. 931 (1972) (15th amendment suit); Holt v. City of Richmond, Civil No. 695-71-R (E.D. Va., filed Dec. 9, 1971), stay of election granted, 406 U.S. 903 (1972) (further district court action is pending Supreme Court action in City of Richmond v. United States) (section 5 suit); City of Richmond, Virginia v. United States, 376 F. Supp. 1344 (D.D.C. 1974), prob. jur. noted, No. 74-201, (U.S. 43 U.S.L.W. 3343) (U.S. Dec. 16, 1974) (section 5 suit).

194. City of Richmond, Virginia v. United States.

195. Holt v. City of Richmond, Civil No. 695-71-R.

196. City of Petersburg, Virginia v. United States, 354 F. Supp. 1021 (D.D.C. 1972), affirmed, 410 U.S. 962 (1973).

the city by the United States District Court for the District of Columbia.[197] There are three elements which led to this conclusion. First, before the annexation the city was 55 percent black. Afterward, it was only 46 percent black.[198] Second, city council elections in Petersburg had been held at large with a majority vote required for election. The city declined to adopt single-member districts after the annexation, which would have minimized the dilution of the black vote caused by the increased white population.[199] Third, the court found evidence of racial bloc voting in Petersburg. An "informal white political structure" does not slate black candidates, and voting, in elections where both whites and blacks are involved, is along racial lines.[200] Thus the black minority would have little power in city council elections held at large.[201] The result of the court's determination was the election of city council members from single-member districts in June 1973. Black candidates won a majority of the seats.[202]

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197. Objection letter, Feb. 22, 1972. City of Petersburg, Virginia v. United States.

198. 354 F. Supp. 1021, 1024.

199. Ibid., p. 1027.

200. Ibid., pp. 1025-26.

201. Hermanze E. Fauntleroy, Jr., vice mayor, Petersburg, Va., interview, July 9, 1974.

202. 1974 Roster, pp. 224-26.

NORTHEASTERN NORTH CAROLINA

In the counties and towns of northeastern North Carolina--the part of the State with the greatest proportion of blacks--the use of at-large elections has severely limited the ability of blacks to be elected to county commissions, school boards, and town councils. (See map no. 18.) While a few blacks have been elected to these positions, the number is far below the proportion of blacks in the total population. In a few instances, possibly discriminatory changes in the method of election have been made without having been cleared under section 5 of the Voting Rights Act.

In Bertie, Gates, Halifax, Hertford, and Northampton Counties, county commissioners are elected at large. In all of those counties except Northampton they must reside in particular districts.[203] In both Hertford and Northampton Counties one of five commissioners is black. In the other three counties no blacks serve on the five-member county commissions.[204]

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203. Bertie Co., Edith Williford, secretary, board of elections, interview, July 10, 1974; Gates Co., Hayes Carter, clerk of court, interview, July 12, 1974; Halifax Co., Marie Page, executive secretary, board of elections, interview, July 11, 1974; Hertford Co., C. L. Willoughby, chairman, board of elections, interview, July 10, 1974; Northampton Co., Barbara A. Wheeler, executive secretary, and R. L. Grant, chairman, board of elections, interview, July 12, 1974.

204. 1974 Roster, p. 165; Earl R. Lewis, commissioner, Hertford Co., interview, July 9, 1974; Wheeler and Grant Interview.



Map No. 18. The five counties in northeastern North Carolina discussed in the text are majority, or close to majority, nonwhite. The numbers indicate the nonwhite percentage.

On May 7, 1974, a primary election was held for one commissioner position in Halifax County.[205] Since the winner of the Democratic primary in that county has traditionally had little opposition in the general election, victory in the primary is tantamount to election.[206] The seat available was for district 1, a rural district which is 72.7 percent black, 18.7 percent white, and 8.6 percent Native American (Haliwa Tribe).[207] Registration for the district was 1,359 blacks, 1,144 whites, and 275 Native Americans.[208] There were four candidates for the position: the white incumbent, one black, and two Haliwas.[209] The black candidate, Horace Johnson, received a plurality in district 1 and in a runoff in that district would have had a good chance of victory. (See table 13.) With the election held countywide Johnson had no chance of even getting into a primary runoff.

Single-member districts might also have led to the election of a black to the county commission in Bertie County in 1974.[210] In the fifth district (the seat in contest) the Rev. Leroy Gilliam received

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205. 1974 Roster, p. 165, James Gilliam, Windsor (Bertie Co.), N.C., interview, July 10, 1974; Carter Interview; Horace Johnson, Sr., Hollister (Halifax Co.), N.C., July 11, 1974.

206. Roanoke Rapids (N.C.) Daily Herald, May 8, 1974, sec. 1, p. 1.

207. Ibid.

208. Page Interview.

209. Ibid.

210. James Gilliam Interview (James Gilliam is not related to Leroy Gilliam, the candidate.)

178 votes. His white opponent, the incumbent Bennie F. Bazemore received only 104. Countywide, however, Bazemore won easily, 1,059 to 779.[211]

Table 13. RESULTS OF MAY 7, 1974 PRIMARY ELECTION, HALIFAX COUNTY, NORTH CAROLINA

Candidate	Vote in District 1	Total Vote
Horace Johnson, Sr. (black)	488	1,913
Oliver L. Lynch (Haliwa)	79	280
Thomas W. Myrick (white)	433	4,212
W. R. Richardson (Haliwa)	178	778

Source: Roanoke Rapids (N.C.) Daily Herald, May 8, 1974, sec. 1, p. 8.

Halifax County's residence requirement was adopted in 1971.[212] It has been implemented without clearance under section 5 of the Voting Rights Act.[213] Other counties have made similar changes without obtaining section 5 clearance. Vance County, which is 42 percent nonwhite, adopted in 1966 the use of residence requirements and staggered

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211. Williford Interview.

212. Resolution of May 24, 1971. Jean Futrell, secretary to county auditor and former executive secretary, board of elections, Halifax Co., interview, July 11, 1974.

213. Section 5 Printout, as of May 8, 1974.

terms for commissioners; in 1968 it made the same change for school board members.[214] In Pasquotank County, which is 38 percent nonwhite, residence requirements were adopted in 1965.[215]

The county school boards in Bertie, Gates, Halifax, Hertford, and Northampton Counties also are elected at large.[216] Four of the counties each have only one black school member.[217] Northampton County has two blacks on its school board, which was expanded from the normal five to seven members in 1970.[218]

At-large election with residence requirements may have prevented the election of a Haliwa to the Halifax County school board in the May 7, 1974, nonpartisan election. The seven-member school board includes one black, who was first appointed to the school board in 1970 and became the county's first black elected official when he placed third in a six-person field in the 1974 election.[219] In fifth place in the election, but not too far behind the third and fourth place candidates, was Thomas O. Hedgpath, a Haliwa. In his own district 1, he was the

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214. Information provided by Deva W. Paschall, executive secretary, board of elections, Vance County, Aug. 15, 1974.

215. Information provided by Mildred W. Umphlet, executive secretary, board of elections, Pasquotank County, N.C., Aug. 12, 1974.

216. See note 203 above. 1974 Roster, pp. 172-74, and Gilliam, Carter, Page, and Lewis Interviews.

217. Ibid.

218. Wheeler and Grant Interview.

219. Futrell Interview; Dock M. Brown, vice president, Halifax County NAACP, Halifax, N.C., interview, July 11, 1974.

top vote getter by a wide margin. (See table 14.)

Table 14. MAY 7, 1974 SCHOOL BOARD ELECTION, HALIFAX COUNTY, NORTH CAROLINA (three elected)

Candidate	Vote in District 1	Total Vote
Charles S. Bartholomew (white)	348	3,363
Nina W. Beavers (white)	402	4,137
Thomas O. Hedgpath (Haliwa)	695	2,938
Jessie W. Richardson (Haliwa)	296	1,608
Homer G. (Fuzzy) Rose (white)	395	3,112
Walter L. Turner (black)	458	3,216

Source: Roanoke Rapids (N.C.) Daily Herald, May 8, 1974, sec. 1, p. 8; Page Interview.

At-large election is not the only barrier to minority entry into the Halifax County school board. The county has three school districts, one which corresponds approximately to the city of Roanoke Rapids, one for the city of Weldon and environs, and the county district for the remainder of the county. Residents of the Roanoke Rapids school district elect its board; the Weldon board is appointed. The county school board is chosen by the electors of the whole county.[220] Since 25 percent of the county's residents live in Roanoke Rapids, which is 90 percent white, whites dominate the county school board politically

220. Myron L. Fisher, Jr., superintendent, Weldon Public Schools, interview, July 12, 1974; Page Interview.

even though 63 percent of the county residents outside Roanoke Rapids and Weldon are black or Native American. At least 87 percent of the students of the county district are nonwhite.[221]

A similar arrangement in Robeson County, which is 31 percent Native American and 26 percent black, was challenged in Federal court by Native American voters. The district court denied them relief, and the case has been appealed to the United States Court of Appeals for the the Fourth Circuit.[222]

At-large elections also limit black success in city council elections in northeastern North Carolina. Seven communities in Halifax County have elected councils.[223] All are elected at large[224] and none has a black member.[225] Similarly, in Bertie County there are no black council members in the five towns with elected councils, all chosen at large.[226] Three of nine towns in Northampton County with

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221. U.S., Department of Health, Education and Welfare, Office for Civil Rights, Directory of Public Elementary and Secondary Schools in Selected Districts: Enrollment and Staff by Racial/Ethnic Group, Fall 1972, p. 996.

222. Locklear v. North Carolina State Board of Elections, 379 F. Supp. 2 (E.D.N.C. 1974), appeal docketed, No. 74-1856, 4th Cir., July 23, 1974.

223. Enfield, Halifax, Hobgood, Littleton, Roanoke Rapids, Scotland Neck, Weldon. Page Interview.

224. Ibid.

225. 1974 Roster, pp. 166-71.

226. Windsor, Colerain, Powellsville, Lewiston, and Aulander. Gilliam Interview.

city councils--elected at large--have among them four black council members.[227] In Hertford County, both Ahoskie (42 percent black) and Murfreesboro (39 percent black) have one black on their five-member, at-large elected city councils.[228]

ALABAMA

While 1974 was a year of breakthrough for blacks in gaining seats in the Alabama legislature, there has been no similar breakthrough for local commissions and councils. The legislative increase was primarily the result of the use of single-member districts. City council members and county commissioners are still typically elected at large.

Only four counties in Alabama--Bullock, Greene, Lowndes, and Macon--have any black commissioners.[229] Each of the four is at least two-thirds black. (See map no. 19.) The six other majority black counties elect their commissioners at large.[230] In these counties the

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227. Conway, Garysburg (two blacks on council), Gaston, Jackson, Lasker, Rich Square (one black on council), Seaboard (one black on council), Severin, Woodland. Wheeler and Grant Interview; 1974 Roster, pp. 166-71.

228. Viola Perry, secretary to city manager, Ahoskie, N.C., interview, July 11, 1974; Elizabeth Councill, clerk, Murfreesboro, N.C., interview, July 11, 1974; Jacob Ruffin, city councilman, Murfreesboro, N.C., interview, July 11, 1974.

229. 1974 Roster, p. 1 and Alexander, telephone interview, Dec. 6, 1974.

230. Dallas, Hale, Marengo, Perry, Sumter, and Wilcox. Information provided by officials of the six counties.



Map No. 19. Alabama racial composition.

higher proportion of blacks than whites who are below voting age and the lower black registration rates have helped to prevent blacks from electing any commissioners. (See appendix 1.)

In Dallas County, which is 52 percent black, the county commission consists of four commissioners and the probate judge--the typical arrangement in Alabama counties.[231] The commissioners are not only elected at large, but they must also reside in particular districts, which prevents single-shot voting from being effective. In addition, the way the residential districts are drawn underrepresents the main area of black concentration in the county.[232] The district containing most of Selma, which is 50 percent black, contains 27,000 people; one rural district contains only 4,000.[233] A challenge to the election system in a Federal district court was unsuccessful.[234]

No blacks have been elected to county office in 31 percent black Talladega County, where the county commission and school board are both elected at large.[235] Because of the greater number of white voters than black and the unwillingness of whites to vote for a black candidate, blacks do not expect political success in the county until

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231. Code of Ala., Tit. 12 § 5 (1958).

232. J. L. Chestnut, attorney, Selma, Ala., interview, Sept. 3, 1974.

233. Henry Sanders, attorney, Selma, Ala., interview, Sept. 4, 1974.

234. Reese v. Dallas County Commissioners, Civil No. 7503-73 (S.D. Ala. Oct. 3, 1973), appeal docketed, No. 73-3756 5th Cir., Nov. 20, 1973. As of Dec. 26, 1974, the appeal was still pending.

235. Huell Love, attorney, Talladega, Ala., interview, Sept. 7, 1974.

there are single-member districts. A black campaign worker told a Commission staff member that blacks are reluctant to run for at-large seats because there is so little expectation of victory.[236]

Blacks in Pickens County have attacked in Federal court the election scheme for county commission, county board of education, and county Democratic executive committee.[237] At-large elections with residence requirements have helped to prevent blacks from being elected, although the county is 42 percent black.[238] The judge has ruled that the districts should be equalized but has not passed on whether at-large election with residence requirements discriminates against blacks in Pickens County.[239]

There have been only six changes in districting or the method of election for county commissioners in Alabama which have been submitted to the Attorney General under section 5 of the Voting Rights Act.[240] Objections were made to the at-large election system submitted by Autauga County in 1972[241] and by Pike County in 1974.[242]

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236. Emmett L. Gray, Talladega, Ala., interview, Sept. 7, 1974.

237. Corder v. Kirksey, Civil No. CA 73M1086 (N.D. Ala., filed Nov. 15, 1973).

238. Ed Still, counsel for plaintiffs in Corder v. Kirksey, Tuscaloosa, Ala., telephone interview, Oct. 3, 1974.

239. Corder v. Kirksey, Order of Aug. 21, 1974.

240. Section 5 Printout, as of May 8, 1974.

241. Objection letter, March 20, 1972.

242. Objection letter, Aug. 12, 1974.

In 1969 Pike County changed from electing its four commissioners from single-member districts to electing them at-large while requiring them to live in particular districts. A majority vote was also required. Though passed in 1969, this new electoral system was not submitted to the Attorney General under section 5 until May 1974.[243] The Attorney General believed that blacks might have a better chance of success with at-large election than with single-member districts because of the lack of sufficient black voting strength in any one district. The Attorney General nevertheless objected to the change because of the use of residency and majority requirements. These requirements, together with the continued use of staggered terms, could dilute black voting strength.[244]

Although blacks in Birmingham, Alabama's largest city, have been more successful politically than blacks in other parts of the State, a suit has been filed challenging the city's at-large method of electing its city council.[245] While Birmingham is 42 percent black, only two of the nine council members, or 22 percent, are black.[246] The use of numbered posts was eliminated by the Justice Department in 1971,[247] but an anti-single-shot requirement[248] continues to reduce

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243. Section 5 Printout, as of May 8, 1974.

244. Objection letter, Aug. 12, 1974.

245. Coar v. Seibels, Civil No. 748519 S (N.D. Ala., filed May 29, 1974) (pending as of Dec. 2, 1974).

246. 1974 Roster, pp. 3-5.

247. Objection letter, July 9, 1971.

248. Mayor-Council Act of 1955, as amended, sec. 3.01.

the effectiveness of the black vote.[249] In the 1971 election 16,000 ballots were voided because fewer candidates were voted for than there were positions available on the city council. Some 97 percent of the voided ballots were from black areas, a Commission staff member was told.[250]

The large black population in Birmingham and the substantial number of blacks living in other communities in the county combine to make Jefferson County 32 percent black. The absence of blacks on the county commission can be explained by the electoral system in the county: only three commissioners, elected at large, and elected to designated positions. This electoral system is also before a Federal court.[251]

Bessemer and Fairfield are smaller cities in Jefferson County that both have substantial black populations. Bessemer is 52 percent black and Fairfield, 48 percent. At-large council elections with a majority requirement in both towns and residency requirements in Fairfield help to explain the current absence of blacks from the council in

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249. Dr. Richard Arrington, member, city council, Birmingham, Ala., interview, July 19, 1974.

250. Ibid.

251. McPhearson v. Green, Civil No. 74P519 S (N.D. Ala., filed May 29, 1974) (pending as of Dec. 2, 1974).

either city.[252] A suit has been filed against the Fairfield electoral system.[253] In 1968 blacks had been elected to 6 of 13 council positions in Fairfield. In the 1972 election all eight black candidates lost, even though 42 percent of the vote was cast for black candidates.[254] Adding to the dilution of black votes in recent years in both communities has been the fact that several white areas have been annexed without pre-clearance under section 5 of the Voting Rights Act.[255]

SOUTH CAROLINA

During 1973 and 1974 the Attorney General objected to changes in the method of election of the governing bodies of a number of South Carolina cities and counties.[256] (See map no. 20.) During the same period section 5 objections were also entered to annexations by two cities and to a city-county consolidation.

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252. Walter Jackson, director, Legal Evaluation Action Project, Birmingham, Ala., interview, July 17, 1974; A.L. Harrison, candidate (subsequently elected), Alabama House of Representatives, Birmingham, Ala., interview, July 16, 1974. Complaint, p. 3, Memorandum in Support of Motion for Summary Judgment, p. 4, Nevett v. Sides, Civil No. 73P529 (N.D. Ala., filed May 30, 1973) (pending as of Nov. 1, 1974).

253. Nevett v. Sides.

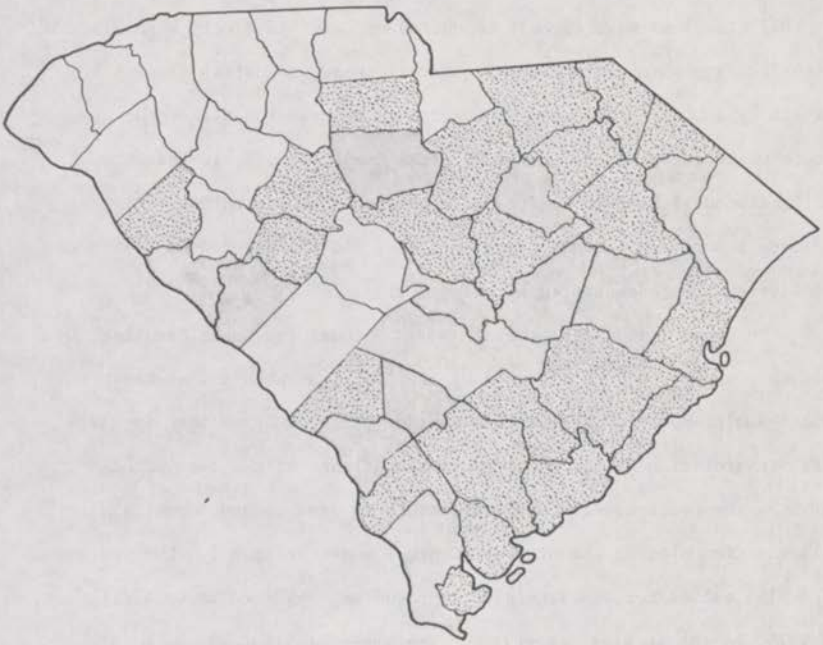
254. Complaint, p. 4, Memorandum, p. 2, Nevett v. Sides.

255. Jackson Interview.

256. Until a recent amendment to the State constitution there was no provision for county home rule in the State. Act No. 68, [1973] Stat. at large of S.C. 67, amending Art. VIII of the Constitution of 1895, authorized the passage of county home rule charters.

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SOUTH CAROLINA



Map No. 20. South Carolina racial composition.

Darlington imposed a majority vote requirement and a candidate residence requirement for city council elections in 1973.[257] The Attorney General's objection to the new requirements was based on the fact that elections were already conducted at large in a city with 51 percent black population and the requested change was passed after a near win by a black candidate. The Attorney General found that the statute would increase the number of votes needed to win, increase the likelihood of head-to-head races between blacks and whites with race made a more significant campaign issue, and thereby reduce the effectiveness of concentrated minority voting.[258]

In January 1974 the Federal district court for South Carolina found the Dorchester County method of electing its seven-member county council--multi-member district with residency and numbered post requirements--in violation of the equal protection clause of the 14th amendment.[259] The court ordered the legislature to draw up and submit a valid election plan to the Attorney General under section 5. The proposed plan called for at-large elections and was objected to on April 22, 1974, by the Attorney General.[260] Subsequent to the objection, a new single-member plan was drawn up and submitted to the court for

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257. Act 117, [1973] Stat. at large of S. C. 140.

258. Objection letter, Aug. 17, 1973.

259. DeLee v. Branton, Civil No. 73-902 (D. S. C. Jan. 2, 1974).

260. R913, adopted Feb. 11, 1974, as received by the U. S. Department of Justice for section 5 preclearance, Feb. 21, 1974. Objection letter, April 22, 1974.

approval, rather than to the Attorney General. In October of 1974 the court approved this plan without requiring the defendants to submit it to the Attorney General.[261]

On September 3, 1974, the Attorney General objected to a plan to stagger the 4-year terms of the six council members in Bishopville. The city currently has no black council members but is 49 percent black. The probable effect of the plan would have been to limit further the opportunity of blacks to elect a candidate, since they are a minority of the population and because the number of positions to be filled at any one time would drop from six to three. The Department found the change to staggered terms particularly offensive because the 1975 election would be the first in which blacks could take advantage of the opportunity to single-shot vote.[262]

On the same day the Attorney General objected to Bamberg County's use of residence requirements and staggered terms in the election its new governing body. The Department noted that the potential of blacks (42 percent of registered voters) to elect a representative of their choice that exists when only a plurality is required and single-shot voting is allowed is decreased when residency requirements narrow the field of candidates. The opportunity of a minority candidate is further reduced when staggered terms are superimposed on the residency requirement, since it further reduces the field of candidates in any given election.[263]

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261. DeLee v. Branton, Order of Oct. 7, 1974.

262. Objection letter, Sept. 3, 1974.

263. Objection letter, Sept. 3, 1974.

Later in September 1974 the Attorney General also objected to the use of at-large voting for the same body after he received a petition containing 600 signatures in opposition to the at-large system.[264] The petition questioned the Department of Justice presumption that the at-large system, even when a plurality only is required for election and single-shot voting is allowed, provides blacks a realistic opportunity to elect candidates in the county.[265]

The Attorney General also objected to the at-large election of county commissioners in Lancaster County. The county's system combined at-large election with the use of staggered terms, majority vote, residency, and numbered post requirements. The Attorney General noted that there is potential in Lancaster County for achieving a black majority district under an equitably drawn, single-member, seven-district plan.[266] Because the county had implemented this new system of election in 1972 in violation of the requirements of section 5 the Department brought suit in 1974 to overturn the 1972 elections and to assure that subsequent elections be conducted in compliance with the Voting Rights Act.[267]

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264. Objection letter, Sept. 20, 1974.

265. The objection letter stated that, since the petition was received late in the 60-day period allowed for a section 5 determination, the Department would hold open the possibility of its withdrawing the objection after further consideration of the situation and other issues raised by the black voters.

266. Objection letter, Oct. 1, 1974.

267. United States v. Lancaster County Election Board, Civil No. 74-1528 (D.S.C., filed Oct. 9, 1974) (consent decree, Oct. 11, 1974).

The 1974 Charleston city and county consolidation plan provided for the election of members of the new governing body through the use of multi-member districts, at-large elections, a majority vote requirement, residency requirements, and numbered posts. In September the Attorney General objected to these elements of the plan, though not to the consolidation itself, saying that, with the significant minority population of Charleston and a history of racial bloc voting, methods of election such as those proposed would have an impermissible diluting effect on black voting strength. Department of Justice analysis indicated that a fairly drawn plan of single-member districts would allow fair opportunity for the election of black candidates.[268] A single-member district plan was adopted immediately following the section 5 objection,[269] but the consolidation plan was turned down by the voters in a referendum held on November 5, 1974.[270]

Also in September 1974 the Attorney General objected to seven annexations made by the city of Charleston between 1964 and 1974 which were not submitted for section 5 review until July 1974. Eighteen other annexations adopted during the 10-year period and submitted at the same time were not objected to. The Department's analysis

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268. Objection letter, Sept. 24, 1974.

269. Armand Derfner, attorney, Charleston, S.C., interview, Nov. 18, 1974.

270. Herbert Fielding, former member, South Carolina house, Charleston, S.C., telephone interview, Nov. 21, 1974.

indicated that the objectionable annexations may have led to the defeat of candidates supported by the black community in 1971.[271]

Earlier in 1974 the Attorney General had objected to two annexations of predominantly white areas adjacent to McClellanville, a town with only 30 blacks in a population of 304. For racial reasons the annexation excluded a black community of 500 immediately adjacent to the town.[272] The Department later withdrew the objection after it received assurance that future annexations will be considered without regard to race or color.[273]

* * * *

While generalizations are difficult over the hundreds of counties and cities covered by the special provisions of the Voting Rights Act, a frequent occurrence is for a local governmental unit to alter its method of election to head off the possibility of minorities' gaining significant political strength at the local level. For example, Richmond, Virginia, brought in additional white voters through an annexation when it appeared that blacks had a good chance to take control of the city government. Numerous Mississippi counties adopted

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271. Objection letter, Sept. 20, 1974.

272. Objection letter, May 6, 1974.

273. J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, letter to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Dec. 23, 1974. The objection was withdrawn Oct. 21, 1974.

at-large elections when black voting strength grew rapidly after 1965. Small towns in Georgia continue to adopt numbered post and majority requirements in an apparent effort to control black voting strength.

What these changes have in common is that they were made by whites in political control. Minority political strength, despite progress under the Voting Rights Act, is not yet able to prevent structural changes that limit the effectiveness of that strength. For example, when the Richmond annexation was agreed to in 1969, three of the nine city council members were black. They were excluded from the negotiations that led to the annexation and had no way to prevent its taking place. The only safeguard of minority voting rights in this situation was section 5 of the Voting Rights Act, enforced by the Attorney General, and the judicial system. In other cities and counties where changes similar in their effect have been made, minorities have had even less political strength than had been gained in Richmond by 1969. For example, when Leflore County, Mississippi, adopted at-large election for its board of supervisors and when it later adopted (as required by court order) a single-member district plan that a Federal court found to be racially gerrymandered, there was not even token black representation on the county board of supervisors.

Unfortunately, the years since the passage of the Voting Rights Act do not seem to have led to a diminution of objectionable changes in methods of election at the local level. There were more section 5

objections to changes of this type in 1974 than in any previous year. Moreover, the 1980 census will open a new round of changes that can effect the fairness of representation in local governing bodies.

CONCLUSION

In the 10 years since passage of the Voting Rights Act, minority citizens in jurisdictions covered by the act have finally begun to participate actively in the American political process. The percentage of registered blacks in covered Southern States nearly doubled between 1964 and 1972, and has continued to rise in the three States for which more current data are available. Voter turnout has also increased in Southern States covered by the act. In addition, the number of blacks elected to office in those States has increased substantially, from fewer than 100 in 1964 to 963 in 1974. Much of this change is the result of the Voting Rights Act.

The act provides several interrelated mechanisms to protect the constitutional rights of minority citizens. The suspension of literacy tests and the use of Federal examiners enabled many minority persons to register. Where examiners have not been used, the potential of their use has stimulated registration of minorities. Similarly, the use of Federal observers has helped to ease the entry of minorities into the political process and to protect against discrimination at the polls. These procedures have been supported by the authority of the Attorney General to enforce the act and the 15th amendment through the judicial process.

The section 5 preclearance provision of the Voting Rights Act, bolstered by litigation, has enabled the Justice Department to block the imposition of new discriminatory laws and practices in jurisdictions covered by the Voting Rights Act. Although section 5 review was hardly used before 1971, it has become the centerpiece of the act. The long list of objections by the Attorney General under section 5 is testimony to its importance in the progress toward full and effective minority political participation.

In most jurisdictions covered by the act there has been real progress toward achievement of its purposes. In those jurisdictions, however, as well as in areas where there has been little or no progress, minority citizens encounter barriers to free exercise of their political rights. Exclusion from the political process left minorities at a decided disadvantage when the opportunity to participate was finally achieved. The years under the Voting Rights Act have been years of catching up, a process well under way but far from complete.

The data presented in chapters 2 and 3 and the experiences described in chapters 4 through 7 document the persistence of discrimination in the electoral process. And though minority citizens usually are no longer excluded from political participation, the widespread use of racial gerrymandering and manipulation of voting rules detailed in chapters 8 and 9 dilute the effect of their participation and minimize hardwon success at the polls.

The problems facing minority voters, detailed in the report, lead to the conclusion that there is still hostility and resistance to the free and effective political participation of blacks, Native Americans, Puerto Ricans, and Mexican Americans. Where the Voting Rights Act has opened the door to political participation, minorities have stepped across the threshold with both determination and wariness. They experience the electoral process as an obstacle course, still controlled by the people (and in many instances the same individuals) who have long sought to exclude them from effective political participation. They bear the burden of mastering the intricacies of the political process in the face of persistent hostility and the often openly-expressed fear of whites that minorities in political control will treat whites as minorities themselves have been treated.

For the minority citizen, the right to vote is still a precarious right. In conjunction with the persistence of discrimination, the persistence of vulnerability to economic and physical pressure shapes the minority citizen's response to the opportunity to participate. For many minority voters, entering a polling place is crossing into dangerous territory, where personal experience and the shared heritage of centuries tell them they do not belong.

The episodes reported here may seem like isolated instances, for the scattering of details obscures their full impact on minority voters and candidates. An individual in a particular jurisdiction, however, experiences the political process as a whole, and the accumulation of these problems may deter individuals from exercising their political rights.

Consider, for example, the experience of reservation Navajos in Apache County, Arizona. Although they participate in the political process more freely now than before passage of the Voting Rights Act, their progress has been slow and uneven. Those who could read and write English were first enfranchised in 1948. Apache County was only briefly covered by the act in 1965, but the later suspension of literacy tests enabled many Navajos to register. Following the 1970 general election, however, the Arizona legislature required a complete reregistration of voters, and many newly registered Navajos were removed from the rolls.

By the 1972 election Navajo registration had increased substantially, but Apache County did not provide additional polling places. Many voters had to wait long hours in freezing temperatures to vote. Those who obtained ballots often had difficulty reading them and using the voting machine. Since Arizona requires purging if a voter misses one general election, Navajos who were unable to wait to vote, or did not vote for some other reason, were subsequently purged. Though a

notice was sent to voters who were purged, some did not receive it in time to preserve their registration. Others who received the notice were unable to read it.

Despite these problems, one Navajo was elected to the three-member Apache County Board of Supervisors. The county refused to allow him to take office until the Arizona Supreme Court ordered him seated.

Although Navajos residing on the reservation constitute about three-quarters of Apache County's population, the three supervisors' districts are drawn in such a way that all the Navajos are placed in one grossly overpopulated district. The Navajos and the Department of Justice have filed suit against the districting plan. The county's defense in the suit is that Navajos residing on the reservation should not have the right to vote and, therefore, should not be counted for the purpose of creating supervisors' districts. Thus 10 years after the Voting Rights Act enabled most Navajos in Apache County to begin to participate in the political process, their own county government is trying to exclude them from it.

Blacks in Wilcox County, Alabama, have also encountered a variety of obstacles to political participation. Wilcox is a small rural county with a population of 16,000, 60 percent of which was black in 1970. According to previous Commission reports, no black was registered to vote in Wilcox County in 1959, 1961, or 1965. By November 1967, blacks

had achieved a slight majority of the county's registration through the work of Federal examiners appointed under the Voting Rights Act.

Registration is only the beginning of the political process, however. Barriers to political success abound in Wilcox County. At-large elections make it extremely difficult for blacks to win a seat on the county commission. Many blacks are reluctant to go to the white-owned stores that serve as polling places because they fear they will not receive credit at these stores if they vote. During the 1972 election one poll watcher for a black candidate was ordered to leave such a store shortly after the polls opened.

Several events occurred during the 1972 election in Wilcox County which may deter black political activity. The 100-vote lead of a black candidate for county commission was overtaken by absentee ballots. The election for constable was confused and its integrity undermined when the Democratic Party added a number of blacks, without their knowledge or consent, to its previously all-white slate of nominees. They opposed a black slate offered by the National Democratic Party of Alabama (NDPA). In addition, black supporters of the NDPA were not allowed to cast challenge ballots. Such experiences do not encourage political participation.

Minority citizens in other jurisdictions covered by the Voting Rights Act have also encountered difficulties in attempting to exercise the rights protected by the act. Progress toward full political participation is limited by the fact that some of the barriers that continue to deter minority political activity result from abuse of discretion by local officials whose behavior cannot be monitored completely. By fostering the opportunity for minorities to participate in the political process, however, the act lays the foundation for minority participation in the selection of local procedures and personnel. Participation at that level offers some hope of protection against abuse of discretion.

The Voting Rights Act has been an effective law, but the potential of its remedies has not been fully realized. The effectiveness of the act itself in the covered jurisdictions has been limited by the fact that section 5 does not reach discriminatory practices which existed before its coverage took effect. Litigation by the Department of Justice to eradicate such practices has been limited. Also, Federal examiners have not been used in many jurisdictions where minority registration lags substantially behind white registration.

The Voting Rights Act has opened the political process to minority citizens in the covered jurisdictions. Persistent discriminatory barriers, however, undermine both the success of the act and the political system itself. A democratic system depends on the full participation

of its citizens, and until the right of minority citizens to participate freely is realized the rights of all Americans are not yet secured.

FINDINGS

PROGRESS UNDER THE VOTING RIGHTS ACT

1. Minority political participation in jurisdictions covered by the Voting Rights Act has increased substantially since passage of the act:
   a. The suspension of literacy tests has facilitated the participation of many minority citizens including those whose facility in English is limited.
   b. Registration and voting by minorities has increased to the point that their influence is being felt through their ability to elect minority public officials and to determine the outcome of elections between white candidates.

2. Progress toward full enfranchisement of minorities in the jurisdictions covered by the Voting Rights Act is uneven.
   a. In many areas minority registration lags far behind that of whites and apparently minority turnout is usually lower than white turnout.
   b. Analysis of the types of offices to which minorities, particularly blacks, have been elected indicates that minorities have not yet gained a foothold on positions of real influence.

c. There is little evidence of progress in some covered jurisdictions. For example, some counties with substantial black populations have no black elected officials at any level of government.

3. The failure of most State governments in covered jurisdictions to maintain registration and turnout data by race hampers statistical evaluation of progress made by those jurisdictions in enabling minority citizens to register and vote. The failure of the Bureau of the Census to implement Title VIII of the Civil Rights Act of 1964 to obtain reliable estimates of registration by race compounds the problem of inadequate data.

ENFORCEMENT OF THE VOTING RIGHTS ACT

4. Enforcement of the Voting Rights Act has contributed substantially to the progress toward full minority political participation, but its potential has not been fully realized.

   a. Section 5 preclearance has helped to eliminate new practices which are discriminatory in purpose or effect; however, the effectiveness of section 5 depends on the willingness of the covered jurisdictions to submit changes in electoral laws, practices, and procedures as required by the act.

   b. Compliance with the submission requirement has been uneven, and the Department of Justice does not have an effective monitoring system to bring to its attention unsubmitted changes.

c. The use of Federal examiners has stimulated minority registration in the 60 counties to which they have been assigned, but examiners have rarely been used in recent years despite persistent disparities in minority and white registration rates in many counties of covered States.

d. The presence of Federal observers in five of the covered States has helped to promote fair elections. The effectiveness of the observer program, however, has been limited by the failure to ensure that a substantial number of minorities serve as observers and to adequately inform the public of the presence and purpose of observers.

e. Litigation by the Justice Department under the Voting Rights Act has helped to eliminate discriminatory practices in some of the covered jurisdictions. Private litigants, however, still bear much of the burden of enforcing the act and challenging discriminatory practices that antedate its coverage.

REGISTRATION

5. Few jurisdictions make any affirmative nonpartisan effort to register eligible persons. The burden of registration is borne by individuals or by private nonprofit organizations. Such organizations are hampered by provisions of the Tax Reform Act of 1969 which severely limit foundation financing of nonpartisan voter registration drives.

6. Registration, including the registration of minorities, is hampered in jurisdictions covered by the Voting Rights Act by the fact that registration hours and places are limited, inconvenient, and poorly publicized. The absence or ineffective use of deputy registrars, mobile registration, and weekend and evening hours further limits opportunities to register.

7. Dual registration as practiced in many jurisdictions covered by the act is particularly burdensome to minority voters, who often are not informed of the need to register twice.

8. Few minority persons serve as registrars and a disproportionately small number of registration staff members are minorities.

9. Uncooperative and sometimes hostile behavior on the part of registrars and the failure of registrars to maintain scheduled hours limit the number of minorities who can register.

10. In some jurisdictions, minority registration has been discriminatorily reduced by unequal application of purge requirements to minorities and whites and by inadequate notice to minorities of both the purging and the procedures for reinstatement.

11. Reregistrations have removed substantial numbers of registrants including disproportionate numbers of minorities from the registration rolls. This has had the effect of undermining the objectives of the Voting Rights Act.

VOTING

12. The frequent inability of election officials to locate the names of minority voters on voting lists and numerous failures of these officials to inform minorities of their right to cast challenge ballots curtail the participation of these voters in many jurisdictions covered by the Voting Rights Act.

13. The location of polling places and the inadequacy of voting facilities deter minority voting in many areas.

14. County officials in some States often fail to inform minority voters of polling place changes. Furthermore, notification is rarely made in any language other than English, despite the presence of a substantial non-English-speaking population.

15. Minority and bilingual persons are severely underrepresented among election officials and rarely serve in supervisory positions.

16. Despite the requirement of a bilingual electoral process in certain jurisdictions, materials and assistance, including translations of ballots and voting instructions into languages other than English, have been inadequate to ensure the voting rights of Native Americans and Spanish speaking persons in those jurisdictions.

17. Illiterate persons in many jurisdictions are denied their right to cast an effective ballot because of a failure to provide for acceptable and adequate assistance.

18. Abuses of absentee ballot procedures such as permitting ineligible whites to vote absentee and applying unequally requirements for voting absentee have deprived minorities of their voting rights in some of the jurisdictions covered by the Voting Rights Act. Absentee ballots cast in some of these instances have provided the margin of victory for white candidates running against minorities.

RUNNING FOR OFFICE

19. Excessive qualifying fees deter many persons from running for office and have a disproportionate impact on the poor and minorities.

20. Lack of cooperation from some local officials has prevented minorities from running for office and has impeded the candidacies of others.

21. Poll watchers for minority candidates are sometimes excluded from polling places and frequently encounter restrictions on their observing the casting and counting of votes.

22. Minority candidates in some areas have been prevented from campaigning on an equal basis in white communities.

23. Many blacks, excluded from the traditional party structure, have encountered discriminatory restrictions in their efforts to run as independents or third party candidates.

24. Minority political success in some instances has been hampered by abolishing offices, preventing winning candidates from taking office or exercising the full powers of office, and substituting appointment for election in filling certain offices.

PHYSICAL AND ECONOMIC SUBORDINATION

25. Although physical violence against minorities who attempt to register and vote is no longer common, violent episodes have occurred in recent years in Alabama, Louisiana, and Mississippi.

26. Acts or threats of economic retaliation continue to deter minorities from registering and voting. Moreover, many minorities are deterred from participating in the political process by fear of economic harm which results from their economically dependent status.

27. The history of physical violence and economic reprisal against minority communities has left widespread fear of retaliation for political participation, particularly among rural Southern blacks.

FAIR REPRESENTATION

28. The use of multi-member districts, instead of single-member districts, especially in conjunction with one or more of the following requirements: majority vote, numbered post, candidate residence, and full-slate voting, has discriminatorily limited the impact of minority voters in the selection of State legislators in the covered States.

29. Racial gerrymandering of State legislative and congressional district lines has limited the effectiveness of minority votes in elections for those offices in the covered jurisdictions.

30. The use of at-large elections, in conjunction with numbered posts, candidate residence, majority, and full-slate requirements, has resulted in discriminatory dilution of minority influence in the election of local officials in the covered jurisdictions.

31. Practices which appear to be neutral, such as annexation, consolidation, and incorporation, have diluted the voting strength of minorities in the selection of local officials in some of the covered jurisdictions.

RECOMMENDATIONS

Extension of the Voting Rights Act

1. Prior to August 6, 1975, Congress should extend the Voting Rights Act for an additional 10 years.

After August 6, 1975, the States and counties discussed in this report will be able to remove themselves from coverage under the Voting Rights Act. This means that the Justice Department will no longer be able to send Federal examiners and observers to these jurisdictions and that preclearance of changes with respect to voting will no longer be required. Also, if Congress does not take the action urged in the next recommendation, there is a possibility that some jurisdictions will resume using literacy tests.

Despite progress in all of the areas that were studied, it is clear to the Commission that the protection provided by the Voting Rights Act is still needed. Violations of the rights of minorities continue, and minorities remain disproportionately underrepresented in the voting process and in elective office.

The Voting Rights Act originally provided protection for a 5-year period. In 1970 Congress decided that an additional 5 years of coverage was required. The Commission believes that the act should now be extended

for 10 years. Experiences of the past 10 years clearly show that the barriers which the Voting Rights Act was designed to overcome are not easily eradicated. Earlier estimates of the time required for full achievement of rights guaranteed to minorities under the 15th amendment were unrealistic.

Other factors have helped to persuade the Commission that a 10-year extension is necessary. Section 5, the preclearance provision, is the cornerstone of the Voting Rights Act. Yet its full implementation did not begin until the end of 1971. Even now some jurisdictions either are not fully aware of or fail to comply with its requirements. Second, the most serious problem for minority voters now is practices which dilute the minority vote. The greatest use of section 5 has been in preventing such practices. Following the 1980 Decennial Census, all the States covered by the act will reapportion their legislatures and their congressional districts. County and municipal redistricting will be widespread. Based on the redistricting practices which followed the 1970 census, the Commission believes it essential that section 5 protection be available during the next major period of redistricting. The Commission believes that information available to Congress now amply justifies such action and that no purpose would be served by postponing for 5 years the decision to extend the Voting Rights Act to August 6, 1985.

2. Congress should extend the national suspension of literacy tests for an additional 10 years.

In 1970 Congress enacted a 5-year suspension of literacy tests and other tests and devices. This ban will expire in August 1975. Research by the Commission in areas with large numbers of blacks, Mexican Americans, Puerto Ricans, and Native Americans whose literacy in English is limited indicates that a return to literacy tests would serve no useful purpose and would have a disproportionately adverse impact upon these groups.

3. Congress should amend the Voting Rights Act to provide for civil penalties or damages against State and local officials who violate section 5 of the act by enforcing or implementing changes in their electoral laws and procedures without having first obtained preclearance from the Attorney General of the United States or the District Court for the District of Columbia.

The effectiveness of section 5 preclearance has been limited by the failure of covered jurisdictions to submit all changes in their electoral laws and procedures for review and by the absence of direct procedures to enforce compliance with the preclearance requirement.

An enforcement provision that would assess personal damages against officials who implement unsubmitted changes, without reimbursement from public funds, would foster timely submission of changes. Damages in such cases should be awarded to those who institute proceedings against such officials.

Enforcement of the Voting Rights Act

4. The Department of Justice should strengthen its enforcement of section 5 of the Voting Rights Act, the preclearance provision.

The Department of Justice should assume the responsibility for developing a system which ensures the discovery and systematic review of election law changes. The Department also should take legal action to prevent the implementation of uncleared changes and give greater publicity to the requirements of section 5 to increase the timely submission of changes for the Attorney General's review.

5. The Department of Justice should bring lawsuits to end discriminatory practices which are not prevented by section 5.

Many of the discriminatory practices which the Commission found were instituted prior to November 1964 and therefore are not subject to the requirement of preclearance. Much of the burden of litigation to remove these practices has fallen on private parties. Where appropriate the Department should initiate litigation.

6. The Department of Justice should direct the Civil Service Commission to send Federal examiners to counties where the minority registration rate is significantly lower than the white rate, registration for minorities is inordinately inconvenient, or purges are burdensome or discriminatory in purpose or effect.

There are numerous counties in which the minority registration rate is significantly lower than the white registration rate. The reasons for this disparity vary, but they are rooted in the history of discrimination in voting which is common to the areas studied by the Commission. Similar disparities may exist in areas for which reliable statistics on voter registration by race are not available. In some jurisdictions differences between minority and white registration rates may be slight, but the process of registration still places a discriminatory burden on minorities. In other places overly-strict purge requirements result in the removal of minorities from registration lists after the initial obstacles of registration have been overcome with difficulty. In all these situations a more vigorous program for using Federal examiners under the Voting Rights Act should be instituted in order to facilitate minority registration.

7. The Department of Justice, in situations where time permits, should give advance notice of the use of Federal observers. Federal observers must be identifiable as such to minority voters and include among their

number a higher proportion of minorities.

The Department's practice of not announcing the use of observers until election day and not having observers wear distinctive identification was based on a policy of keeping the Federal presence at elections as unobtrusive as possible. During the past several years the presence of observers has become more widely accepted. Both blacks and whites often consider observers valuable in ensuring a fair election. Greater publicity for the presence of observers at elections can only increase the fairness and appearance of fairness of the elections. One concern of many blacks in areas where observers have been sent is that the observers have been too identified with the white election officials. Increasing the proportion of minority observers would ease this problem.

8. The Department of Justice should take action to ensure that minority citizens whose usual language is not English receive adequate election materials and necessary assistance in their usual languages.

The Voting Rights Act and court cases ensure the right to vote of non-English-speaking minority citizens. For this right to be meaningful, publicity and election materials must be prepared and made available in the appropriate languages. The Commission found that all too often these requirements were not adequately met. Where necessary the Department should initiate litigation to ensure that the use of a language other than English is not a barrier to voting.

9. The Department of Justice should determine whether there are other jurisdictions which satisfy the criteria of section 4(b) of the Voting Rights Act for coverage under the act.

Coverage under section 4(b) is based on voter turnout rates and on the use of a literacy test or other tests or devices. Court decisions since 1965 have given a broader interpretation to what constitutes a test or device. It is therefore possible that there are States, or counties within States, that in 1964 or 1968 in fact applied a test or device although they had no statutory literacy test. For example, if a State conducted elections exclusively in English in those years, despite a sizeable non-English-speaking population, it may actually have applied a literacy test.

10. If the staff of the Voting Section of the Civil Rights Division of the Department of Justice is inadequate for the implementation of the preceding recommendations and for full enforcement of the Voting Rights Act, the President should request and Congress should appropriate additional funds for the Department of Justice and the Department should increase its allocation of resources to that section.

Additional Recommendations

The Commission's research indicates that some problems which minorities encounter with respect to participation in the political

process are not dealt with or are not dealt with sufficiently by the Voting Rights Act. The following recommendations are intended to remedy some of the conditions that permit discrimination against minorities or that have a discriminatory effect on minorities.

11. Congress should enact a program to enhance the economic independence of all citizens.

One of the basic conditions underlying the slow progress toward complete equality in the political process is the economic dependence of minorities on whites. As long as this lasts minorities will be hesitant or unable to register, vote, and run for office freely. An impersonally administered Federal program, such as a negative income tax, can provide a measure of economic independence to those who are now dependent on local welfare administrators, local farm owners, and other employers, landlords, and creditors.

The Commission found in its 1961 report on voting that economic dependence was a substantial barrier to participation in the political process and recommended the adoption of programs to reduce the dependence which was found. In its 1968 report, Political Participation, the Commission again found a link between economic dependence and the inability to participate fully in the political process and again recommended corrective action. The Commission's research for this report indicates that the problem is still present and that a remedy is still needed.

12. Congress should enact legislation enabling an illiterate voter to receive assistance from whomever the voter wishes.

In some States a person who needs assistance in voting because of limited literacy can be helped only by an election official. In other States there is a strict limitation on the number of voters whom one person can assist. In both cases the result is that a minority voter often must accept assistance from a white election official whom the voter does not trust. The way the person votes--or whether he or she votes--may be affected by this. In some instances election officials have voted against the wishes of the persons receiving assistance. This situation could be remedied if the voter had the right to choose the person who gives the assistance, e.g., a relative, another person who accompanies the voter, or an election official considered more sympathetic.

13. The Equal Employment Opportunity Commission should take action to end discrimination in the employment of registration and election workers, which is prohibited by Title VII of the Civil Rights Act of 1964.

An important method of ensuring that the registration and voting processes are fair to minorities is for minorities to have a significant role in those processes. The Commission has found that the employment of minorities in the registration office and at the polling place is rare. Rarer still is a minority person in a supervisory position. While in some

situations remedial action can be taken under voting rights legislation, the Commission believes that a more effective approach to this problem is through the enforcement mechanisms of Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment by State and local governments as well as by private employers. If additional resources are required to ensure full implementation of this recommendation, the President should request and Congress should appropriate the necessary funds.

14. Congress should provide for the awarding of attorneys' fees where appropriate in private litigation to enforce the Voting Rights Act or rights guaranteed by the 15th amendment.

Much of the burden of voting rights litigation has fallen on private parties. The litigation is expensive and the individuals and organizations who are parties to it often cannot bear the sustained financial strain. Some Federal courts award attorneys' fees in this type of litigation, but others do not. A provision for attorneys' fees similar to that in Titles II and VII of the Civil Rights Act of 1964 should be enacted.

15. Congress should enact legislation establishing a Federal program to assist State and local governments wishing to improve and modernize their registration programs.

In many of the areas that the Commission studied registration procedures are outmoded, and many of the problems that the Commission found

are the result of inadequate financing of the registration process. Federal financial assistance would allow States and local jurisdictions to experiment with improved methods of ensuring that every citizen who wants to is able to register. One program intended to accomplish this was passed by the Senate in 1973 (section 21 of S. 372, The Federal Election Campaign Act Amendments, 93rd Cong. 1st Sess.).

16. Congress should amend the Tax Reform Act of 1969 to end the restriction on foundation financing of nonpartisan voter registration drives.

The principal burden of increasing registration has always been borne by privately-funded nongovernmental organizations. The Tax Reform Act of 1969 taxes partisan political activity by foundations, but it also severely limits foundation financing of nonpartisan voter registration drives. Those portions of the act, 26 U.S.C. § 4945(d)(2) and (f), which limit funding of voter registration drives are not necessary to prevent abuse and have served only to reduce or deny assistance to registration programs.

In addition, Congress should consider establishing a Federal program to support voter registration in areas with persistently low registration.

17. The Bureau of the Census should conduct surveys in specified States and counties to determine the level of voter registration and voter turnout by race and ethnicity.

The Commission first noted in 1959 the lack of information by race on voter registration and turnout. In 1964 Congress passed legislation to help remedy this problem. Unfortunately, the surveys called for by Title VIII of the Civil Rights Act of 1964 have never been undertaken, and reliable data for many of the States and counties considered in this report are unavailable. This lack of data adds to the difficulty of assessing the progress which has been made under the Voting Rights Act and of determining which areas should be subject to more or less intensive enforcement of the act.

18. Congress should enact a program for the collection of information on voter registration, all primary and general elections, and requirements of running for office. Such information should be distributed at United States Post Offices.

In its research the Commission staff frequently heard of persons who wished to run for office but had difficulties finding out such basic information as the filing deadline, petition requirements, and the like. If there were available at each United States Post Office a directory giving the requirements for voter registration and candidacy and showing schedules of registration and elections, minority voters and potential minority candidates would always have a reliable source of information.

19. Immediate steps should be taken to conduct a study of voting rights in jurisdictions that are not covered by the Voting Rights Act.

This report has assessed the status of minority voting rights only in jurisdictions covered by the Voting Rights Act. There is reason to believe that minority citizens in other jurisdictions encounter discrimination in the electoral process. In addition to sources cited in the report, the Commission has had representations from the Spanish speaking community regarding problems of registration and voting as well as other impediments to the exercise of the franchise by Spanish speaking citizens.

The Commission, recognizing that such a study should be accorded the highest priority, voted at its meeting on November 11, 1974, to direct that the study be undertaken no later than January 1975. It is now under way. The Commission will pursue the study in light of its belief that the concerns of language minorities, including those of Spanish speaking background, should be addressed as promptly as possible. However, it may not be completed before congressional action on this matter is concluded.

Therefore, we further recommend that the Congress not await the Commission's forthcoming report before giving serious consideration to including an amendment to the extension of the Voting Rights Act to cover those language minorities as well as other minorities who, according to preliminary information, require the protection of this law.

STATEMENT OF COMMISSIONER FRANKIE M. FREEMAN

I believe that Congress should abolish literacy tests rather than continue their suspension for 10 years. There is ample evidence that the historical purpose of literacy tests and the effect of their administration was simply to exclude otherwise qualified citizens from participating in the political process. When Congress suspended the use of literacy tests in the Voting Rights Act Amendments of 1970 the Commission recommended their abolition and I see no reason to retreat from that position now.

I find the arguments supporting the use of literacy tests misguided. Literacy tests cannot guarantee intelligent and informed voting. Literacy tests guarantee only that a class of citizens, many of whom are victims of unconstitutional discrimination in education, may not participate in their own self-government. How is the Nation's interest in fostering facility in written English served by excluding those who lack it from the political process? It is not. Literacy tests merely work further hardships on citizens, many of them minority citizens, who usually lack access to other means of political influence.

While I personally believe that all Americans should be literate in English, it is obvious to me that inability to read and write English does not necessarily prevent a citizen from casting an informed and intelligent ballot. Every citizen has ample opportunity

to receive as much or as little information on public issues as he or she wishes. The illiterate, like the blind person, may be well informed concerning public affairs through the broadcast media, public meetings, and conversation with family, friends, and coworkers. The non-English-speaking citizen may also have access to print or broadcast media in his or her usual language. Lack of facility in written English does not absolve a person of the responsibilities of citizenship. There is no reason why it should deprive a person of the rights of citizenship.

I believe that Congress has the power under the 14th and 15th amendments to abolish literacy tests. The potential of disfranchisement by literacy tests is a national problem that requires a national solution. The right to vote is too fundamental to be granted or withheld at the whim of States. Why should a citizen qualified to vote in one State be denied that right in another? Americans are a mobile people and the right to move freely from State to State is protected by the Constitution. That a citizen who has been unconstitutionally deprived of equal educational opportunity by one State may then be deprived of the right to vote by another State is contrary to the spirit of a free society. I believe that the right to vote clearly outweighs any State interest in the use of literacy tests.

In the years since literacy tests were suspended, many citizens, particularly members of minority groups, have been able to vote for the first time. I see no reason to jeopardize their participation in the political process by permitting a return to the use of literacy tests. Nor do I see any reason to make their right to vote conditional by merely extending the temporary suspension of literacy tests. As we approach the Nation's bicentennial in a chastened spirit, at a time when many citizens are "turned off" by politics, we can ill afford to exclude citizens who wish to participate in the political process. On the contrary, Congress should exercise its power to encourage the full and free political participation of all citizens, and Congress should begin by abolishing literacy tests.

STATEMENT OF VICE CHAIRMAN STEPHEN HORN

I disagree with Recommendation 2 that "Congress should extend the national suspension of literacy tests for an additional 10 years." As legislative assistant to Senator Thomas H. Kuchel (R-Calif.), I was a participant in the drafting of the original Voting Rights Act of 1965. Consequently, I am well aware of the solid and sordid record which has been laid down over the years by this Commission and various committees of the Congress as to the discriminatory misuse of literacy tests. In 1970, Congress suspended such tests nationally for a period of 5 years.

I do not favor illiterate election officials administering literacy tests which require interpretations of complex sections of State constitutions that neither they nor the Chief Justice of the United States could readily make. Neither do I favor an encouragement of citizen illiteracy in a nation where the ability to read and to write with some minimum level of competence is essential to the securing of employment in a largely technological society.

I would continue the ban for another 5 years until Congress could make a judgment as to the removal of the vestiges of past discriminatory behavior.

As an educator and a member of the Commission, I have long noted the interrelationship between the trilogy of education, employment, and housing. Without a minimum level of education, there will

be little opportunity for adequate employment in a technological society, and without a job, there is little hope that suitable shelter can be provided for oneself or one's family.

In brief, given the complex issues which confront this democratic Republic, I do not believe that the more illiterates who vote, the better. Neither do I believe that only those with a high school or college education should vote. I do believe, however, that there is a certain minimum level of literacy which a polity that prides itself on effective citizenship has a right to expect. Perhaps the ability to read the average daily newspaper would be a start. Such a standard might be the equivalent of a sixth or eighth grade education, although I am also well aware that some of our youth, especially those who are poor, now are "graduated" from overcrowded high schools even though they can barely read or write.

I believe that the Congress should enact and the President should sign into law a National Adult Literacy Act to assure that adult illiteracy can be wiped out in this decade. Such a program should recognize the particular needs of the Asian American, Mexican American, Native American, Puerto Rican, and Spanish speaking communities throughout the country. Instead of the public schoolrooms of American becoming empty and silent at three o'clock in the afternoon, the schools together with the larger firms and unions should be providing opportunities for adults who have not had the benefit to acquire a minimum competency in English. Our nation and our citizens would be much the better for this commitment.

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With reference to Recommendation 12 that "Congress should enact legislation enabling an illiterate voter to receive assistance from whomever the voter wishes," I am concerned by the possible misuse of such a provision by the corrupt political machines which still dominate a few of the urban and rural areas of the Nation. Without careful drafting such a provision would offer a sure and additional way for such machines to check effectively on the casting of votes they have already bought and paid for.

STATEMENT OF COMMISSIONER ROBERT S. RANKIN

I approve of the extension of the Voting Rights Act for 10 years. It does not interfere with the freedom to elect but, in effect, serves as a guarantee of the right to vote to many United States citizens. However, by the end of this 10-year period, I hope that future extension of this act will become unnecessary.

With the great majority of the findings and recommendations made by this report I am in agreement. A few I accept without great enthusiasm. I would like to make the following comments:

1. I approve the extension of this act, not because some irregularities still exist in the South and elsewhere--to some extent they exist nationwide--but for the improvements that have resulted from this act. This point, to my mind, should have received greater emphasis in the report. As an illustration of this great improvement, I would draw attention to the rapidly decreasing number of complaints that are filed with the Commission that concern the alleged deprivation of voting rights. Ten years ago these complaints were numerous. Today the complaints concern employment, housing, and other matters while claims of the deprivation of voting rights are the least numerous of all.

2. I attribute the improvement of voting conditions in the South not only to the Voting Rights Act but to the fact that many citizens in that area recognize on their own volition that the

right to vote belongs to all citizens. I trust that the growth of this feeling will make the extension of the Voting Rights Act unnecessary beyond the 10-year extension.

Now as to some of the subjects considered in this report. Filing fees are not necessarily bad in themselves but become so when they deter the poor of whatever race from running for public office. This observation applies to filing fees in all sections of the United States. I would welcome a broad study of the use of filing fees. Should this study show that they act as a serious detriment in keeping the poor and minority persons from running for office, I would regulate their use, not only in the South but in other sections of the United States as well.

I agree to the abolition of the literacy test for the 10-year period because of the unfair administration of that test for the past 100 years. My solution to this broad problem, however, is not to accept illiteracy but to so improve our educational systems that illiteracy in the United States will disappear. Thomas Jefferson spoke of his awareness of the great value of public opinion, but he wanted it to be an informed public opinion.

I wish there were more interviews with registrars and other election officials that would show their position and attitude toward certain events described in this report. There are frequently two sides to a case. Also, even though the description given by one

party to an incident may be accurate, the opinion of the person criticized might be of assistance to the reader in making up his mind as to the true nature and extent of the alleged discrimination.

APPENDIX 1. VOTING AGE POPULATION AND REGISTERED VOTERS BY RACE AND BY COUNTY FOR LOUISIANA, NORTH CAROLINA, AND SOUTH CAROLINA

Voting age population (VAP) is the number of persons 18 years old or older according to the 1970 census. Registration data was supplied by the respective State Election Boards in the three States which gather such data. The first counties listed in North Carolina are 39 counties covered by the special provisions of the Voting Rights Act. The 61 counties in the second list are not covered. In a number of cases, voter registration appears to exceed 100% of the voting age population. Two possible explanations for this phenomenon are infrequent or inadequate purges of voters who have moved or died, and a substantial increase in the voting age population since 1970 due to in-migration.

Table 1-A. LOUISIANA (as of Oct. 5, 1974)

Parish	White VAP	Black VAP	White Registered	Black Registered	Percent White Registered	Percent Black Registered	Percentage Point Difference in White Registration Rate Over Black
Acadia	25,706	5,548	24,089	4,837	93.7%	87.2%	6.5
Allen	9,722	2,688	8,838	2,013	90.9	74.9	16.0
Ascension*	16,011	5,188	14,841	4,463	92.7	86.0	6.7
Assumption	7,336	3,728	6,837	3,095	93.2	83.0	10.2
Avoyelles	17,717	5,173	16,476	3,980	93.0	76.9	16.1
Beauregard	11,847	2,390	11,476	1,519	96.9	63.6	33.3
Bienville	5,999	4,324	5,419	3,301	90.3	76.3	14.0
Bossier	30,869	7,092	22,115	3,948	71.6	55.7	15.9
Caddo	98,539	47,861	73,126	23,636	74.2	49.4	24.8
Calcasieu	70,763	17,161	57,802	12,148	81.7	70.8	10.9
Caldwell	4,762	1,197	4,775	899	100.3	75.1	25.2
Cameron*	4,558	316	4,388	271	96.3	85.8	10.5

LOUISIANA (continued)

Parish	White VAP	Black VAP	White Registered	Black Registered	Percent White Registered	Percent Black Registered	Percentage Point Difference in White Registration Rate Over Black
Catahoula	5,207	1,794	5,318	1,414	102.1	78.8	23.3
Claiborne	6,171	4,949	5,659	3,198	91.7	64.6	27.1
Concordia	8,378	4,562	8,300	3,756	99.1	82.3	16.8
DeSoto	7,341	7,017	6,879	4,943	93.7	70.4	23.3
East Baton Rouge**	131,065	48,107	105,432	30,859	80.4	64.1	16.3
East Carroll	3,230	3,814	3,294	3,238	102.0	84.9	17.1
East Feliciana	5,959	5,509	4,335	3,756	72.7	68.2	4.5
Evangeline	15,069	4,062	16,017	4,420	106.3	108.8	-2.5
Franklin	10,100	4,132	9,608	2,278	95.1	55.1	40.0
Grant	6,995	1,688	7,300	1,066	104.4	63.2	41.2
Iberia	24,398	8,592	21,800	6,543	89.4	76.2	13.2
Iberville	10,007	7,743	9,556	6,859	95.5	88.6	6.9
Jackson	7,603	2,928	6,671	2,291	87.7	78.2	9.5
Jefferson	180,945	21,824	145,281	14,988	80.3	68.7	11.6
Jefferson Davis	14,309	3,126	12,634	2,417	88.3	77.3	11.0
Lafayette	53,378	12,773	47,164	9,803	88.4	76.7	11.7
Lafourche	36,118	3,837	33,748	3,253	93.4	84.8	8.6
LaSalle	7,897	792	8,648	689	109.5	87.0	22.5
Lincoln	15,056	8,991	11,417	3,776	75.8	42.0	33.8
Livingston	19,619	2,068	20,876	2,032	106.4	98.3	8.1
Madison	3,811	4,781	4,258	3,953	111.7	82.7	29.0
Morehouse	12,327	6,959	9,683	4,006	78.6	57.6	21.0
Natchitoches	15,763	7,210	11,856	5,192	75.2	72.0	3.2

LOUISIANA (continued)

Parish	White VAP	Black VAP	White Registered	Black Registered	Percent White Registered	Percent Black Registered	Percentage Point Difference in White Registration Rate Over Black
Orleans	236,597	152,650	137,296	83,545	58.0	54.7	3.3
Ouachita	55,320	17,110	39,882	9,365	72.1	54.7	17.4
Plaquemines	11,290	2,907	11,216	1,828	99.3	62.9	36.4
Pointe Coupee	6,901	5,735	6,900	5,028	100.0	87.7	12.3
Rapides*	54,693	18,758	44,268	9,558	80.9	51.0	29.9
Red River	3,622	2,111	4,041	1,757	111.6	83.2	28.4
Richland	8,631	4,472	7,370	2,311	85.4	51.7	33.7
Sabine	9,784	2,056	9,867	1,885	100.8	91.7	9.1
St. Bernard	29,169	1,367	29,265	983	100.3	71.9	28.4
St. Charles	12,451	3,913	11,525	3,452	92.6	88.2	4.4
St. Helena*	2,805	2,709	3,429	2,831	122.2	104.5	17.7
St. James	6,019	4,796	5,851	4,185	97.2	87.3	9.9
St. John the Baptist	7,467	5,688	8,124	5,710	108.8	100.4	8.4
St. Landry	29,218	17,095	28,259	15,477	96.7	90.5	6.2
St. Martin	12,586	5,708	12,748	5,517	101.3	96.7	4.6
St. Mary	25,450	8,698	22,002	6,649	86.5	76.4	10.1
St. Tammany	31,164	6,209	31,557	4,346	101.3	70.0	31.3
Tangipahoa	29,681	10,610	25,725	7,428	86.7	70.0	16.7
Tensas	2,565	3,035	2,877	2,594	112.2	85.5	26.7
Terrebonne	35,434	5,927	27,486	3,416	77.6	57.6	20.0
Union	8,556	3,377	7,926	2,546	92.6	75.4	17.2
Vermilion	23,297	3,093	22,753	3,161	97.7	102.2	-4.5

LOUISIANA (continued)

Parish	White VAP	Black VAP	White Registered	Black Registered	Percent White Registered	Percent Black Registered	Percentage Point Difference in White Registration Rate Over Black
Vernon	36,572	4,393	13,392	1,116	36.6	25.4	11.2
Washington	18,767	7,171	18,539	5,067	98.8	70.7	28.1
Webster	18,775	7,364	15,891	5,097	84.6	69.2	15.4
West Baton Rouge	5,682	3,856	5,429	3,026	95.5	78.5	17.0
West Carroll	6,872	1,261	6,227	762	90.6	60.4	30.2
West Feliciana	3,004	5,624	1,791	2,136	59.6	38.0	21.6
Winn	7,785	2,808	7,475	2,050	96.0	73.0	23.0
TOTAL	1,644,732	600,425	1,335,027	391,666	81.2	65.2	16.0

* As of July 17, 1974

** As of Feb., 1974

Table 1-B. NORTH CAROLINA (as of Oct. 30, 1974)

Covered Jurisdictions

County	White VAP	Black VAP	White Registered	Black Registered	Percent White Registered	Percent Black Registered	Percentage Point Difference in White Registration Rate Over Black
Anson	8,897	5,914	6,554	2,490	73.7	42.1	31.6
Beaufort	16,511	6,704	12,695	2,960	76.9	44.2	32.7
Bertie	6,381	6,117	5,873	4,764	92.0	77.9	14.1
Bladen	10,774	5,528	8,271	3,420	76.8	61.9	14.9
Camden	2,331	1,066	1,704	522	73.1	49.0	24.1
Caswell	6,727	5,134	4,736	2,911	70.4	56.7	13.7
Chowan	4,297	2,566	3,601	1,415	83.8	55.1	28.7
Cleveland	38,820	7,859	23,451	2,073	60.4	26.4	34.0
Craven	30,947	8,953	15,796	3,827	51.0	42.7	8.3
Cumberland	103,405	30,073	37,311	10,133	36.1	33.7	2.4
Edgecombe	18,412	13,039	12,581	6,824	68.3	52.3	16.0
Franklin	11,275	6,222	9,318	3,788	82.6	60.9	21.7
Gaston	85,746	10,348	52,500	4,885	61.2	47.2	14.0
Gates	2,837	2,510	2,447	2,303	86.3	91.8	-5.5
Granville	12,681	8,252	9,375	4,769	73.9	57.8	16.1
Greene	5,434	3,383	4,405	1,807	81.1	53.4	27.7
Guilford	151,545	38,612	104,498	19,280	69.0	49.9	19.1
Halifax	18,965	13,715	16,206	7,446	85.5	54.3	31.2
Harnett	25,987	6,508	17,558	2,973	67.6	45.7	21.9
Hertford	7,309	7,069	5,356	4,697	73.3	66.4	6.9

NORTH CAROLINA (continued)

County	White VAP	Black VAP	White Registered	Black Registered	Percent White Registered	Percent Black Registered	Percentage Point Difference in White Registration Rate Over Black
Hoke	4,787	3,656	3,023	1,856	63.2	50.8	12.4
Lee	15,550	3,930	13,356	2,405	85.9	61.2	24.7
Lenoir	23,257	11,265	15,889	6,040	68.3	53.6	14.7
Martin	9,218	6,038	7,960	4,172	86.4	69.1	17.3
Nash	26,195	11,285	18,788	5,764	71.7	51.1	20.6
Northampton	7,326	7,545	5,949	5,911	81.2	78.3	2.9
Onslow	59,373	9,473	18,352	2,734	30.9	28.9	2.0
Pasquotank	11,367	6,052	7,682	2,906	67.6	48.0	19.6
Pennuimans	3,443	1,979	2,189	955	63.6	48.3	15.3
Person	11,798	4,574	10,859	3,929	92.0	85.9	6.1
Pitt	34,859	14,152	22,102	5,671	63.4	40.1	23.3
Robeson	24,173	11,539	18,915	10,178	78.2	88.2	-10.0
Rockingham	39,218	8,565	25,363	4,440	64.7	51.8	12.9
Scotland	11,082	4,959	7,468	2,779	67.4	56.0	11.4
Union	29,498	5,491	19,738	2,495	66.9	45.4	21.5
Vance	12,952	7,796	9,101	4,450	70.3	57.1	13.2
Washington	5,393	3,053	3,648	2,004	67.6	65.6	2.0
Wayne	37,041	16,192	20,805	5,838	56.2	36.1	20.1
Wilson	25,016	11,510	17,527	5,926	70.1	51.5	18.6
TOTAL-COVERED JURISDICTIONS	960,827	338,626	602,950	173,740	62.8	51.3	11.5

NORTH CAROLINA (continued)

Uncovered Jurisdictions

County	White VAP	Black VAP	White Registered	Black Registered	Percent White Registered	Percent Black Registered	Percentage Point Difference in White Registration Rate Over Black
Alamance	53,792	10,151	35,587	4,177	66.2	41.1	25.1
Alexander	11,765	840	11,528	690	98.0	82.1	15.9
Alleghany	5,514	140	5,101	75	92.5	53.6	38.9
Ashe	12,966	120	12,465	78	96.1	65.0	31.1
Avery	8,489	65	6,205	26	73.1	40.0	33.1
Brunswick	11,152	3,834	10,508	3,272	94.2	85.3	8.9
Buncombe	91,020	8,386	58,898	4,287	64.7	51.1	13.6
Burke	37,174	2,679	27,299	1,496	73.4	55.8	17.6
Cabarrus	42,843	6,930	26,834	3,052	62.6	44.0	18.6
Caldwell	33,866	2,032	24,628	1,373	72.7	67.6	5.1
Carteret	18,867	1,987	15,052	1,024	79.8	51.5	28.3
Catawba	55,053	4,450	43,671	3,225	79.3	72.5	6.8
Chatham	14,231	5,229	11,418	3,149	80.2	60.2	20.0
Cherokee	10,723	213	10,239	170	95.5	79.8	15.7
Clay	3,505	32	3,935	22	112.3	68.8	43.5
Columbus	21,120	7,567	16,023	4,663	75.9	61.6	14.3
Currituck	3,523	1,045	3,401	622	96.5	59.5	37.0
Dare	4,617	308	4,604	174	99.7	56.5	43.2
Davidson	56,915	5,371	46,486	4,301	81.7	80.1	1.6
Davie	11,208	1,318	10,332	875	92.2	66.4	25.8

NORTH CAROLINA (continued)

County	White VAP	Black VAP	White Registered	Black Registered	Percent White Registered	Percent Black Registered	Percentage Point Difference in White Registration Rate Over Black
Duplin	16,778	7,294	15,093	3,864	90.0	53.0	37.0
Durham	63,164	27,621	43,977	13,715	69.6	50.0	19.6
Forsyth	112,264	29,131	90,153	22,559	80.3	77.4	2.9
Graham	4,071	-	4,277	-	105.1	-	-
Haywood	27,847	499	19,426	284	69.8	56.9	12.9
Henderson	28,051	1,213	21,714	651	77.4	53.7	23.7
Hyde	2,281	1,234	1,992	825	87.3	66.9	20.4
Iredell	40,421	6,924	30,010	2,912	74.2	42.1	32.1
Jackson	14,232	298	11,039	191	77.6	64.1	13.5
Johnston	33,163	7,234	26,776	3,669	80.7	50.7	30.0
Jones	3,630	2,282	3,017	1,799	83.1	78.8	4.3
Lincoln	19,554	1,890	18,864	1,647	96.5	87.1	9.4
Macon	10,785	228	9,657	57	89.5	25.0	64.5
Madison	11,315	71	9,518	48	84.1	67.6	16.5
McDowell	19,172	942	13,618	622	71.0	66.0	5.0
Mecklenburg	178,757	48,424	138,870	26,568	77.7	54.9	22.8
Mitchell	9,193	18	8,708	11	94.7	61.1	33.6
Montgomery	9,888	2,610	8,550	1,532	86.5	58.7	27.8
Moore	19,647	5,432	15,872	2,554	80.8	47.0	33.8
New Hanover	42,992	11,160	31,230	5,852	72.6	52.4	20.2
Orange	35,586	6,082	27,315	4,302	76.8	70.7	6.1
Pamlico	4,326	1,738	3,221	1,053	74.5	60.6	13.9
Pender	6,990	4,442	5,737	2,271	82.1	51.1	31.0

NORTH CAROLINA (continued)

County	White VAP	Black VAP	White Registered	Black Registered	Percent White Registered	Percent Black Registered	Percentage Point Difference in White Registration Rate Over Black
Polk	7,271	843	6,393	573	87.9	68.0	19.9
Randolph	47,181	3,237	36,407	1,685	77.2	52.1	25.1
Richmond	18,897	6,282	13,580	4,738	71.9	75.4	-3.5
Rowan	52,603	8,979	37,143	4,155	70.6	46.3	24.3
Rutherford	28,820	2,864	19,967	1,353	69.3	47.2	22.1
Sampson	19,579	8,646	16,509	4,830	84.3	55.9	28.4
Stanly	26,402	2,692	20,532	1,557	77.8	57.8	20.0
Stokes	14,421	1,261	15,880	1,281	110.1	101.6	8.5
Surry	32,947	1,506	24,252	1,040	73.6	69.1	4.5
Swain	4,551	127	4,873	52	107.1	40.9	66.2
Transylvania	12,270	598	11,015	427	89.8	71.4	18.4
Tyrrell	1,551	879	1,296	554	83.6	63.0	20.6
Wake	121,160	30,716	96,420	15,857	79.6	51.6	28.0
Warren	4,394	5,209	3,572	3,311	81.3	63.6	17.7
Watauga	17,089	173	11,992	69	70.2	39.9	30.3
Wilkes	30,896	1,560	25,205	1,160	81.6	74.4	7.2
Yadkin	16,049	737	12,449	375	77.6	50.9	26.7
Yancy	8,454	112	8,165	66	96.6	58.9	37.7
TOTAL-UNCOVERED JURISDICTIONS	1,686,985	305,885	1,308,498	176,820	77.6	57.8	19.8
TOTAL STATE	2,647,812	644,511	1,911,448	350,560	72.2	54.4	17.8

Table 1-C. SOUTH CAROLINA (as of Oct. 5, 1974)

County	White VAP	Black VAP	White Registered	Black Registered	Percent White Registered	Percent Black Registered	Percentage Point Difference in White Registration Rate Over Black
Abbeville	10,194	3,753	6,474	1,826	63.5	48.7	14.8
Aiken	44,176	11,958	30,449	6,487	68.9	54.2	14.7
Allendale	2,653	3,330	2,371	3,087	89.4	92.7	-3.3
Anderson	58,797	10,890	30,805	4,100	52.4	37.6	14.8
Bamberg	4,854	4,896	3,829	2,971	78.9	60.7	18.2
Barnwell	6,561	3,849	6,203	3,357	94.5	87.2	7.3
Beaufort	23,062	9,117	9,221	4,680	40.0	51.3	-11.3
Berkeley	21,880	8,507	14,173	6,547	64.8	77.0	-12.2
Calhoun	3,015	3,362	2,313	2,081	76.7	61.9	14.8
Charleston	113,708	41,640	62,890	29,975	55.3	72.0	-16.7
Cherokee	19,826	3,838	14,139	2,548	71.3	66.4	4.9
Chester	12,611	6,199	7,797	3,130	61.8	50.5	11.3
Chesterfield	14,743	5,873	11,272	4,192	76.5	71.4	5.1
Clarendon	6,440	7,784	5,400	5,197	83.9	66.8	17.1
Colleton	9,854	6,798	7,648	4,587	77.6	67.5	10.1
Darlington	21,865	10,671	16,204	7,163	74.1	67.1	7.0
Dillon	10,494	5,776	6,426	2,969	61.2	51.4	9.8
Dorchester	12,610	6,174	12,641	5,610	100.2	90.9	9.3
Edgefield	5,195	4,167	3,773	2,539	72.6	60.9	11.7
Fairfield	5,584	6,242	3,882	4,162	69.5	66.7	2.8
Florence	37,034	17,632	25,292	10,819	68.3	61.4	6.9
Georgetown	11,098	8,003	8,455	6,717	76.2	83.9	-7.7
Greenville	134,143	22,806	72,773	10,819	54.3	47.4	6.9
Greenwood	24,355	8,015	14,943	3,621	61.4	45.2	16.2
Hampton	5,440	4,204	4,138	3,572	76.1	85.0	-8.9

SOUTH CAROLINA (continued)

County	White VAP	Black VAP	White Registered	Black Registered	Percent White Registered	Percent Black Registered	Percentage Point Difference in White Registration Rate Over Black
Horry	34,530	8,726	23,048	5,733	66.7	65.7	1.0
Jasper	3,270	3,667	2,548	2,684	77.9	73.2	4.7
Kershaw	15,260	6,048	11,855	3,251	77.7	53.8	23.9
Lancaster	21,297	5,784	14,091	2,336	66.2	40.4	25.8
Laurens	24,447	7,992	11,590	3,054	47.4	38.2	9.2
Lee	4,922	5,278	4,369	4,262	88.8	80.8	8.0
Lexington	49,784	6,018	40,251	3,458	80.9	57.5	23.4
McCormick	2,099	2,501	1,846	1,492	87.9	59.7	28.2
Marion	9,954	8,348	6,156	4,856	61.8	58.2	3.6
Marlboro	9,850	6,229	6,473	2,990	65.7	48.0	17.7
Newberry	14,220	5,524	10,383	2,007	73.0	36.3	36.7
Oconee	24,137	2,402	12,335	949	51.1	39.5	11.6
Orangeburg	21,074	21,184	16,035	15,190	76.1	71.7	4.4
Pickens	36,979	3,263	19,290	997	52.2	30.6	21.6
Richland	114,182	43,810	59,614	28,555	52.2	65.2	-13.0
Saluda	6,464	2,560	4,575	1,454	70.8	56.8	14.0
Spartanburg	93,606	20,614	51,303	8,417	54.8	40.8	14.0
Sumter	28,903	17,602	14,263	8,772	49.3	49.8	-0.5
Union	14,391	4,583	11,285	3,136	78.4	68.4	10.0
Williamsburg	8,686	10,449	7,083	8,202	81.5	78.5	3.0
York	42,660	11,532	24,398	6,559	57.2	56.9	0.3
TOTAL	1,200,907	429,598	736,302	261,110	61.3	60.8	0.5

APPENDIX 2. BLACK ELECTED COUNTY AND MUNICIPAL OFFICIALS IN SELECTED JURISDICTIONS OF THE SOUTH

Table 2-A. BLACK ELECTED COUNTY OFFICIALS (as of April 1974)--COUNTIES WITH 25 PERCENT OR MORE BLACK POPULATION

State/County	Population	Percent Black	Offices Held: Governing Body Members [a]	Law Enforcement Officials [b]	School Board Members [c]	Others [d]
ALABAMA						
Autauga	6,911	28.3				
Barbour	10,389	46.1				
Bibb	13,812	27.9				
Bullock	11,824	67.4	1	1	2	2
Butler	22,007	40.1				
Chambers	12,637	34.8				
Choctaw	16,589	44.1				
Clarke	26,724	43.8				
Conecuh	15,645	44.7				
Coosa	10,662	35.0				

a. This includes county commissioners, supervisors, police jurors, and so forth.

b. Law enforcement officials include sheriffs, judges, justices of the peace, constables, and magistrates.

c. This includes only county school board members. Municipal school board members are included in Table 2-B.

d. All other black elected county officials.

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Table 2-A. (continued)

State/County	Population	Percent Black	Offices Held: Governing Body Members	Law Enforcement Officials	School Board Members	Others
ALABAMA (cont'd)						
Crenshaw	13,188	28.7				
Dallas	55,296	52.2				
Elmore	33,535	28.2				
Escambia	34,906	30.4				
Greene	10,650	75.4	4	2	5	3
Hale	15,888	66.4		2		
Henry	13,254	40.3				
Jefferson	644,991	32.0		3	1	1
Lee	61,268	27.8				
Lowndes	12,897	76.9	1	1		2
Macon	24,841	81.1	3	1	4	3
Marengo	23,819	55.2				
Mobile	317,308	32.3				
Monroe	20,883	45.5		5		
Montgomery	167,790	36.2				
Perry	15,388	58.7			1	
Pickens	20,326	41.7				
Pike	25,038	34.5				
Russell	45,394	45.7				
Sumter	16,974	66.2		16	2	1
Talladega	65,280	30.7				
Tallapoosa	33,840	27.6				
Washington	16,241	29.9				
Wilcox	16,303	68.5	–	18	–	–
TOTAL (counties 25 percent black)			9	49	15	12
TOTAL (all counties)			9	52	16	12

Table 2-A. (continued)

State/County	Population	Percent Black	Offices Held: Governing Body Members	Law Enforcement Officials	School Board Members	Others
GEORGIA						
Atkinson	5,879	32.0				
Baker	3,875	53.0				
Baldwin	34,240	38.0				
Ben Hill	13,171	31.3				
Bibb	143,418	34.5			2	
Brooks	13,739	46.2				
Bryan	6,539	27.2				
Bulloch	31,585	36.3				
Burke	18,255	60.2				
Butts	10,560	43.0				
Calhoun	6,606	63.1				
Camden	11,334	36.2			1	
Candler	6,412	32.4				
Charlton	5,680	33.7				
Chatham	187,767	33.9	2		2	
Clay	3,636	61.7				
Clinch	6,405	31.7				
Coffee	22,828	25.8				
Cook	12,129	31.3				
Coweta	32,310	31.9				
Crawford	5,748	53.2				
Crisp	18,087	40.3				
Decatur	22,310	41.8				
Dodge	15,658	25.4				
Dooly	10,404	50.1				

Table 2-A. (continued)

State/County	Population	Percent Black	Offices Held: Governing Body Members	Law Enforcement Officials	School Board Members	Others
GEORGIA (cont'd)						
Dougherty	89,639	34.2				
Early	12,682	45.9				
Echols	1,924	25.6				
Elbert	17,262	31.9				
Emanuel	18,189	30.5				
Evans	7,290	35.0				
Fulton	607,592	39.1				
Grady	17,826	35.7				
Greene	10,212	51.8			1	
Hancock	9,019	73.8	2	4	4	3
Harris	11,520	45.0				
Henry	23,724	32.0				
Irwin	8,036	33.4				
Jasper	5,760	49.3				
Jefferson	17,174	54.5				
Jenkins	8,332	44.4				
Johnson	7,727	32.1				
Jones	12,218	38.5			1	
Lamar	10,688	38.7			1	
Lanier	5,031	29.3				
Laurens	32,738	33.7				
Lee	7,044	43.6				
Liberty	17,569	34.2	1			
Lincoln	5,895	46.1				
Long	3,746	31.8				

Table 2-A. (continued)

State/County	Population	Percent Black	Offices Held: Governing Body Members	Law Enforcement Officials	School Board Members	Others
GEORGIA (cont'd)						
Lowndes	55,112	29.0				
McDuffee	15,276	39.7			1	
McIntosh	7,371	49.9	1			
Macon	12,933	61.0			1	
Marion	5,099	52.4				
Meriwether	19,461	47.9			2	
Miller	6,397	28.8				
Mitchell	18,956	48.5			1	
Monroe	10,991	46.3				
Montgomery	6,099	34.7				
Morgan	9,904	45.1				
Muscogee	167,377	25.7				
Newton	26,282	31.1				
Oglethorpe	7,598	37.2				
Peach	15,990	57.1		1		
Pike	7,316	40.4				
Pulaski	8,066	36.8				
Putnam	8,394	48.7				
Quitman	2,180	60.1				
Randolph	8,734	55.7				
Richmond	162,437	29.9	1	1	3	
Schley	3,097	44.8				
Screven	12,591	46.7				
Seminole	7,059	35.0				
Spalding	39,514	26.7				

Table 2-A. (continued)

State/County	Population	Percent Black	Offices Held: Governing Body Members	Law Enforcement Officials	School Board Members	Others
GEORGIA (cont'd)						
Stewart	6,511	64.4			1	
Sumter	26,931	44.4				
Talbot	6,625	67.8	1			
Taliaferro	2,423	63.6				
Tattnall	16,557	30.8				
Taylor	7,865	44.8				
Telfair	11,381	34.5				
Terrell	11,416	59.5				
Thomas	34,515	39.7				
Tift	27,288	26.3				
Toombs	19,151	26.8				
Treutlen	5,647	32.5				
Troup	44,466	31.8			1	
Turner	8,790	35.2				
Twiggs	8,222	56.3				
Upson	23,505	28.2				
Walton	23,404	27.7				
Warren	6,669	59.1				
Washington	17,480	53.6				
Webster	2,362	58.4				
Wheeler	4,596	30.3				
Wilcox	6,998	31.3				
Wilkes	10,184	47.3				
Wilkinson	9,393	46.1				
Worth	14,770	37.4	—	—	—	—
TOTAL (counties 25 percent black)			8	6	22	3
TOTAL (all counties)			8	6	26	3

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Table 2-A. (continued)

State/County	Population	Percent Black	Offices Held: Governing Body Members	Law Enforcement Officials	School Board Members	Others
LOUISIANA						
Ascension	37,086	26.8	2			
Assumption	19,654	37.3				
Avoyelles	37,751	27.6				
Bienville	16,024	46.9				
Caddo	230,184	36.6	4		3	
Catahoula	11,769	29.2				
Claiborne	17,024	50.0				
Concordia	22,578	38.8	2	1	2	
DeSoto	22,764	53.4				
East Baton Rouge	285,167	28.7			1	
East Carroll	12,884	58.7	2		1	
East Feliciana	17,657	53.8	2			
Evangeline	31,932	27.0				
Franklin	23,946	35.7		1		
Iberia	57,397	27.8				
Iberville	30,746	47.4	2			
Jackson	15,963	32.0				
Lincoln	33,800	40.0	2		2	
Madison	15,065	61.0	3	2	4	
Morehouse	32,463	42.5	2		2	
Natchitoches	35,219	37.1			3	
Orleans	593,471	45.0		2	1	
Ouachita	115,387	27.3	1		3	
Pointe Coupee	22,002	50.3	2	3	1	
Rapides	118,078	27.8				

Table 2-A. (continued)

State/County	Population	Percent Black	Offices Held: Governing Body Members	Law Enforcement Officials	School Board Members	Others
LOUISIANA (cont'd)						
Red River	9,226	42.0				
Richland	21,774	40.6	1		1	
St. Charles	29,550	26.3				
St. Helena	9,937	55.8			1	
St. James	19,733	47.2	1	3	2	
St. John the Baptist	23,813	46.3	1	2	3	
St. Landry	80,364	41.3		2		
St. Martin	32,453	34.8			1	
St. Mary	60,752	28.1		2		
Tangipahoa	65,875	31.3				
Tensas	9,732	59.1	2	1	1	
Union	18,447	33.3				
Washington	41,987	32.2				
Webster	39,939	31.4				
West Baton Rouge	16,864	43.1				
West Feliciana	11,376	67.1	2		3	
Winn	16,369	30.5	—	—	—	
TOTAL (counties 25 percent black)			31	19	35	0
TOTAL (all counties)			32	19	41	0

Table 2-A. (continued)

State/County	Population	Percent Black	Offices Held: Governing Body Members	Law Enforcement Officials	School Board Members	Others
MISSISSIPPI						
Adams	37,293	47.9		2		
Amite	13,763	50.4				
Attala	19,570	40.4				
Benton	7,505	42.0			1	
Bolivar	49,409	61.4	1	3	7	
Calhoun	14,623	26.1				
Carroll	9,397	50.8				
Chicksaw	16,805	35.6				
Choctaw	8,440	28.0				
Claiborne	10,086	74.6	1	4	2	7
Clarke	15,049	35.9				
Clay	18,840	49.4				1
Coahoma	40,447	64.3	1	3	1	
Copiah	24,749	50.3				
Covington	14,002	32.6				
DeSoto	35,885	35.1				
Franklin	8,011	38.8				
Grenada	19,854	43.8				
Hinds	214,973	39.1				
Holmes	23,120	68.1		2	2	5
Humphreys	14,601	64.8				
Issaquena	2,737	62.0	1	5		
Jasper	15,994	46.4			1	
Jefferson	9,295	75.3	2	5	3	4
Jefferson Davis	12,936	50.2				

Table 2-A. (continued)

State/County	Population	Percent Black	Offices Held: Governing Body Members	Law Enforcement Officials	School Board Members	Others
MISSISSIPPI (cont'd)						
Kemper	10,233	54.8				
Lafayette	24,181	27.7				
Lauderdale	67,087	30.8				
Lawrence	11,137	32.1				
Leake	17,085	35.7			1	
Leflore	42,111	57.9				
Lincoln	26,198	30.7				
Lowndes	49,700	32.7		1		
Madison	29,737	62.4		7	2	
Marion	22,871	31.1			1	
Marshall	24,027	62.0		3	1	2
Monroe	34,043	30.5				
Montgomery	12,918	44.8				
Newton	18,983	27.3				
Noxubee	14,288	65.8	1			
Oktibbeha	28,752	34.8				
Panola	26,829	51.3				
Perry	9,065	26.3				
Pike	31,756	43.5				
Quitman	15,888	57.4				
Rankin	43,933	28.1				
Scott	21,369	33.0				
Sharkey	8,937	64.7		1		
Simpson	19,947	31.4				
Sunflower	37,047	62.8				

Table 2-A. (continued)

State/County	Population	Percent Black	Offices Held: Governing Body Members	Law Enforcement Officials	School Board Members	Others
MISSISSIPPI (cont'd)						
Tallahatchie	19,338	60.2				
Tate	18,544	47.2				
Tunica	11,854	72.7				
Walthall	12,500	40.7				
Warren	44,981	40.8				
Washington	70,581	54.5		1		
Wayne	16,650	32.9				
Wilkinson	11,099	67.6	1	4	2	
Winston	18,406	39.1				
Yalobusha	11,915	40.4				
Yazoo	27,304	53.4	—	—	—	—
TOTAL (counties 25 percent black)			8	41	24	19
TOTAL (all counties)			8	41	24	19
NORTH CAROLINA						
Anson	23,488	46.4				
Beaufort	35,980	33.2				
Bertie	20,528	56.6			1	
Bladen	26,477	39.0				
Brunswick*	24,223	29.6			1	
Camden	5,453	37.0				
Caswell	19,055	48.0				
Chatham *	29,554	30.4				

Table 2-A. (continued)

State/County	Population	Percent Black	Offices Held: Governing Body Members	Law Enforcement Officials	School Board Members	Others
NORTH CAROLINA (cont'd)						
Chowan	10,764	42.0			1	
Columbus*	46,937	29.7				
Craven	62,554	25.4				
Currituck*	6,976	26.4				
Duplin*	38,015	34.2				
Durham*	132,681	32.6	2		1	
Edgecombe	52,341	47.5			1	
Franklin	26,820	41.7				
Gates	8,524	53.4				
Granville	32,762	43.7				
Greene	14,967	47.0				
Halifax	53,884	48.0				
Hertford	23,529	55.2	1		1	
Hoke	16,436	44.2				
Hyde*	5,571	41.3				
Jones*	9,779	45.1			2	
Lenoir	55,204	36.8				
Martin	24,730	44.9				
Nash	59,122	35.7			1	
Northampton	24,009	59.0	1		1	
Pamlico*	9,467	33.1				
Pasquotank	26,824	37.7				
Pender*	18,149	43.7				
Perquimans	8,351	41.5				
Person	25,914	32.3	1			

Table 2-A. (continued)

State/County	Population	Percent Black	Offices Held: Governing Body Members	Law Enforcement Officials	School Board Members	Others
NORTH CAROLINA (cont'd)						
Pitt	73,900	34.6				
Richmond*	39,889	29.3			1	
Robeson	84,842	25.8			3	
Sampson*	44,954	34.5				
Scotland	26,929	33.8			1	
Tyrrell*	3,806	43.4				
Vance	32,691	42.3				
Warren*	15,810	59.9			1	
Washington	14,038	41.5			1	
Wayne	85,408	33.2			1	
Wilson	57,486	36.8	—	—	1	
TOTAL (counties 25 percent black)			5	0	19	0
TOTAL (all counties)			7	2	29	0
SOUTH CAROLINA						
Abbeville	21,112	31.1				
Allendale	9,692	60.1	2			
Bamberg	15,950	54.5				
Barnwell	17,176	41.1				
Beaufort	51,136	32.9	4	2	3	

* Counties not covered under 4(b) of the Voting Rights Act.

Table 2-A. (continued)

State/County	Population	Percent Black	Offices Held: Governing Body Members	Law Enforcement Officials	School Board Members	Others
SOUTH CAROLINA (cont'd)						
Berkeley	56,199	30.1				
Calhoun	10,780	60.4			2	
Charleston	247,650	31.4	1		2	
Chester	29,811	39.2			1	
Chesterfield	33,667	32.9				
Clarendon	25,604	62.0	2			1
Colleton	27,622	46.8			1	
Darlington	53,442	37.9				
Dillon	28,838	41.5				
Dorchester	32,276	35.1		1		
Edgefield	15,692	51.6				
Fairfield	19,999	59.4	2	2		1
Florence	89,636	36.4	1		3	
Georgetown	33,500	48.4	1		1	
Greenwood	49,686	28.0	1			
Hampton	15,878	48.9				
Jasper	11,885	57.1	2	1	6	
Kershaw	34,727	31.8			1	
Laurens	49,713	28.4				
Lee	18,323	59.8				
McCormick	7,955	60.3				
Marion	30,270	50.5				
Marlboro	27,151	43.6				
Newberry	29,273	33.1				
Orangeburg	69,789	54.9				

Table 2-A. (continued)

State/County	Population	Percent Black	Offices Held: Governing Body Members	Law Enforcement Officials	School Board Members	Others
SOUTH CAROLINA (cont'd)						
Richland	233,868	32.8		3		
Saluda	14,528	33.4				
Sumter	79,425	41.7	1		2	
Union	29,230	28.3				
Williamsburg	34,243	60.9	1	3	—	1
TOTAL (counties 25 percent black)			18	12	22	2
TOTAL (all counties)			18	12	23	2
VIRGINIA						
Accomack	29,004	37.4				
Amelia	7,592	47.2	1			
Brunswick	16,172	58.4				
Buckingham	10,597	44.2				
Caroline	13,925	50.8	2			
Charles City	6,158	74.2	2			2
Charlotte	11,551	39.8				
Cumberland	6,179	47.9		1		
Dinwiddie	25,046	45.6		1		
Essex	7,099	45.0				
Fluvanna	7,621	35.9				
Goochland	10,069	43.5	1			
Greensville	9,604	57.3		1		

Table 2-A. (continued)

State/County	Population	Percent Black	Offices Held: Governing Body Members	Law Enforcement Officials	School Board Members	Others
VIRGINIA (cont'd)						
Halifax	30,076	40.1				
Isle of Wight	18,285	49.5				
James City	17,853	34.9	1			
King and Queen	5,491	50.7				
King George	8,039	26.4				
King William	7,497	42.5				
Lancaster	9,126	38.7				
Louisa	14,004	38.6				
Lunenberg	11,687	43.2				
Mecklenburg	29,426	42.2	2			392
Middlesex	6,295	37.0				
Nansemond	35,166	54.1		1		
Nelson	11,702	28.6				
New Kent	5,300	44.0	1			
Northampton	14,442	52.3				
Northumberland	9,239	39.0				
Nottoway	14,260	40.0				
Pittsylvania	58,789	33.7				
Powhatan	7,696	36.4				
Prince Edward	14,379	36.6	2			
Richmond	5,841	36.6				
Southampton	18,582	54.2				
Surry	5,882	65.5	3			

Table 2-A. (continued)

State/County	Population	Percent Black	Offices Held: Governing Body Members	Law Enforcement Officials	School Board Members	Others
VIRGINIA (cont'd)						
Sussex	11,464	63.2				
Westmoreland	12,142	44.2	—	–	–	–
TOTAL (counties 25 percent black)			15	4	0	2
TOTAL (all counties)			15	4	0	2
7-STATE TOTAL (counties 25 percent black)			94	131	137	38
7-STATE TOTAL (all counties)			97	136	159	38

Sources: U.S. Census, 1970; Joint Center for Political Studies, National Roster of Black Elected Officials (April 1974).

Table 2-8. BLACK ELECTED MUNICIPAL OFFICIALS IN SEVEN SOUTHERN STATES BY POPULATION OF MUNICIPALITY (as of April 1974)

State	Population: Less than 5,000			Population: 5,000 - 50,000			Population: Over 50,000		
	Mayors	Council Members[a]	Others[b]	Mayors	Council Members	Others	Mayors	Council Members	Others
ALABAMA	5	31	0	3	15	1	0	2	0
GEORGIA	1	38	0	0	15	1	1	16	5
LOUISIANA	4	28	5	0	7	2	0	3	0
MISSISSIPPI	7	57	27	0	5	2	0	0	1
NORTH CAROLINA	6	69	3	1	24	0	1	11	2
SOUTH CAROLINA	6	38	0	0	10	1	0	3	0
VIRGINIA	0	11	0	1	17	1	0	10	0
TOTAL	29	272	35	5	93	8	2	45	8

a. Council members are members of the governing body including vice mayors and mayors pro tem.

b. Others include town marshalls, school board members, and all other elected municipal officials.

Source: Joint Center for Political Studies, National Roster of Black Elected Officials (April 1974).

APPENDIX 3. COUNTIES DESIGNATED FOR FEDERAL EXAMINERS AND NUMBER OF PERSONS LISTED BY EXAMINERS

State/County	Date of Designation[a]	Number of Persons Listed[b]
ALABAMA		
Autauga	10-29-65	1,333
Choctaw*	5-30-66	-
Dallas	8-09-65	9,068
Elmore	10-29-65	1,807
Greene	10-29-65	2,151
Hale	8-09-65	3,617
Jefferson	1-20-66	23,385
Lowndes	8-09-65	3,034
Marengo	8-09-65	5,096
Montgomery	9-29-65	10,438
Perry	8-18-65	2,877
Sumter	5-02-66	25
Talladega*	10-31-74	-
Wilcox	8-18-65	3,678
TOTAL LISTED		66,539
GEORGIA		
Baker*	11-04-68	
Hancock*	11-07-66	
Lee	3-23-67	475
Peach*	11-04-72	
Screven	3-23-67	1,478

* No examiners were sent to these counties.

a. Source: U.S. Department of Justice, "Counties Designated as Examiner Counties," Nov. 4, 1974.

b. Source: U.S. Civil Service Commission, "Cumulative Totals on Voting Rights Examining," June 30, 1974.

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State/County	Date of Designation	Number of Persons Listed
GEORGIA (cont'd)		
Taliaferro*	11-04-68	-
Terrell	3-23-67	1,465
Twiggs*	9-03-74	-
TOTAL LISTED		3,418
LOUISIANA		
Bossier	3-23-67	1,605
Caddo	3-23-67	7,432
De Soto	3-23-67	2,332
East Carroll	8-09-65	2,738
East Feliciana	8-09-65	2,129
Madison	8-12-66	663
Ouachita	8-18-65	5,936
Plaquemines	8-09-65	2,808
Sabine*	9-27-74	-
St. Helena*	8-16-72	-
West Feliciana	10-29-65	1,335
TOTAL LISTED		26,978
MISSISSIPPI		
Amite	3-23-67	464
Benton	9-24-65	538
Bolivar*	12-20-65	-
Carroll	12-20-65	926
Claiborne	4-12-66	1,418
Clay	9-24-65	1,523
Coahoma	9-24-65	4,669
De Soto	10-29-65	1,526
Forrest	6-01-67	1,116
Franklin	3-23-67	85
Grenada	7-20-66	1,512
Hinds	10-29-65	13,348
Holmes	10-29-65	4,701
Humphreys	9-24-65	2,268
Issaquena	6-01-67	72

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State/County	Date of Designation	Number of Persons Listed
MISSISSIPPI (cont'd)		
Jasper	4-12-66	673
Jefferson	10-29-65	2,070
Jefferson Davis	8-18-65	1,136
Jones	8-18-65	2,408
Kemper*	10-31-74	-
Leflore	8-09-65	8,732
Madison	8-09-65	8,163
Marshall	8-05-67	104
Neshoba	10-29-65	791
Newton	12-20-65	733
Noxubee	4-12-66	2,360
Oktibbeha	3-23-67	400
Pearl River	4-29-74	181
Rankin	4-12-66	1,147
Sharkey	6-01-67	400
Simpson	12-20-65	1,489
Sunflower*	4-29-67	-
Tallahatchie	8-14-71	132
Walthall	10-29-65	1,365
Warren	12-20-65	2,027
Wilkinson	8-05-67	152
Winston	4-12-66	58
Yazoo*	10-28-71	-
TOTAL LISTED		68,687
SOUTH CAROLINA		
Clarendon	10-29-65	3,448
Dorchester	10-29-65	1,206
TOTAL LISTED		4,654

APPENDIX 4. OBSERVATION OF ELECTIONS UNDER THE VOTING RIGHTS ACT OF 1965

State/County	Number of Observers								
	1966	1967	1968	1969	1970	1971	1972	1973	1974
ALABAMA									
Choctaw	-	-	-	-	-	-	-	-	24
Greene	118	-	22	44	40	-	-	-	18
Dallas	96	-	-	-	-	-	-	-	-
Hale	37	-	-	-	25	-	42	-	30
Lowndes	36	-	14	-	34	-	-	-	42
Marengo	208	-	10	-	54	-	-	-	-
Perry	68	-	-	-	-	-	-	-	-
Sumter	38	-	28	-	-	-	-	-	22
Talladega	-	-	-	-	-	-	-	-	54
Wilcox	138	-	24	-	52	-	68	-	44
TOTAL	739	-	98	44	205	-	110	-	234
GEORGIA									
Baker	-	-	18	-	-	-	12	-	-
Hancock	22	-	36	-	-	-	-	-	64
Peach	-	-	-	-	-	-	20	-	-
Taliaferro	-	-	22	-	6	-	12	-	-
Terrell	-	-	16	-	-	-	-	-	-
TOTAL	22	-	92	-	6	-	44	-	64

APPENDIX 4. (continued)

State/County	Number of Observers								
	1966	1967	1968	1969	1970	1971	1972	1973	1974
LOUISIANA									
DeSoto	-	12	22	-	-	-	30	-	-
East Carroll	40	40	16	-	-	-	-	-	24
East Feliciana	82	56	-	-	-	-	-	-	-
Madison	97	49	21	20	16	42	-	-	20
Ouachita	40	-	-	-	-	-	-	-	-
Plaquemines	58	38	30	-	-	-	-	-	-
Sabine	-	-	-	-	-	-	-	-	12
St. Helena	-	-	-	-	-	-	30	-	-
West Feliciana	80	56	36	-	-	12	-	-	-
TOTAL	397	251	125	20	16	54	60	-	56
MISSISSIPPI									
Amite	-	24	36	5	20	12	-	-	-
Benton	4	12	20	-	-	20	-	-	-
Bolivar	-	20	20	20	18	48	-	-	-
Carroll	10	54	20	6	-	-	-	-	-
Claiborne	22	64	32	-	6	26	38	-	-
Clay	14	12	10	-	-	24	-	-	-
Coahoma	-	40	30	28	16	122	-	-	-
DeSoto	8	8	-	-	-	-	-	-	-
Forrest	-	6	-	-	-	-	-	-	-
Franklin	-	12	26	-	-	-	-	-	-

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APPENDIX 4. (continued)

State/County	Number of Observers								
	1966	1967	1968	1969	1970	1971	1972	1973	1974
MISSISSIPPI (cont'd)									
Grenada	-	44	-	-	-	-	-	-	-
Hinds	-	36	44	28	-	-	-	-	-
Holmes	22	66	36	32	10	14	-	-	-
Humphreys	10	38	20	8	-	36	6	-	-
Issaquena	-	18	20	-	-	28	19	-	-
Jasper	11	12	-	-	-	-	-	-	-
Jefferson	14	72	60	12	-	-	-	-	-
Jefferson Davis	12	-	-	-	-	6	-	-	-
Jones	8	8	-	-	-	-	-	-	-
Kemper	-	-	-	-	-	-	-	-	48
Leflore	59	68	22	6	-	34	-	-	-
Madison	24	64	24	16	12	64	47	-	-
Marshall	-	112	40	14	14	219	-	-	20
Neshoba	14	18	-	-	-	-	-	-	-
Noxubee	22	18	32	-	10	120	-	-	-
Oktibbeha	-	36	-	-	-	18	-	-	-
Rankin	6	38	-	-	-	-	-	-	-
Sharkey	-	30	14	-	-	20	-	-	-
Simpson	-	10	-	-	-	-	-	-	-
Sunflower	-	32	-	24	12	66	-	-	-

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APPENDIX 4. (continued)

State/County	Number of Observers								
	1966	1967	1968	1969	1970	1971	1972	1973	1974
MISSISSIPPI (cont'd)									
Tallahatchie	-	-	-	-	-	10	-	-	-
Warren	-	-	48	-	-	-	-	-	-
Wilkinson	-	86	62	20	16	38	36	-	-
Winston	4	-	-	-	-	-	-	-	-
Yazoo	-	-	-	-	-	34	-	-	8
TOTAL	264	1,058	616	219	134	959	146	-	76
SOUTH CAROLINA									
Clarendon	118	-	36	-	9	-	50	-	-
Dorchester	40	-	58	-	10	-	55	-	-
TOTAL	158	-	94	-	19	-	105	-	-

Source: U.S. Department of Justice.

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APPENDIX 5. OBJECTIONS UNDER SECTION 5 OF THE VOTING RIGHTS ACT
(As of Dec. 20, 1974)

Jurisdiction	Type of Change	Date	Page[a]
	Registration and Voting		
South Carolina	literacy test, poll tax	Oct. 2, 1967	17
Georgia	assistance to illiterate voters	June 19, 1968	
Webster Co., Ga.	polling place	Dec. 12, 1968	
Georgia	qualification of registration and election workers	July 11, 1968	
Georgia	tests or devices	Aug. 20, 1968	30
Alabama	signature requirement	Nov. 13, 1969	
Mobile, Ala.	signature requirement	Dec. 16, 1969	
Alabama	assistance for absentee registration	Mar. 13, 1970	
North Carolina	literacy test	Mar. 18, 1971	17
North Carolina	literacy test	Apr. 20, 1971	
Jasper County, Miss.	reregistration	June 8, 1971	
Lafayette Co., Miss.	polling place	July 6, 1971	
Caroline, Miss.	polling place	Sept. 10, 1971	
Albany, Ga.	polling place	Nov. 16, 1971	
Marshall Co., Miss.	polling place	Dec. 3, 1971	
Tate Co., Miss.	polling place	Dec. 3, 1971	
Albany, Ga.	election date	Jan. 7, 1972	
Alabama	assistance to illiterate voters	Apr. 4, 1972	
Atlanta, Ga.	polling place	Nov. 27, 1972	106
St. Landry Parish, La.	polling place	Dec. 6, 1972	
Atlanta, Ga.	polling place	Mar. 1, 1973	106
New Orleans, La.	polling place	July 17, 1973	107
Martinsville, Va.	polling place	Apr. 19, 1974	
Newport News, Va.	polling place	May 17, 1974	107
Jones Co., Ga.	polling place	Aug. 12, 1974	106
New York Co., N.Y.	polling place	Sept. 3, 1974	
Suffolk, Va.	polling place	Sept. 23, 1974	

Jurisdiction	Type of Change	Date	Page[a]
	Candidacy		
Mississippi	abolition of office	May 21, 1969	162, 172, 271
Alabama	discrimination against independent candidates	Aug. 1, 1969	162
Alabama	discrimination against independent candidates	Aug. 14, 1972	162
Alabama	abolition of office	Dec. 26, 1972	171
Ocilla, Ga.	filing fees	June 22, 1972	135
Hollandale, Miss.	abolition of office	July 9, 1973	171
Mobile, Ala.	filing fee, petition requirement	Aug. 3, 1973 (Objection withdrawn after modification, Oct. 10, 1973)	134
Clarendon Co., S.C.	abolition of office	Nov. 13, 1973	171
Shaw, Miss.	elective to appointive	Nov. 21, 1973	171
Albany, Ga.	filing fee	Dec. 7, 1973	135
Mississippi	open primary	Apr. 26, 1974	162, 274
	State and Federal Representation		
Virginia (State House)	redistricting[b]	May 7, 1971 (Objection withdrawn, June 10, 1971)	241
Virginia (State Senate)	redistricting	May 7, 1971	241
Louisiana (State House)	redistricting[b]	Aug. 20, 1971	235-36
Louisiana (State Senate)	redistricting[b]	Aug. 20, 1971	235-36
Georgia (U.S. House of Representatives)	redistricting	Feb. 11, 1972	230, 231
Georgia (State Senate)	redistricting	Mar. 3, 1972	230, 232

Jurisdiction	Type of Change	Date	Page[a]
	State and Federal Representation (cont.)		
Georgia (State House)	redistricting[b] majority requirement, numbered posts	Mar. 3, 1972	230, 232
South Carolina (State Senate)	redistricting[b] majority requirement, numbered posts	Mar. 6, 1972	218
Georgia (State House)	redistricting	Mar. 24, 1972	232
South Carolina	numbered posts[b]	June 30, 1972	216
South Carolina (State Senate)	redistricting[b] majority requirement, numbered posts	July 20, 1973	219
South Carolina (State House)	redistricting[b] majority requirement, numbered posts	Feb. 14, 1974	216-17
Kings County, N.Y. (U.S. House of Representatives)	redistricting	Apr. 1, 1974	221-30
Kings and N.Y. Counties, N.Y. (State Senate)	redistricting	Apr. 1, 1974	221-30
Kings and N.Y. Counties, N.Y. (State Assembly)	redistricting	Apr. 1, 1974	221-30
	Local Representation		
Mississippi	county bds. of supervisors: at-large election	May 21, 1969	
East Carroll Parish, La.	police jury and school board: at-large elections	Sept. 10, 1969	297
Copiah Co., Miss.	bd. of supervisors: redistricting	Mar. 5, 1970	275
Portsmouth, Va.	40% vote requirement	June 26, 1970	
Leake Co., Miss.	bd. of supervisors: redistricting	Jan. 8, 1971	275
Warren Co., Miss.	bd. of supervisors: redistricting	Apr. 4, 1971	275
Richmond, Va.	annexation	May 7, 1971	300-03
Marion Co., Miss.	bd. of supervisors: redistricting[b]	May 25, 1971	275
Jeff Davis Parish, La.	police jury: redistricting	June 4, 1971	
Union Parish, La.	police jury and school board: redistricting	June 8, 1971	294
Grenada Co., Miss.	at-large election, residency requirement	June 30, 1971	272
Attala Co., Miss.	at-large election, residency requirement	June 30, 1971	272

Jurisdiction	Type of Change	Date	Page[a]
	Local Representation (cont.)		
Assumption Parish, La.	school board: at-large election, redistricting	July 8, 1971	294
Franklin Parish, La.	police jury: redistricting[b]	July 8, 1971	294
Birmingham, Ala.	numbered posts	July 9, 1971	317
Hinds Co., Miss.	bd. of supervisors: redistricting	July 14, 1971	275
Yazoo Co., Miss.	bd. of supervisors: redistricting	July 19, 1971[c]	275
St. Charles Parish, La.	police jury: at-large election	July 22, 1971	294
Jeff Davis Parish, La.	school board: redistricting	July 23, 1971	294
Ascension Parish, La.	school board: redistricting[b]	July 23, 1971	
Talladega, Ala.	anti-single-shot law	July 23, 1971	
Bossier Parish, La.	school board: redistricting	July 30, 1971	294
North Carolina	numbered posts	July 30, 1971	248
Clarke Co., Ga.	school board: redistricting	Aug. 6, 1971	260-61
DeSoto Parish, La.	police jury: at-large election	Aug. 6, 1971	294
East Baton Rouge, La.	parish council: redistricting	Aug. 6, 1971	294
Pointe Coupee Parish, La.	police jury: redistricting[b]	Aug. 9, 1971	
Webster Parish, La.	police jury: redistricting	Aug. 6, 1971[d]	294
Warren Co., Miss.	bd. of supervisors: redistricting	Aug. 23, 1971	275
Bibb Co., Ga.	school board: at-large election	Aug. 24, 1971	261
East Feliciana Parish, La.	police jury: at-large election, redistricting[b]	Sept. 20, 1971	294
Natchitoches Parish, La.	school board: redistricting[b]	Sept. 20, 1971	294
North Carolina	numbered posts	Sept. 27, 1971	248
Hinesville, Ga.	majority requirement, numbered posts	Oct. 1, 1971	263
St. Helena Parish, La.	police jury: redistricting	Oct. 8, 1971	294
Caddo Parish, La.	school board: redistricting	Oct. 8, 1971	294
Newnan, Ga.	numbered posts	Oct. 13, 1971	263
St. James Parish, La.	police jury: redistricting	Nov. 2, 1971	294
Conyers, Ga.	majority requirement, numbered posts, staggered terms	Dec. 2, 1971	263
Tate Co., Miss.	bd. of supervisors: redistricting	Dec. 3, 1971	275
Mecklenberg Co., Va.	county council: redistricting	Dec. 7, 1971	
East Feliciana Parish, La.	police jury: redistricting[b]	Dec. 28, 1971	294
Waynesboro, Ga.	city council: at-large election, majority requirement	Jan. 7, 1972	

Jurisdiction	Type of Change	Date	Page[a]
	Local Representation (cont.)		
St. Mary Parish, La.	school board: redistricting	Jan. 12, 1972	294
Jonesboro, Ga.	majority requirement	Feb. 4, 1972	263
Petersburg, Va.	annexation	Feb. 22, 1972	304-05
St. Helena Parish, La.	school board: redistricting	Mar. 17, 1972	
Autauga Co., Ala.	bd. of commissioners, school board: at-large election, majority requirement	Mar. 20, 1972	316
Grenada, Miss.	city council: at-large election, majority requirement, numbered posts	Mar. 20, 1972	286
Ascension Parish, La.	school board: redistricting[b]	Apr. 20, 1972	294
East Feliciana Parish, La.	school board: redistricting[b]	Apr. 22, 1972	294
Pointe Coupee Parish, La.	school board: redistricting[b]	June 7, 1972	294
Lafayette Parish, La.	school board: redistricting,[b] staggered terms	June 16, 1972	294
South Carolina	numbered posts	June 30, 1972	
Newnan, Ga.	majority requirement	July 31, 1972	263
Twiggs Co., Ga.	county commissioners: at-large election, residency requirement	Aug. 7, 1972	258
Thomasville, Ga.	majority requirement, numbered posts	Aug. 24, 1972	263
Aiken, S.C.	numbered posts, residency requirement	Aug. 25, 1972	
Saluda Co., S.C.	creation of new school district	Nov. 13, 1972	
Tate Co., Miss.	bd. of supervisors: redistricting	Nov. 28, 1972	275
Lake Providence, La.	annexation	Dec. 1, 1972	
Harris Co., Ga.	residency requirement	Dec. 5, 1972 (Objection withdrawn, Mar. 30, 1973)	
New Orleans, La.	city council: redistricting	Jan. 15, 1973	289
Cochran, Ga.	majority requirement	Jan. 29, 1973	263
Warren Co., Miss.	bd. of supervisors: redistricting	Feb. 13, 1973	
Cuthbert, Ga.	numbered posts	Apr. 9, 1973	263
New Orleans, La.	numbered posts	Apr. 20, 1973	287

Jurisdiction	Type of Change	Date	Page[a]
	Local Representation (cont.)		
Indianola, Miss.	numbered posts	Apr. 20, 1973	286
McComb, Miss.	annexation	May 30, 1973 (Objection withdrawn, Sept. 12, 1973)	
Newellton, La.	annexation	June 12, 1973	
Ocilla, Ga.	majority requirement	June 22, 1973	263
New Orleans, La.	city council: redistricting	July 9, 1973	290
Sumter Co., Ga.	majority requirement, residence requirement	July 13, 1973	260
Hogansville, Ga.	majority requirement, numbered posts	Aug. 2, 1973	263
Darlington, S.C.	residency requirement	Aug. 7, 1973	321
Grenada Co., Miss.	bd. of supervisors: redistricting	Aug. 9, 1973	275,276,282-83
Perry, Ga.	majority requirement, numbered posts	Aug. 14, 1973	263
Thomasville. Ga.	residency requirement	Aug. 27, 1973	263
Bogalusa, La.	residency requirement, anti-single-shot law	Oct. 29, 1973	299
Pearl, Miss.	incorporation	Nov. 21, 1973 (Objection withdrawn after modification, Jan. 3, 1974)	286
East Dublin, Ga.	numbered posts, staggered terms	Mar. 4, 1974	263
Dorchester Co., S.C.	county council: at-large election	Apr. 22, 1974	321
McClellanville, S.C.	annexation	May 6, 1974[e]	325
Fort Valley, Ga.	numbered posts, majority requirement	May 13, 1974	263
Fulton Co., Ga.	numbered posts, majority requirement	May 22, 1974	261
Walterboro, S.C.	residency requirement	May 24, 1974	
Clarke Co., Ga.	school bd.: at-large election, numbered posts, majority requirement	May 30, 1974	260

Jurisdiction	Type of Change	Date	Page[a]
	Local Representation (cont.)		
Louisville, Ga.	numbered posts, majority requirement	June 4, 1974	263
East Dublin, Ga.	staggered terms	June 19, 1974	
Evangeline Parish, La.	school bd. and police jury:[b] majority requirement, anti-single-shot requirement, staggered terms	June 25, 1974	294,298
Evangeline Parish, La.	school bd. and police jury:[b] majority requirement, anti-single-shot requirement, staggered terms	July 26, 1974	294,298
Lancaster Co., S.C.	school bd.: at-large election, numbered posts, majority requirement	July 30, 1974	
Meriwether Co., Ga.	county commissioners: at-large election, numbered posts, majority requirement	July 31, 1974	
Pike Co., Ala.	residency requirement, majority requirement, staggered terms	Aug. 12, 1974	316,317
Attala Co., Miss.	bd. of supervisors: redistricting	Sept. 3, 1974	275,282
Thomson, Ga.	numbered posts, majority requirement, staggered terms, extension of terms	Sept. 3, 1974	263,265
Bamberg Co., S.C.	residency requirements, staggered terms	Sept. 3, 1974	322
Bishopville, S.C.	staggered terms	Sept. 3, 1974	322
Bamberg Co., S.C.	county commissioners: at-large election	Sept. 20, 1974	323
Charleston, S.C.	annexation	Sept. 20, 1974	324-25
Charleston Co., S.C.	governing body: at-large election, consolidation, numbered posts, residency requirements, majority requirement	Sept. 24, 1974	324
Lancaster Co., S.C.	county commissioners: at-large election, numbered posts, residency requirements, majority requirement, staggered terms	Oct. 1, 1974	323

Jurisdiction	Type of Change	Date	Page[a]
	Local Representation (cont.)		
Sumter Co., Ala. Democratic Executive Committee	anti-single-shot requirement	Oct. 29, 1974	
Wadley, Ga.	numbered posts, majority requirement	Oct. 30, 1974	263
York Co., S.C.	county council: at-large elections, residency requirements	Nov. 12, 1974	
	Miscellaneous		
Arizona	procedures for recall	Oct. 9, 1973 (Objection withdrawn, Mar. 15, 1974)	

Source: Department of Justice and David H. Hunter, Federal Review of Voting Changes: How to Use Section 5 of the Voting Rights Act (Washington, D.C.: Joint Center for Political Studies et al., 1974), pp. 90-97.

a. Refers to page or pages of this report where the objection is mentioned.

b. Involved the use of multi-member districts.

c. Objection withdrawn, Sept. 23, 1971.

d. Objection withdrawn, Sept. 14, 1971.

e. Objection withdrawn after assurances, Oct. 21, 1974.

APPENDIX 6. THE VOTING RIGHTS ACT OF 1965 AS AMENDED BY THE VOTING RIGHTS ACT AMENDMENTS OF 1970

PUBLIC LAW 89–110, 89TH CONGRESS, S. 1564, AUGUST 6, 1965

AN ACT To enforce the fifteenth amendment to the Constitution of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Voting Rights Act of 1965".

TITLE I—VOTING RIGHTS

SEC. 2. No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.

SEC. 3. (a) Whenever the Attorney General institutes a proceeding under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal examiners by the United States Civil Service Commission 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 guarantees of the fifteenth amendment (1) as part of any interlocutory order if the court determines that the appointment of such examiners is necessary to enforce such guarantees or (2) as part of any final judgment if the court finds that violations of the fifteenth amendment justifying equitable relief have occurred in such State or subdivision: *Provided*, That the court need not authorize the appointment of examiners if any incidents of denial or abridgement of the right to vote on account of race or color (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.

(b) If in a proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, it shall suspend the use of tests and devices in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

(c) If in any proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that violations of the fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on

account of race or color: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced 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, except that neither the court's finding nor the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

SEC. 4. (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff.

An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

(b) The provisions of subsection (a) 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) pursuant to the previous sentence, the provisions of subsection (a) 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.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color if (1) incidents of such use 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.

(e)(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

SEC. 5. 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

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standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, 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, except that neither 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. 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 of the United States Code and any appeal shall lie to the Supreme Court.

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, 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 fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivision as it 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 Commission 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 Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity: *Provided*, That the Commission 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 Civil Service Commission shall by regulation designate, examine applicants concerning their qualifications for voting. An application to an examiner shall be in such form as the Commission 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 of this Act. 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): *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 Civil Service Commission 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 Civil Service Commission and under such rules as the Commission shall by regulation prescribe. Such challenge shall be entertained only if filed at such office within the State as the Civil Service Commission 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 Civil Service Commission and the Commission 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 Civil Service Commission shall have the power to require by subpena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter pending before it under the authority of this section. In case of contumacy or refusal to obey a subpena, 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 or 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 Commission 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. 10. (a) The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress

declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

(b) In the exercise of the powers of Congress under section 5 of the fourteenth amendment and section 2 of the fifteenth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) and the purposes of this section.

(c) The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

(d) During the pendency of such actions, and thereafter if the courts, notwithstanding this action by the Congress, should declare the requirement of the payment of a poll tax to be constitutional, no citizen of the United States who is a resident of a State or political subdivision with respect to which determinations have been made under subsection 4(b) and a declaratory judgment has not been entered under subsection 4(a), during the first year he becomes otherwise entitled to vote by reason of registration by State or local officials or listing by an examiner, shall be denied the right to vote for failure to pay a poll tax if he tenders payment of such tax for the current year to an examiner or to the appropriate State or local official at least forty-five days prior to election, whether or not such tender would be timely or adequate under State law. An examiner shall have authority to accept such payment from any person authorized by this Act to make an application for listing, and shall issue a receipt for such payment. The examiner shall transmit promptly any such poll tax payment to the office of the State or local official authorized to receive such payment under State law, together with the name and address of the applicant.

SEC. 11. (a) No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this Act or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 3(a), 6, 8, 9, 10, or 12(e).

(c) Whoever knowingly or willfully gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires

with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than $10,000 or imprisoned not more than five years, or both: *Provided, however*, That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, or Resident Commissioner of the Commonwealth of Puerto Rico.

(d) Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

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 (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.

(d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2, 3, 4, 5, 7, 10, 11, or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under this Act to vote and (2) to count such votes.

(e) Whenever in any political subdivision in which there are examiners appointed pursuant to this Act any persons allege to such an examiner 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 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.

(f) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under the provisions of this Act shall have exhausted any administrative or other remedies that may be provided by 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 Civil Service Commission, 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 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. 14. (a) All cases of criminal contempt arising under the provisions of this Act shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C. 1995).

(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 section 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.

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

(2) The term "political subdivision" shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

(d) In any action for a declaratory judgment brought pursuant to section 4 or section 5 or this Act, subpenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States: *Provided*, That no writ of subpena shall issue for witnesses without the District of Columbia at a greater distance than one hundred miles from the place of holding court without the permission of the District Court for the District of Columbia being first had upon proper application and cause shown.

SEC. 15. Section 2004 of the Revised Statutes (42 U.S.C. 1971), as amended by section 131 of the Civil Rights Act of 1957 (71 Stat. 637), and amended by section 601 of the Civil Rights Act of 1960 (74 Stat. 90), and as further amended by section 101 of the Civil Rights Act of 1964 (78 Stat. 241), is further amended as follows:

(a) Delete the word "Federal" wherever it appears in subsections (a) and (c);

(b) Repeal subsection (f) and designate the present subsections (g) and (h) as (f) and (g), respectively.

SEC. 16. The Attorney General and the Secretary of Defense, jointly, shall make a full and complete study to determine whether, under the laws or practices of any State or States, there are preconditions to voting, which might tend to result in discrimination against citizens serving in the Armed Forces of the United States seeking to vote. Such officials shall, jointly, make a report to the Congress not later than June 30, 1966, containing the results of such study, together with a list of any States in which such preconditions exist, and shall include in such report such recommendations for legislation as they deem advisable to prevent discrimination in voting against citizens serving in the Armed Forces of the United States.

SEC. 17. Nothing in this Act shall be construed to deny, impair, or otherwise adversely affect the right to vote of any person registered to vote under the law of any State or political subdivision.

SEC. 18. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEC. 19. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

TITLE II—SUPPLEMENTAL PROVISIONS

APPLICATION OF PROHIBITION TO OTHER STATES

SEC. 201. (a) Prior to August 6, 1975, no citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election conducted in any State or political subdivision of a State as to which the provisions of section 4(a) of this Act are not in effect by reason of determinations made under section 4(b) of this Act.

(b) As used in this section, the term "test or device" means any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement

or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

RESIDENCE REQUIREMENTS FOR VOTING

SEC. 202. (a) The Congress hereby finds that the imposition and application of the durational residency requirement as a precondition to voting for the offices of President and Vice President, and the lack of sufficient opportunities for absentee registration and absentee balloting in presidential elections—

(1) denies or abridges the inherent constitutional right of citizens to vote for their President and Vice President;

(2) denies or abridges the inherent constitutional right of citizens to enjoy their free movement across State lines;

(3) denies or abridges the privileges and immunities guaranteed to the citizens of each State under article IV, section 2, clause 1, of the Constitution;

(4) in some instances has the impermissible purpose or effect of denying citizens the right to vote for such officers because of the way they may vote;

(5) has the effect of denying to citizens the equality of civil rights, and due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment; and

(6) does not bear a reasonable relationship to any compelling State interest in the conduct of presidential elections.

(b) Upon the basis of these findings, Congress declares that in order to secure and protect the above-stated rights of citizens under the Constitution, to enable citizens to better obtain the enjoyment of such rights, and to enforce the guarantees of the fourteenth amendment, it is necessary (1) to completely abolish the durational residency requirement as a precondition to voting for President and Vice President, and (2) to establish nationwide, uniform standards relative to absentee registration and absentee balloting in presidential elections.

(c) No citizen of the United States who is otherwise qualified to vote in any election for President and Vice President shall be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to comply with any durational residency requirement of such State or political subdivision; nor shall any citizen of the United States be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to be physically present in such State or political subdivision at the time of such election, if such citizen shall have complied with the requirements prescribed by the law of such State or political subdivision providing for the casting of absentee ballots in such election.

(d) For the purposes of this section, each State shall provide by law for the registration or other means of qualification of all duly qualified residents of such State who apply, not later than thirty days immediately prior to any presidential election, for registration or qualification to vote for the choice of electors for President and Vice President or for President and Vice President in such election; and each State shall

provide by law for the casting of absentee ballots for the choice of electors for President and Vice President, or for President and Vice President, by all duly qualified residents of such State who may be absent from their election district or unit in such State on the day such election is held and who have applied therefor not later than seven days immediately prior to such election and have returned such ballots to the appropriate election official of such State not later than the time of closing of the polls in such State on the day of such election.

(e) If any citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any election for President and Vice President has begun residence in such State or political subdivision after the thirtieth day next preceding such election and, for that reason, does not satisfy the registration requirements of such State or political subdivision he shall be allowed to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election, (1) in person in the State or political subdivision in which he resided immediately prior to his removal if he had satisfied, as of the date of his change of residence, the requirements to vote in that State or political subdivision, or (2) by absentee ballot in the State or political subdivision in which he resided immediately prior to his removal if he satisfies, but for his nonresident status and the reason for his absence, the requirements for absentee voting in that State or political subdivision.

(f) No citizen of the United States who is otherwise qualified to vote by absentee ballot in any State or political subdivision in any election for President and Vice President shall be denied the right to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election because of any requirement of registration that does not include a provision for absentee registration.

(g) Nothing in this section shall prevent any State or political subdivision from adopting less restrictive voting practices than those that are prescribed herein.

(h) The term "State" as used in this section includes each of the several States and the District of Columbia.

(i) The provisions of section 11(c) shall apply to false registration, and other fraudulent acts and conspiracies, committed under this section.

JUDICIAL RELIEF

SEC. 203. Whenever the Attorney General has reason to believe that a State or political subdivision (a) has enacted or is seeking to administer any test or device as a prerequisite to voting in violation of the prohibition contained in section 201, or (b) undertakes to deny the right to vote in any election in violation of section 202, he may institute for the United States, or in the name of the United States, an action in a district court of the United States, in accordance with sections 1391 through 1393 of title 28, United States Code, for a restraining order, a preliminary or permanent injunction, or such other order as he deems appropriate. An action under this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2282 of title 28 of the United States Code and any appeal shall be to the Supreme Court.

PENALTY

SEC. 204. Whoever shall deprive or attempt to deprive any person of any right secured by section 201 or 202 of this title shall be fined not more than $5,000, or imprisoned not more than five years, or both.

SEPARABILITY

SEC. 205. If any provision of this Act or the application of any provision thereof to any person or circumstance is judicially determined to be invalid, the remainder of this Act or the application of such provision to other persons or circumstances shall not be affected by such determination.

TITLE III—REDUCING VOTING AGE TO EIGHTEEN IN FEDERAL, STATE, AND LOCAL ELECTIONS

DECLARATION AND FINDINGS

SEC. 301. (a) The Congress finds and declares that the imposition and application of the requirement that a citizen be twenty-one years of age as a precondition to voting in any primary or in any election—

(1) denies and abridges the inherent constitutional rights of citizens eighteen years of age but not yet twenty-one years of age to vote—a particularly unfair treatment of such citizens in view of the national defense responsibilities imposed upon such citizens;

(2) has the effect of denying to citizens eighteen years of age but not yet twenty-one years of age the due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment of the Constitution; and

(3) does not bear a reasonable relationship to any compelling State interest.

(b) In order to secure the constitutional rights set forth in subsection (a), the Congress declares that it is necessary to prohibit the denial of the right to vote to citizens of the United States eighteen years of age or over.

PROHIBITION

SEC. 302. Except as required by the Constitution, no citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any primary or in any election shall be denied the right to vote in any such primary or election on account of age if such citizen is eighteen years of age or older.

ENFORCEMENT

SEC. 303. (a)(1) In the exercise of the powers of the Congress under the necessary and proper clause of section 8, article I of the Constitution, and section 5 of the fourteenth amendment of the Constitution, the Attorney General is authorized and directed to institute in the name of the United States such actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the purposes of this title.

(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title, which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

(b) Whoever shall deny or attempt to deny any person of any right secured by this title shall be fined not more than $5,000 or imprisoned not more than five years, or both.

DEFINITION

SEC. 304. As used in this title the term "State" includes the District of Columbia.

EFFECTIVE DATE

SEC. 305. The provisions of title III shall take effect with respect to any primary or election held on or after January 1, 1971.

APPENDIX 7

RESPONSES RECEIVED TO LETTERS SENT PURSUANT TO 42 U.S.C.S 1975a(e) (1970)

425

Response to comments on page 73.

According to Myrtis Bishop, the registrar in Madison Parish, Louisiana, she closes the registration office only "on rare occasions for meetings and such, but I always put it in the paper."[12] Zelma Wyche, chief of police of Tallulah, the parish seat, and President of the Madison Parish Voters League, said that the registrar is ready with excuses for closing the office whenever she feels like it, often to the disadvantage of blacks, as for example, during a voter registration drive. Frequently the office is closed by 4:00 p.m.[13]

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12. Myrtis Bishop, interview in Tallulah, La., Sept. 4, 1974.

13. Zelma C. Wyche, interview in Tallulah, La., Sept. 3, 1974.

When this office is being closed for various meetings, conventions, etc., I publish this fact if time permits. Permission is granted by Russell Gaspard and Police Jury President, Joe Thornton. As for the office being closed at 4:00 P.M., this is untrue. Our courthouse hours are 8:30 A.M. to 4:30 P.M.

Myrtis Bishop

Mrs. Myrtis Bishop
Registrar of Voters

Response to comments on page 80.

In Madison Parish the entire registration process is run by one person, the registrar, Myrtis Bishop. Black community leaders and officials have found the registrar to be incompetent, uncooperative, and hostile. One black official stated that her behavior was that of a "vicious racist." In addition to closing the office without notice when it is scheduled to be open, the registrar is charged with harassing black registrants.[61] She is particularly strict in demands for identification. Many blacks, especially the more elderly, do not have adequate identification with them, lacking such things as social security cards or birth certificates. Even blacks who have identification with them have difficulties.[61a]

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61. Wyche Interview.

61a. Ibid.

True, I am the only person in this office, therefore it is run by one person.

The black community leader most often quoted in this report, Zelma C. Wyche, would find any white registrar to be "incompetent, uncooperative, and hostile." Every since my appointment to the Office of Registrar in 1967, Zelma C. Wyche has attempted almost unceasingly to have me removed from office so that I might be replaced with a black registrar.

The only demands that are made on any person regardless of race is to be able to prove his or her identity. That is why a drivers license is asked for, if not a drivers license then a Social Security Number. People with their identification are not turned away.

Myrtis Bishop

Mrs. Myrtis Bishop
Registrar of Voters

Response to comments on page 80.

> Sometimes she will accept social security cards as sufficient identification. Other times she will require much more and make people go back home three and four times. 62

According to another source, Mrs. Bishop often intimidates registrants. "A black volunteer in a registration drive took two young blacks to register. One of them, a young woman while filling out the registration form asked the registration volunteer a question, at which point Mrs. Bishop yelled: "I'll answer your questions here...you don't ask anyone for information here except me." 63 In another instance she was involved in a fight with a registrant. 64

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62. Id.

63. Staff interview in Tallulah, La., Sept. 4, 1974.

64. This incident is described in Chap. 7, Physical and Economic Subordination, pp. 213-214.

When a person comes to register and has their identification with them they are told, "If you need any assistance, I will be glad to help in filling out the form completely if necessary."

Myrtis Bishop

Mrs. Myrtis Bishop
Registrar of Voters

Response to comments on page 183.

A fight involving the registrar of Madison Parish, Myrtis Bishop, and a black woman attempting to register occurred on February 19, 1974. Arnicey Tyson accompanied by her husband, Ramon, and their 3-year-old son went to the courthouse in Tallulah to register. According to an account of the incident sent to the Department of Justice by Mr. Tyson, Mrs. Bishop, after exchanging angry remarks with Mrs. Tyson over the lack of information concerning previous registration, refused to register her. Mrs. Tyson questioned the registrar regarding this refusal at which point the registrar slapped her in the face. Mrs. Tyson then slapped Mrs. Bishop several times at which point Mr. Tyson intervened to separate the two women. Mr. Tyson was then attacked by three men including a deputy sheriff and in the ensuing struggle thrown to the floor, beaten and his clothes torn. The Tysons were then taken to jail and subsequently released on bond.[21]

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21. Ramon E. Tyson, letter to Michael Shaheen, Voting Rights Section, U.S. Department of Justice, Wash., D.C., Feb. 20, 1974.

I might add that Arnicey Tyson was registered on February 19, 1974, contrary to the above statement. A copy of her application for registration is annexed hereto.

As the date specifies above, this being eleven (11) months ago, I'd rather you just read the statement I gave the Sheriff's office on February 20, 1974.

Myrtis Bishop

Mrs. Myrtis Bishop
Registrar of Voters

44 A. 429

Attachment 1 to response of Mrs. Myrtis Bishop. Date Feb. 20, 1974 Page No. 1

STATEMENT OF: Myrtis Bishop
Registrar. 7/18/74

Tuesday afternoon at approximately 3 o' Clock J. D. Porter came in my office to pick up a drivers license that a black man had used to get his S. S. number from so he could register to vote. He was still standing in my office when a black man & woman came in to register. They were the same people who came the evening before and she had been told that I had to have her social security number before I would register her. The man is diginant but left shortly.

She brought with her a slip of paper with the S.S. number written on it. Normally I would not accept a number that way, but not wanting to argue I said nothing. She filled out her registration form and when I read that she had been registered in California I asked if she had a registration Card from there, She replied no. I then asked if she knew what Ward she lived in there. She replied no.

Myrtis Bishop

430 Date Feb. 20, 1974 Page No. 2

STATEMENT OF:

I then asked if she knew when the place was located or the name of the place, such as school, fire station etc. She still replied no. I asked how long that had been + she replied two years. I smiled + replied + said "You can't remember two years back?" At this she became very excited + called me a "Honkey Cracker" and that people like me should not be in an office + several things about white folks I did not have to listen to such so I turned + went to the Sheriffs office + asked Mr. Deckard to come to my office. I turned + returned or started back to my office + she met me shaking her fingers in my face + hit me across my nose demanding a registration card. Naturally I slapped her back + told her not to. When she came at me with her purse raised + the black man held me by the shoulders + Mr. Porter pinned her against the wall, at which time the man attacked him, + the woman also kicked him + hit him with her purse. After a scuffle with both

Muntie Bishop

431 Date Feb. 20 Page No. 3

STATEMENT OF:

Of them, Mr. Deckard + Mr. Lunn put them in jail. I left my office and went to Dr. Wells office. After examining me he gave me a sedative and told me I had to go home and could not return to work until the next day.

Mystie Bishop

432

Attachment 2 to response of Mrs. Myrtis Bishop. Date February 19, 1974 Page No. 1

STATEMENT OF:

J. D. "Mike" Porter, Drivers License Examiner, Tallulah, La.

About three P.M., on the afternoon of Tuesday, February 19, 1974, I went into the Registrar's Office for the purpose of picking up an old Drivers License which had been used for the purpose of obtaining a Social Security Number as voting identification. While I was there a negro male and female, along with a child about 4 years of age, came in. When Mrs. Bishop, the Registrar of Voters, asked if she could help them, the negro female said she wanted to register. Mrs. Bishop handed her a card which she filled out and returned. After the card was returned to Mrs. Bishop she asked if she had voted before. The girl said she had voted in Los Angeles, but she did not have her registration card, nor could she give information as to what precinct she had voted in. Mrs. Bishop handed her a form to sign. The man with her said it was a form to keep her from voting in Los Angeles. At which time, the girl said, "That's alright." Then further statements were made by her such as... that her vote was needed here ... to help clean out this mess ---- to help get people out of offices where they dont belong .... like this Honkie-cracker here and pointed her finger at Mrs. Bishop.

At that time Mrs. Bishop left the office without saying where she was going. Immediately afterwards the two negros left and turned to the right toward the south door. Just after the got into the hall I heard the man ask the woman if she got her registration card. She said, "No, but I want it." ....and I'm going to get it." She turned and started back to the office and met Mrs. Bishop near the door. They exchanged words, but I do not know just what was said, but the negro girl struck Mrs. Bishop in the face and a scuffel occured, at which time I stepped in front of the negro girl.

J. D. Porter

433

Date February 19, 1964. No. 2

STATEMENT OF:

J. D. "Mike" Porter, Drivers License Examiner, Tallulah, La.

She hit me with her purse/ knocking off my glasses and breaking them and I caught her arm. About that time, the man hit me and knocked my leg from under me, and I fell to the floor. When I got up Deputy Wayne Deckard and Oran Lewis arrived and subdued the subjects

J. D. Porter

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Attachment 3 to response of Mrs. Myrtis Bishop.

Date 2/19/74

Social Security or Registration Number 566-88-8929

APPLICATION FOR REGISTRATION
Office of Registrar of Voters
State of Louisiana
Parish of Madison

Ward No. 1 Prct. No. 2
Municipality: In ___ Out ___
Mailing Address 411 Chester Dr Tallulah, La

I am a citizen of the United States and of the State of Louisiana and have not been disfranchised by any provision of the Constitution of this State.

My name is Arnicey (Mr.-Mrs.-Miss) (First) Nicey (Maiden or Middle) Tyson (Last)

I live at 111 Chester Dr. (House or Apt. No.) (Street) Tallulah (City or Town). I have resided in this State since JAN 15, 73 (date), in this Parish since JAN 15, 73 (date) and at my present address since JAN 15, 73 (date)

The place of my birth is Ark. (City) Ware (Parish, County or Province) (State or Foreign Country)

The date of my birth is 5 (Month) 6 (Day) 51 (Year) I was last registered as a voter in (Leave blank if none) Calhoun (Parish or County) (State)

I hereby declare my party affiliation to be (Circle one) American - Democrat - Republican - None - Other (Specify) ___.

Have you been convicted of a felony? Yes [ ] No [x] If yes, have you received full pardon and restoration of franchise? Yes [ ] No [ ]

Under Louisiana Revised Statutes 18: 270.802, no person shall register falsely or illegally as a voter or make a false statement in an affidavit or other document that he presents for the purpose of procuring himself to be registered or to be retained as a registrant. No person shall knowingly present, for any purpose within the purview of this Chapter, an affidavit or other document containing a false statement.

Whoever violates this Section shall be fined not less than five hundred nor more than one thousand dollars or imprisoned for not less than six months nor more than one year, or both. The penalties shall be doubled for the second or any succeeding offense of the same character. I have read the statements above. Yes [x] No ___

I do hereby solemnly swear or affirm that I will faithfully and fully abide by all the laws of the State of Louisiana, so help me God.

Sworn to and subscribed before me this 19th day of Feb., 19 74.

Myrtis Bishop (Deputy) Registrar

Arnicey Tyson Applicant's Signature

LR-71

UPON REQUEST, THE REGISTRAR SHALL FURNISH EACH APPLICANT A COPY OF HIS APPLICATION FORM

Copy of Registration Form showing that Arnicey Tyson was registered on Feb 19, 1974

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Attachment 4 to response of Mrs. Myrtis Bishop.

OFFENSE REPORT

Complainant Mrs. Myrtis Bishop № 4958

Address Registrar of Voters, Tallulah, La. Phone 574-2193

Offense Disturbing the Peace Place of Occurrence Court House

Report received by 3:00 at M. Date 2/19/74 19 How reported In Person

Date and time offense committed 3:00 P.M.

Time of investigation M. Date 2/19/74

Suspects and/or persons arrested Ramon Elwood Tyson, Jr., 111 Chestnut St., Tallulah, La
Arnicey Tyson, 111 Chestnut St., Tallulah, La.

DETAILS OF OFFENSE (State fully all other circumstances of this offense and its investigation)

At approximately 3:00 P.M. I was in the Sheriff's Office when Mrs. Bishop, the Registrar of Voters, ran into the front office and called me. She said,"Wayne come quick." I went out into the hall. I was a short distance behind Mrs. Bishop and just as I got into the hall I saw her (Mrs. Bishop) and a colored female in the hall just outside the Registrar's Office door. They were exchanging words in a heated manner and I saw the negro girl strike Mrs. Bishop in the face. As I arrived on the scene the a negro man, who was apparently with the girl, stepped up behind the girl and swung at Mrs. Bishop with his fist. I grabbed him and kept him from striking her. He fought back and after an exchange of blows I finally subdued the subject and with the help of Oran Lewis, both subjects were taken to the Madison Parish Jail where they were booked on a charge of Resisting arrest. At that time they caused a further disturbance by using profane language. Subjects were identified as Ramon Elwood Tyson, Jr., 111 Chestnut St. and Arnicey Tyson, 111 Chestnut St.

Later in the afternoon the following charges were filed:

ARNICEY TYSON:
Simple battery on the person of Mrs. Myrtis Bishop, bond set at $1,000.00
Resisting Areest, bond $1,000.00
Simple Battery on the person of J. D. Porter, bond $1,000.00
Simple Criminal Damage, bond $100.00
Disturbing the peace at the jail, bond $50.00

RAMON ELWOOD TYSON, JR.:

Simple battery on the person of Myrtis Bishop, bond $1,000.00
Simple Battery on the person of J. D. Porter, Bond $1,000.00
Resisting Arrest, bond $1,000.00
Bistrubing the Peace in the Courthouse, bond $1,000.00

Investigating Officer: Deputy Wayne Nichols Date 2/19/74

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JAMES T. BRIDGES
ATTORNEY AT LAW
BELZONI, MISSISSIPPI 39038

January 15, 1975

Ms. Lucy R. Edwards
Assitant General Counsel
United States Commission on Civil Rights
Washington, D. C. 20425

In re: G. H. Hood
Circuit Clerk & Registrar
Belzoni, Mississippi

Dear Ms. Edwards:

Mr. Hood has asked me to comment on the material you forwarded to him on January 8, 1975. One page of the report reads,

> "In Humphreys County blacks informed the Commission that even if they are able to get off from work to register there is no way of knowing whether the circuit clerk and registrar will be there. On some days when a number of blacks were brought in to register, the circuit clerk had left.17"

Mr. Hood's office is open from 8:00 a.m. to 5:00 p.m. each business day except Saturday, when it is closed all day pursuant to Resolution of the Board of Supervisors, and it is closed from 12:00 to 1:00 for lunch. These are the same hours as all of the officers in the Court House and is required by Section 25-1-99 of the Mississippi Code of 1972. Of course, the allegation is that Humphreys County blacks informed the Commission that they couldn't tell whether he was there or not, and if they would give days and times when Mr. Hood was not there perhaps we could answer it. There is absolutely no way to answer such a general allegation except to say that the office was kept open at the times required by statute. On the other page we have several allegations and I noticed you have changed that Mr. Hood has been in office since the early 1950's, as he was elected in 1959 and began service as Circuit Clerk and Registrar on the first Monday in January of 1960. Mr. Hood denies the allegations that he had steadfastly opposed the black franchise and would show that he has followed the statutes in registration of the individuals. Mr. Hood is not a member of the Legislature and has to follow the statutory requirements until they are held invalid by a court.

The allegation that he is reported to have been operating a segregated facility with separated waiting areas for the races in the registration office is untruthful. The Circuit

JAMES T. BRIDGES

January 15, 1975

Clerk and Registrar operates in a one room office approximately 20 x 20 feet in dimension with a vault opening off it. A counter with filing cabinets runs the length of the room about five feet inside the door and this is the only waiting area in the office. There are five chairs adjacent to one another for any person who has to wait. The space inside the counter is the office of the Registrar and Circuit Clerk and contains a double desk and a secretary's desk, a chair for each side of the desk and for the secretary and a deacon's bench for business visitors. The Clerk uses the vault for applicants to register to complete their registration forms and has about two at a time in the vault, as that is about all the room there is. The allegation that he "operates his office in such an arrogant manner that registrees come away thoroughly denigrated, embarrassed and intimidated.", which is contained in a letter from Lawrence Tardy as shown in footnote 59 is absolutely untrue. To the recollection of Mr. Hood, Lawrence Tardy has only been in his office one time, and that was to qualify as a candidate for Justice of the Peace, District #1, as an Independent candidate in the 1971 general election. The answer to the "many people would not register if he came knocking at their door" is untenable in that the Registrar must register the applicants at his office and cannot do so by travelling around the country knocking on doors. The statement that a staff member was told that the "registrar continues to behave in a manner that makes registration a grueling process", footnote 60a, must be by a staff member who interviewed only the black political activists who are dissatisfied because they did not win the election in 1971. The Registrar has registered every person that has applied for registration at his office since the enactment of the Voting Rights Act in 1965 that were qualified and completed the form required by statute.

The allegations made against Mr. Hood are so vague that it is difficult to set forth defense thereto as most of them are conclusions of "black political leaders" and the allegations were not followed up by the staff interviewer so as to get any facts to support the conclusions drawn.

Very truly yours,

James T. Bridges

JAMES T. BRIDGES
Attorney for G. H. Hood

JTB:jdt

cc: Mr. G. H. Hood
Circuit Clerk & Registrar
Court House
Belzoni, Mississippi 39038

MONTEREY COUNTY

OFFICE OF THE COUNTY CLERK

☒ P.O. BOX 1819 · SALINAS, CALIFORNIA 93901 ··(408) 424·0417
☐ 1200 AGUAJITO ROAD, MONTEREY, CALIFORNIA 93940 ··(408) 372·5081

ERNEST A. MAGGINI
COUNTY CLERK

PLEASE REPLY TO ADDRESS CHECKED.

January 14, 1975

Mr. John A. Buggs
Staff Director
US Commission on Civil Rights
Washington, D. C. 20425

Dear Sir:

In reply to your undated letter received by me on Monday, January 13, 1975, I would like to make the following response.

At no time did I or anyone in my office tell persons interested in serving as election officials, whether they be bilingual or not, that we had already filled our quota for election officials. There is no such thing as a quota for election officials in Monterey County as it is quite difficult at times securing enough precinct election officials. Also, there are always last minute cancellations from election officials for various reasons and it is essential and very helpful to contact persons for replacements.

Also, my office received a list of names of Mexican-Americans who were bilingual from interested citizens to recruit as election officials and each one contacted declined to serve for various reasons.

Prior to the Primary and General Elections, instruction classes are held for persons who will serve as election officials and they are all instructed that they may as an election official use a language other than English at the polls to communicate with voters.

Sincerely,

Ernest A. Maggini
County Clerk-Registrar of Voters

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BOARD OF ELECTIONS
IN
THE CITY OF NEW YORK
GENERAL OFFICE, 80 VARICK STREET
NEW YORK, N. Y. 10013

HERBERT J. FEUER, PRESIDENT
JOSEPH J. PREVITE, SECRETARY
CHARLES A. AVARELLO
JAMES F. BASS
ELIZABETH A. CASSIDY
ELRICH A. EASTMAN
STANLEY C. KOCHMAN
ALICE SACHS
ANTHONY SADOWSKI
SALVATORE SCLAFANI
COMMISSIONERS

Darby M. Gaudio, Chief Clerk
Manhattan Borough Office
80 VARICK STREET
NEW YORK, N. Y. 10013
226-2600

Beatrice Berger, Chief Clerk
Bronx Borough Office
1780 GRAND CONCOURSE
BRONX, N. Y. 10457
299-9017

Gus Galli, Chief Clerk
Brooklyn Borough Office
315 ADAMS STREET
BROOKLYN, N. Y. 11201
522-2441

Gloria D'Amico, Chief Clerk
Queens Borough Office
77-40 VLEIGH PLACE
FLUSHING, N. Y. 11367
380-2600

Edward Grabowski, Chief Clerk
Richmond Borough Office
30 BAY STREET
ST. GEORGE, S. I. 10301
727-4300

December 19, 1974

Hon. John A. Buggs
Staff Director
United States Commission on Civil Rights
Washington, D. C. 20425

Dear Mr. Buggs:

In reply to your letter received on December 18, 1974 with regard to Spanish translation of the ballot, please be advised that when the Board was apprised of the alleged errors in our "voting instructions", contact was made with the Department of Justice. Recommended by the State Department was one, Dr. Arsenio Rey.

We immediately contacted Dr. Rey and he re-edited the voting instructions, as well as all other bi-lingual materials sent to the voters. He has consented to work with our Board on all future translations.

As a result of his re-editing, all interested persons were completely satisfied with the bi-lingual materials.

Should you require additional information, please do not hesitate to call me at Canal 6-2196.

Very truly yours,

BETTY DOLEN
Executive Director

BETTY DOLEN
EXECUTIVE DIRECTOR
JOSEPH NEGLIA
DEPUTY EXECUTIVE DIRECTOR

KATHERINE L. PETROCELLI
SENIOR ADMINISTRATOR

440

State of Georgia

Superior Courts of the Southwestern Judicial Circuit

P. O. DRAWER 784

Americus, Georgia

CHAMBERS OF
W. F. BLANKS
JUDGE

LEE, MACON, SCHLEY
STEWART, SUMTER
AND WEBSTER
COUNTIES

December 31, 1974

Mr. John A. Buggs
Staff Director
United States Commission on Civil Rights
Washington, D. C. 20425

Re: Allegations concerning Macon County Primary of 13 August, 1974, and Run-off of 3 September, 1974

Dear Mr. Buggs:

Thank you very kindly for your undated letter recently received which dealt with certain allegations concerning my conduct in relation to the captioned elections. As usual in such allegations, they are a mixture of truth and fiction, and I will refer to them by number in case you care to discuss further the matters herein related, to wit:

1. As of 1 November, 1974, I became Judge of Superior Court, Southwestern Judicial Circuit, and at that time resigned from the State Election Board and from other pertinent positions. I am in the process of relinquishing my Chairmanship of the Macon County Democratic Executive Committee.

2. It is true that I talked with Lynmore James and tried to discourage him from running for the office of County Commissioner from the Montezuma District. As you may or may not know, political affairs in a small county are very complex, but I have always exerted my influence in such manner as to try to insure that all public affairs were conducted in a responsible and progressive manner. It is not true that I treated Lynmore James discourteously, but it is true that I contended that he should not run.

3. It is true that I discussed with Lynmore James the problems that he would have as the first black man seeking to serve as a County Commissioner, which might diminish his influence with the other Commissioners. The Montezuma District has

fifty percent of the population of the County, pays sixty percent of the taxes of the county, yet, has only one of the five commissioners who govern the County. This is disproportionate, especially since two other commissioner districts have fewer than four hundred registered voters each. The situation is so complex that I doubt that Lynmore James would even appreciate the problem. The county is divided by the Flint River with sixty percent of the population on the East side and forty percent on the West side. In addition, the Marshallville District has commercial and cultural ties with Fort Valley (on the North) and has never supported county-wide movements such as the completion of a county hospital and/or consolidation of schools. This has created a situation where the Montezuma District has been under-represented, and this, in turn, has caused many conflicts over the years.

4. It was, and is my opinion, that Lynmore James was seeking the office in fulfillment of his personal ambition rather than for the furtherance of higher ideals such as construction of a county-wide general hospital, which is the number one need of the population at this time. You probably do not know that there is not a hospital bed in the county for Medicare and/or Medicaid patients. Neither is there presently a decent hospital bed available in the county for a black citizen. The construction of this medical facility has been my Number One priority for a number of years and I certainly did not want Lynmore James to interfere with the accomplishment of this very real and basic need.

5. Macon County, particularly the City of Montezuma, has moved progressively to achieve an accommodation acceptable to both races as is attested by the fact that black citizens are serving as Council Members both in the City of Montezuma and in the City of Marshallville. They also serve as members of the Draft Board, the Board of Jury Commissioners, the Board of Registrars, and many other Boards and Committees, including the Macon County Chamber of Commerce and the Macon County Hospital Authority.

6. It is not true that I said anything about a "damn nigger" either at a public or private meeting. In fact, for many years I have personally refrained from using such terminology and have sought to influence others to cease using words which are offensive to our black citizens. You will find that I have been extremely influential in Macon County, Georgia in supporting a fair deal

for all citizens, both black and white. Let it further be said that Lynmore James has not been influential in actions taken by many of us to improve race relations. In the run-off there were a number of white citizens who did not vote for Hugh Crook. At the same time, there were an estimated four hundred to five hundred black citizens who did not think that Lynmore James was the black man to become the first black Commissioner; therefore, they did not vote for him. In my opinion, it was his failure to attract black-voter support which caused him to be defeated. It should also be noted that the population of Macon County is about sixty-eight percent black, further, that the black voters constitute a majority of those registered. In this race, all voters were urged to consider carefully the respective qualifications of the candidates and to vote for the candidate who they thought would best represent the Montezuma District and best aid in mobilizing the political support necessary to construct our county-wide general hospital.

Please feel free to contact me in relation to any further information you might desire in relation to the subject matter of this complaint.

Sincerely,

William F. Blanks

W. F. Blanks
Judge, Superior Courts
Southwestern Judicial Circuit

WFB/pl

Sworn to and subscribed before me
this 31st day of December, 1974.

Virginia M. Culpepper

Notary Public State of Georgia My
Commission Expires June 3, 1977.

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THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

December 31, 1974

Hon. John A. Buggs
Staff Director
U.S. Commission on Civil Rights
Washington, D.C. 20425

Dear Mr. Buggs:

I have read with great concern the abstract regarding Congressman Badillo's allegations of "...blatant appeals to prejudice..."

I am, to be sure, totally in favor of a system which, strictly and unequivocally, provides absolute accountability for any and all individuals vested with the public trust. Within the framework of our political system, the ways and means of conducting a campaign have, particularly in recent times, received the attention and concern of our entire populace. Campaign literature and/or the public utterings by any political candidate should and must be maintained at the highest moral as well as legal standard.

Consistent with the aforementioned, I state as emphatically as I can, that neither I, nor any one operating under my instructions, and/or knowledge, did at any time before, during, or after the Mayoral Campaign in question, ever partake in the type of scurrilous and reprehensible efforts referred to by Congressman Badillo.

When the literature in question was first brought to my attention in the midst of the 1973 Mayoral Primary Runoff, I denounced it publicly and disassociated myself and my entire campaign organization from the sentiments and the issues with which it dealt.

Furthermore, we made every effort possible, under the circumstances, to track down those responsible for these tactics. In the few cases where we were successful, we ordered the material destroyed.

I would also like to point out that after the Primary Runoff, but during the ensuing Election Campaign, a Committee of the New York State Legislature conducted an investigation into the charges made by Congressman Badillo and held public hearings on them.

My campaign representatives cooperated fully with the committee and testified at the public hearings. The Committee found no connection between me or my campaign and the material in question. Some of the literature was, indeed, untraceable.

My representatives also brought to the attention of the committee unfair and derogatory literature and advertisements against me put out by my opponent's campaign.

If a transcript of the public hearings is available from the New York State Legislative Committee, I urge that any pertinent testimony be included in your final report.

I deplore the type of unfair, undemocratic tactics alleged by Mr. Badillo. I sincerely believe that my many years of public service lend credence to the strong personal feelings I have in this regard.

I trust that this information is responsive to your request. Please don't hesitate to contact me if I can be of further assistance.

Very truly yours,

Abraham D. Beame

Abraham D. Beame
MAYOR

STATE OF...New York.....
COUNTY OF...New York.....
On the ...31st... day of ...December..., 1974 before me came ...Abraham D. Beame..., to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he executed the same.

William J. Tierney

.....
Notary Public

WILLIAM J. TIERNEY
Notary Public, State of New York
No. 31-3983751
Qualified in New York County
Term Expires March 30, 1975

445

ROLAND COOPER
JUDGE OF PROBATE

MRS. ANNIE LEE BAILEY
CHIEF CLERK

PROBATE COURT OF WILCOX COUNTY
P. O. BOX 220
CAMDEN, ALABAMA 36726

TELEPHONE:
682-4883
AREA CODE 205

December 30, 1974

Mr. John A. Buggs
Staff Director
United States Commission on Civil Rights
Washington, D. C. 20425

Dear Mr. Buggs:

I have your letter concerning the election of constables in Wilcox County in the National Democratic Party of Alabama in the November 7, 1972 Election.

This office can see no reason for complaint by any of those constables elected because this is an outdated position. This office is no more recognized as an office of authority, in as much as they have no duties required to perform and no provisions for payment or fees. To my knowledge the November 1972 Election was the first time any person had run for this office in this County. In that Election 19 constables were elected but only 11 qualified by making bond. Five of those making bond were elected under the NDPA ticket and 6 of those making bond were elected under the Democratic Party ticket. Those 11 constables that posted bond were given the oath of office, however; the 5 constables elected on the NDPA ticket were never technically qualified because their bond was only paid for one year and should have been for the four year term of office.

In as much as the position of constable carries no official capacity, also due to the fact that none had been previously elected, plus the fact that I was new in this office, no cards were issued. I have recently secured certificates for issuing commissions and I have issued commissions to each of those constables whose bonds are in order.

Sincerely,

Roland Cooper

Roland Cooper

STATE OF LOUISIANA

PARISH OF EAST CARROLL

BEFORE ME, the undersigned authority, personally came and appeared JAMES T. HERRINGTON, who, being duly sworn, deposed and said as follows:

That he is presently and has been for a period of about four years the Superintendent of Schools for East Carroll Parish, Louisiana; that he is the "Superintendent of Schools" referred to in a staff interview, East Carroll Parish, Louisiana, September, 1974, specifically referred to in Footnote Numbered 37 in the proposed report of the U. S. Commission on Civil Rights; that he has not, to the best of his recollection, been in the Registrar's office of East Carroll Parish, Louisiana, at any time during the year 1974 (presumably the alleged occurrence took place in 1974); that the duties of his office do require that he conduct business with the offices of East Carroll Parish Police Jury, East Carroll Parish Tax Assessor, East Carroll Parish Clerk of Court and East Carroll Parish Sheriff's Department, all of which are or were located on the same floor with and are of no greater distance than 100 feet from the Registrar's Office; that his presence at any time on the first floor of East Carroll Parish Court House would have involved business transactions with one or more of the offices aforementioned, but under no circumstances would his presence there have involved any activities in or with the Registrar's Office, and in no case has his presence in said Court House ever in any manner related to or concerned the activities of the Registrar, any persons who might have been in the office of the Registrar for the purpose of registration, or any persons who might have been at or in the Re-

gistrar's Office for the purpose of assisting others to register.

JAMES T. HERRINGTON

SWORN TO AND SUBSCRIBED before me, Notary, on this the 9th day of January, 1975.

NOTARY PUBLIC

50-471 1743

Response to comments on p. 187.

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Lake Providence, Louisiana
December 31, 1974

Mr. John A. Buggs
Staff Director
United States Commission on Civil Rights
Washington, D.C. 20425

Dear Mr. Buggs:

I acknowledge your recent communication to me relative to #37. Staff Interview, East Carroll Parish, September, 1974.

In answering this interview, certainly I could have been in the Registrar's office. It is my feeling that this is a public office and as a citizen, I certainly had a right there. I am wondering if Mr. Lane was there to register, and perhaps his presence was not coincidental.

Answering Interview #38, i.d., it is with reluctance that I admit that I do not own the firm that supplies the city's gas. The fact is I am a lowly service man for the Louisiana Gas Service Company, who has served the area of Lake Providence since 1932. Mr. Lane is certainly right that I try to be nice to all customers of the Company - black and white. As for gas cut-offs, the names of the cut-offs are issued to me from the Central Office of the company and I immediately cut off any and all persons who are on the list. This is a strict company policy and if I do not follow their instructions I would have to pay the bill personally.

Since I have become a subject to your study, I would appreciate receiving a copy of the report issued by your Commission when same is completed.

Yours truly,

Lloyd L Clement

Lloyd Clement

dm

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RESPONSE OF H. E. MITCHELL TO SUMMARY OF MATERIAL PERTAINING TO ALLEGED ACTIVITIES IN TALLADEGA COUNTY, ALABAMA, DURING JUNE 1974 DEMOCRATIC PRIMARY RUN-OFF

I am the duly elected and presently serving Sheriff of Talladega County, Alabama. I served in this capacity during June 1974.

It is my information that staff personnel of the United States Commission on Civil Rights have interviewed certain persons in Talladega County relative to the Democratic Primary run-off of June 1974. I was a candidate in that election.

I have not been furnished any written information as to any misconduct at any specific voting place, no specific information as to individuals involved, no specific information as to names or identity of witnesses to any such incidents, no specific information as to the names or identity of persons who allegedly committed any acts of misconduct and no specific information as to the time when said alleged acts occurred. It is therefore very difficult, if not impossible, for me to respond to these reported incidents. It would seem that any reasonable interpretation of the Federal statutes would entitle me to at least have information as to the specific time and place when reported acts of misconduct were committed and some information as to the name or identity of the officers who committed the acts and the names of persons who are familiar with the incident. It would seem that anyone with a sense of fairness would agree that at least some limited information should be made available to me so that I can make a response as required by the statute.

The only specific information with which I have been furnished is that the alleged misconduct occurred at the National Guard Armory in Talladega. This voting place was open from 8:00 a.m. to 6:00 p.m. There were ten voting machines in the Armory and 2,765 voted there on June 4, 1974. Information furnished me about the alleged incidents at the Armory was not in writing but given by telephone to my attorney.

I have never authorized, permitted or condoned misconduct, violence or harassment by any officer under my jurisdiction at the June 1974 Primary run-off or any other election. I did not use city police or county deputies in such tasks as putting up posters or handing out leaflets in connection with my campaign and neither I nor anyone under my jurisdiction or acting under the color of my office has ever talked with a black person

or warned them that they would not receive welfare or food stamps if they voted for my opponent. How any intelligent person, whether an informer or the recipient of information, could believe that I have any control over the Alabama Department of Pensions and Securities (welfare and food stamps) is beyond comprehension.

I urgently suggest that the source or sources of information furnished staff personnel of the Civil Rights Commission be investigated more thoroughly. I suggest you will find that one of those sources was a former deputy of my predecessor in office. This informer is black. My predecessor was impeached by the Supreme Court of Alabama in September 1972 and removed from office. I headed the investigation which resulted in the impeachment proceedings.

I have never authorized, permitted or condoned any of the alleged acts of misconduct which are vaguely and indefinitely set forth in the summary attached to the undated letter from the United States Commission on Civil Rights which I received December 19, 1974. I have never participated in any such activities and none of the deputies or personnel under my supervision or control have ever participated in any such acts of misconduct.

I respectfully request that this response be made a part of any published report of the Commission in this matter and in addition request that as much time be spent on investigating the sources of information as to their truth and veracity as has been spent in compiling the scurrilous generalities which I have been furnished.

H. E. Mitchell

Subscribed and sworn to before me this the 15th day of January, 1975.

Notary Public

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House of Representatives - State of South Carolina - Columbia

ALBERT L. KLECKLEY
MEMBER FROM JASPER COUNTY

HOME ADDRESS:
P. O. DRAWER X
RIDGELAND, S. C. 29936

COMMITTEES:
AGRICULTURE AND CONSERVATION
ETHICS

January 2, 1975

Mr. John A. Buggs
Staff Director
U.S. Commission on Civil Rights
Washington, D.C. 20425

Dear Mr. Buggs:

I am happy to reply to your letter received December 19, 1974, concerning false and deceitful allegations about the July 30, 1974 run-off primary in Jasper and Beaufort Counties.

I have investigated thoroughly the allegation about Kleckley Gas Company and can assure you that no member of Kleckley Gas Company ever made any statement to voters about not supplying them gas if they did not vote for me. From the information I have received this malicious rumor was started by members of Juanita White's campaign force in order to discredit me and my family. My family has lived in this area since the 1930's and I don't feel that you can find anyone who would have downgraded any member of my family prior to this election. I can assure you also that Kleckley Gas Company would have continued to give the same equal treatment to all persons whether I had won or lost. Many tactics were used and this was just one.

I did ask that one of our dirvers come to the Sheldon precinct since that is an area with which I am not familiar and it was just incorporated into District 122. This driver lives in that area and knows most of the people there. He introduced me to quite a few people and many stated that had they known me before they had voted, they probably would have voted for me.

Concerning the allegations about photographic pictures, there were pictures taken outside of the polling place of vehicles only. There was never at any time any pictures taken inside the polling place by me or any of my campaign workers.

The vehicles that were photographed were thought to be of an agency in this area who thrives solely by federal funds and I was informed was subject to prosecution under the Hatch Act. As a matter of fact, a high ranking member of this agency testified before the S.C. Democratic Party Executive Committee that he was coordinating about fifteen vehicles who were hauling voters to the polls. This same person testified under oath that he approached a person carring the voters to the polls for me and severely chastized, berated and intimidated this driver into not driving for me.

The last allegation about a black man being asked not to enter a polling place may be true. There were several individuals working for Juanita White which, in my opinion, broke almost every rule in the book. Some would bring the voters to the polling place, usher them inside, tell the poll worker that they were helping the voter and then vote the voter. On numerous occasions I had voters tell me that they would have voted for me had they not been intimidated into letting other people vote them.

The person who I have in mind who possibly could have been asked to leave was a member of this same agency mentioned above. He was extremely adamant and should have been asked to leave, if he wasn't. This person was not a voter nor a resident of District 122 and had no authority nor business in interferring with the voting process. Yet he insisted time and again to follow his own rules. However,there was never at any time any threat of physical violence by anyone connected with me or my campaign.

In conclusion, allow me to reiterate that there was no coercion used by me, my campaign workers or Kleckley Gas Company in the July 30, 1974 run-off primary in District 122. I have heard a lot of sour grapes cried over Juanita White losing. However, these and other matters have been tried before the S.C. Democratic Executive Committee, the State Court system and the Federal Court system. To date, they have held unanimously that there was no wrongdoing on my part, nor by my campaign workers nor by Kleckley Gas Company.

I regret that your Commission staff members did not contact me concerning any grievances or false allegations that they have received. If I had been contacted, I feel sure that any rumor concerning me could have been traced down and found to be false. As you can tell, I too have grievances and could make all types of allegations. Therefore, it is extremely distressing to me that your Commission has not seen fit to investigate completely any and all voting procedures and irregularities. Without an impartial investigation, any report that you may make will in all likelihood, be only the false allegations of a poor loser.

With kindest regards, I am

Sincerely,

Albert L. Kleckley

Albert L. Kleckley

ALK:bs

A. D. RUCKER

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Rucker & Richardson

ESTABLISHED 1919

REAL ESTATE & INSURANCE
MORTGAGE LOANS

DIAL 648-4741
118 NORTH EIGHTH STREET
Richmond, Va.

January 6, 1975

Mr. John A. Buggs
Staff Director
United States Commission
on Civil Rights
Washington, D. C. 20425

Dear Mr. Buggs:

Thank you for the opportunity to respond to "certain materials pretaining to" me regarding the Annexation Litigation of the City of Richmond, Virginia and the surrounding counties of Henrico and Chesterfield, Virginia.

It has always been my policy not to discuss matters currently in litigation (the annexation case will be heard by the United States Supreme Court at an undetermined future date). However, I believe your inquiry merits the attached comments.

Your letter was addressed to my son, Philip J. Bagley, 3406 Wythe Avenue. I am Phil J. Bagley, Jr., 6222 West Franklin Street should you desire to contact me in the future.

Respectfully,

Phil J. Bagley, Jr.
Former Mayor of Richmond, Virginia
6222 West Franklin Street
Richmond, Virginia 23226

PJB,Jr/v

Enc.

RESPONSE TO CIVIL RIGHTS COMMISSION REGARDING
RICHMOND-CHESTERFIELD ANNEXATION

It should be noted that in the previous Richmond Councilmanic Election, some candidates ran on a platform to expand the boundaries of Richmond, other candidates adamantly opposed annexation (one contributed to an anti-annexation fund), stating publicly that they wanted "No part of annexation."

Near the conclusion of the prolonged annexation trial, I entered the press room as reporter Mr. James Davis of the Richmond Times-Dispatch was talking on the telephone with the chairman of the Board of Supervisors of Chesterfield County. Mr. Davis suggested that I should, as Mayor of the City of Richmond, talk with the chairman to bring the litigation to a close. I agreed and met the chairman in a public restaurant at Southside Plaza to discuss the possibility of terminating the trial. Subsequently, I talked individually to members of City Council who favored boundary expansion to determine their views as to accepting a smaller area than that requested of the court. There was no need to contact those opposed to annexation in any form as I already knew their views as publicly expressed.

I advised city attorneys that a majority of the council, in order to assure an orderly and cooperative transition, were in accord with accepting a lesser area and suggested this possibility be presented to the court for the court's consideration. It should be emphasized the matter was in litigation and any decision was solely up to the court and not within the authority of the city council nor the board of supervisors. The award verdict was made by the Judges of the Annexation Court.

Regarding alledged statements, I testified that the statements attributed to me were ridiculous. One ridiculous statement was alledged to have been made at a football game in Charlottesville, Virginia (hardly a place to issue statements regarding Richmond). To the best of my knowledge, I have never met or talked with this gentleman. I was later informed this gentleman lives in the area annexed.

The second ridiculous statement was alledged to have been made to one of the councilmen who opposed annexation. This gentleman has since resigned from city council stating, "I heard voices telling me to go elsewhere." To the contrary, it is a matter of record that I was the patron of the ordinance to create a Human Relations Commission to develop better race relations. Also, it is on record that I voted for Mr. Cephas (a Negro) for Vice Mayor and that I have voted for Negroes for the School Board, the Planning Commission and many committees and positions. In addition, I ran on the Richmond Forward Slate for election with Mr. Cephas and Mr. Mundle (also a Negro). I would not have voted for them if I had thought they were not qualified for office.

As to motivation for annexation and the contention that Richmond had no interest in economic or geographical considerations, tax revenue, vacant land, utilities or schools, I brand this assertion as a blatant untruth. The City of Richmond presented valid documents and reams of evidence concerning the above items and legally established its right to expand, not only to the Chesterfield Court but also in a previous case against the County of Henrico. Both courts recognized this evidence as justification and the Henrico Court awarded the City a verdict. Unfortunately the price tag was not feasible and gave the City inadequate open areas to develop to justify the cost. The City rejected this award. I submit that if the City only wanted white bodies, we would have accepted the thousands of white citizens involved in the Henrico award at any cost. But the award was rejected because of the exhorbitant cost and absence of adequate open area to develop.

Henrico 16 square miles with 16% vacant.
Chesterfield 23 square miles with 52% vacant.

Henrico 45,300 population with approximately 900 blacks.
Chesterfield 47,000 population with approximately 1380 blacks.

Henrico cost $55,000,000.
Chesterfield cost $47,000,000.

From a personal viewpoint, I had no reason nor need to acquire additional voters as I ran first in a field of over twenty candidates in the previous council election and second to top in a field of 24 candidates in the last election. In both elections I received thousands of votes in predominately Negro precincts.

The fact is there is no way Richmond can expand its boundaries without acquiring a majority of white citizens. This is due to the citizen make up of the surrounding counties and not to any design of the City. The allegation that I, as Mayor, would not agree to a settlement without the Supervisors guaranteeing 44,000 white citizens is an out and out falsehood. The fact is the Supervisors, even if they wished, could not guarantee anything as the decision, if any, was to be made by the Judges of the Annexation Court.

One would have to be naive and politically stupid to believe that any one being a party to annexing people against their will would receive the votes of the people annexed.

The case was referred to "a master" of the District Court, who, to this day, has not contacted me in any form to determine the truth. Obviously, the text of the District Court relied on the "Master's" report which resulted in the text being fraught with error.

The case has been appealed and the United States Supreme Court has agreed to a hearing.

Phil J. Bagley Jr.
former Mayor
City of Richmond Virginia

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APPENDIX 3

FEDERAL REVIEW OF VOTING CHANGES

How to Use Section 5 of the Voting Rights Act

By David H. Hunter

Joint Center for Political Studies
Voter Education Project
Lawyers' Committee for Civil Rights Under Law

(1467)

This book has been prepared and published by the Joint Center for Political Studies, the Voter Education Project, and the Lawyers' Committee for Civil Rights Under Law.

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The Voter Education Project is a non-partisan organization operating in 11 southern states. It makes voter registration and education grants to local minority organizations and provides technical assistance to other local groups and to minority elected officials.

The Lawyers' Committee for Civil Rights Under Law is a national organization with a number of local offices. It acts as counsel or offers assistance to lawyers involved in litigation designed to secure equal rights for all citizens. The Lawyers' Committee's participation in this project has been made possible by grants from the Josephine H. McIntosh Foundation and the New World Foundation; however, this manual does not necessarily represent the views of those supporting organizations.

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Preface

The Voting Rights Act of 1965 is one of the milestones on the path toward full civil rights for blacks in the United States. Under its provisions thousands of blacks have registered and voted, some for the first time in their lives. This, in turn, has led to an increase in the number of blacks who have run for and won public offices throughout the South, including some in states where there had been no black public officeholders since Reconstruction. Before 1965, about 72 black elected officials were serving in the 11 states of the South, including the seven covered by the Voting Rights Act of 1965. Today, there are more than 900 black officials in just the seven southern states covered by the Act.

One of the most important parts of the Act which has helped to bring about these gains has been Section 5, which provides for a federal review of state and local actions which affect the right to vote. This publication deals with Section 5.

Despite the importance of the Voting Rights Act and Section 5, blacks still have not reached a position of full political equality. While some legal barriers have been lowered, many political and economic obstacles remain.

But these legal tools provided by the Act are still needed, are still available, and should be used. As organizations

concerned with full participation of minorities in the political process, we have joined in preparing this handbook on how to use Section 5 of the Voting Rights Act in the hope that it will make the Act more accessible to those it is designed to benefit.

This handbook also summarizes the experiences under the Act thus far, highlighting how it has furthered black political participation. Unless renewed by Congress, the Act will expire in 1975. This handbook's documentation of how the Act has been and can be used may provide guidance for the future.

We are glad to have been able to cooperate in producing this handbook. We hope it will be useful to many.

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Introduction

Nine years after the passage of the Voting Rights Act of 1965 the provision of that Act which remains most important in protecting the voting rights of minorities is Section 5, which provides for a federal review of state and local actions which affect the right to vote. This section has checked discriminatory practices, has prevented new means of discrimination, and has been a constant deterrent to those who would seek to deny political equality to minorities.

Implementation of Section 5, however, is not perfect or automatic, nor is the section permanent. The requirements of Section 5 are complicated and not widely known. While it has been effective, it could be even more effective if every minority community in a state or local jurisdiction which is affected by it were aware of its utility. Section 5 is not self-enforcing. It requires action by state or local governments and action by the U.S. Department of Justice. People at the local level can help to assure that this action is taken. Finally, the protection of Section 5 will come to an end late in 1975 unless action is taken by Congress to preserve it. It is necessary, therefore, that knowledge of and experience with Section 5 be as widespread as possible so that Congress can receive an accurate indication of its utility.

By making better known the provisions of Section 5 and by making their operation less mysterious, this manual should make Section 5 more effective. There is another more practical reason for its publication at this time. The Election Law Project of the Lawyers' Committee for Civil Rights Under Law is coming to an end in late 1974. Over the past several years this project has been constantly involved in the problems of Section 5. This manual, therefore, is an attempt to put down on paper the knowledge which has been accumulated and which will no longer be available on a case by case basis.

This manual was written primarily by David H. Hunter, under the direction of Armand Derfner, former director of the Election Law Project, and with the assistance of Joseph Taylor and Lawrence Guyot, director of the Section 5 Project of the Lawyers' Committee for Civil Rights Under Law. Mr. Taylor is primarily responsible for the preparation of the appendices and of the index.

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1. The Voting Rights Act—Past and Future

Before the passage of the Act, blacks had no share of political power in the South. In Mississippi, less than seven percent of blacks of voting age were registered before 1965. Registration rates among blacks were not much better in other states: Alabama, 19 percent; Georgia, 27 percent; Louisiana, 32 percent; North Carolina, 47 percent; South Carolina, 37 percent; and Virginia, 38 percent. As a result very few elective offices in the South were held by blacks prior to the passage of the Voting Rights Act. Those that were obtained tended to be minor and in areas where blacks constituted an overwhelming majority of the population. Since blacks were effectively removed from the political arena during the post-Reconstruction reaction of the latter part of the 19th century, methods to maintain white political control had gradually evolved, with new techniques replacing those which courts held unconstitutional. By 1965, the primary means used to keep blacks away from the polls were:

1) Literacy tests and other tests and devices used as a precondition for voter registration -- usually unfairly administered;

2) Other obstructive tactics by voting registrars; and

3) The atmosphere of physical and economic intimidation that made blacks aware that politics was an activity that should be left to whites. 1/

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The Voting Rights Act of 1965[2/] dealt with these problems and provided legal tools for assuring that blacks could no longer be excluded from the political life of the South.

The special remedies of the Act apply to those states, or parts of states, which met a test designed to isolate the areas with the most serious problems. Areas covered are those which had used some device for restricting eligibility of voters and in which less than half the residents of voting age had either registered or voted in the election of 1964. These include the states of Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, and most of North Carolina. In addition, the state of Alaska and certain counties in Arizona, Hawaii, and Idaho were covered. (The current list of covered jurisdictions is contained in Appendix B.)

In these places, no literacy test or other similar test could be applied. This removed the major means used to keep blacks from registering. Federal examiners could be sent to a county to register voters. This meant that an uncooperative local registrar could no longer stand in the way of a voter registration drive. The federal government could send observers to elections to collect evidence about whether elections were fair and whether there were any incidents of harassment, intimidation, or violence.

Finally, Section 5 of the Voting Rights Act prevented the covered jurisdictions from instituting any new practice or procedure that affected the right to vote until they had obtained

a determination from the Department of Justice or the U.S. District Court for the District of Columbia that the new practice was not discriminatory either in its purpose or in its effect. Thus, the Act contained a safeguard against new forms of discrimination.

In 1970, Congress realized that five years had not been enough time to overcome all the obstacles to black political participation which had accumulated over the past century. It therefore extended the Act for an additional five years, although not without a major legislative struggle.[3/] In extending the Voting Rights Act, Congress also expanded it. First, it enlarged the formula for coverage to take in several problem areas outside the South:[4/] several election districts in Alaska, three boroughs of New York City, several counties with substantial Mexican-American or American Indian populations in Arizona and California, and one county each in Idaho and Wyoming. Secondly, the ban on the use of literacy tests and similar barriers to registration was extended to the entire country on a trial basis. The overall nationwide ban expires in August of 1975, unless extended by Congress.[5/]

Much of the special machinery created by Congress in 1965 to protect voting rights -- such as federal examiners and observers -- is rarely used, but is still available whenever blacks have difficulty registering and whenever it is believed that the fairness of an upcoming election will be compromised by discriminatory practices or by racial fears.[6/] The ban on

literacy tests, originally thought to be the heart of the Act, retains its importance, but Section 5 has also grown steadily in importance until it is now the most frequently used portion of the Voting Rights Act.

2. Introducing Section 5

The drafters of the Voting Rights Act were attempting to eliminate all practices which had prevented black political participation in the South. They were concerned, however, that new methods would be found to prevent blacks from entering the electoral process. For this reason they included Section 5.

That section forbids the covered jurisdictions (which are mainly, but not exclusively, in the South) from enforcing any new law, practice, or procedure with respect to voting until they obtain a determination from the United States attorney general that it is not discriminatory in purpose and will not be discriminatory in its effect.[1/]

> Whenever a State or political subdivision... shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting...such State or subdivision may institute any action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification...does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color... [or]...such qualification, prerequisite, standard, or procedure may be enforced without such [court] proceeding if the procedure has been submitted to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission....
>
> [from Section 5, Voting Rights Act]

Although Section 5 was enacted into law in August 1965, it

remained practically dormant for several years.[2/] Then the Supreme Court gave broad interpretations to the coverage of Section 5 in two cases, one in 1969 (Allen v. State Board of Elections), the other in 1971 (Perkins v. Matthews). These decisions resulted in vast increases in the number of Section 5 submissions, from only one in 1965 and 50 in 1966 to 360 in 1970 and 1,339 in 1971. (See Appendix C.)

In 1969 and 1970, although Section 5 had barely begun to be implemented, the administration advocated its repeal. Congress refused, however, and retained Section 5 when in 1970 it extended the Voting Rights Act until 1975. The attorney general took the position, in regard to a submission from Mississippi, that he could not enter an objection unless he made a positive determination that the change was discriminatory.[3/] Since it had been generally thought that the main virtue of Section 5 was to place the burden on the submitting jurisdiction to show that a change was not discriminatory in its purpose or effect, the attorney general's position aroused opposition from civil rights organizations, law professors, United States senators, and the U. S. Commission on Civil Rights. In 1971, the Justice Department reversed itself and agreed that the law's "burden of proof" provision required it to object in cases where it could not make a positive determination either way.

On September 10, 1971, the Department for the first time adopted regulations for implementing Section 5. They explicitly stated that the burden of proof is on the submitting

jurisdiction.[4/] Thus it was not until more than six years after the enactment of Section 5 that the systematic implementation of the Section using the correct standard of determination began. In addition, more than three-fourths of all submissions have come since 1971. At the time the Voting Rights Act is due to expire -- in August 1975 -- there will have been only four years of meaningful experience with Section 5, rather than the 10 years which Congress called for.

During the past few years, however, the wisdom of Section 5 has become evident. The most frequent use of Section 5 in recent years has been to combat practices which were barely realized to be discriminatory when the Voting Rights Act was passed in 1965. These practices include such techniques as racial gerrymandering of legislative districts, annexations, and the use of majority requirements for election. Because of Section 5, both staff lawyers of the Department of Justice and members of civil rights organizations have become expert in detecting practices which tend to be discriminatory. Section 5, in addition, has prevented many discriminatory practices from being instituted because legislatures, county councils and other governing bodies realized that they would not be cleared under Section 5.

The continued effectiveness of Section 5 depends partly upon the extent to which the minorities that it protects use it. The remainder of this booklet will try to provide a guide for its use.

3. Section 5 Procedures

Private individuals and groups can express their views to the Department of Justice about changes in election procedures that they think are discriminatory. The following section shows what happens to such a proposed change, and how citizens' comments play a role.

How the Process Works

Submission-- When a state, city or county covered by the Act wants to implement a "change with respect to voting," one of its officials must file a Section 5 submission by writing to the Justice Department. Submission should be made "as soon as possible" after the change has been authorized and before it has been put into effect. No particular form is required for submissions. The only requirements are that the change be set forth clearly, that the name and title of the person making the submission be disclosed, and that two copies of the submission be included.[1/] (A sample submission is shown in Appendix E.)

Within the Department, Section 5 submissions are handled by the Civil Rights Division. Within that division, Section 5 is the responsibility of the Voting and Public Accommodations Section. When a submission is received by the Voting and Public Accommodations Section, several things happen. First,

the submission is assigned to an attorney or research analyst of the section. Secondly, notice of the submission is included in a weekly list of Section 5 submissions which is sent to interested individuals and organizations.[2/] (A sample weekly list is shown in Appendix E.) Third, two sets of files are created for each submission -- an internal file, for use by Department personnel, and a public file, which is available to the public at any time.[3/] Finally, information concerning the submission is put into a computer, which keeps track of the status of all Section 5 submissions.

Analysis -- The attorney or analyst to whom the submission is assigned examines it to determine whether the Department will need more information before it can determine whether the change is discriminatory or not. For example, he might decide that maps are needed to show old or new voting districts or polling places, or that an explanation is needed of why the change was enacted. If more information is needed, a letter requesting it is sent out by the assistant attorney general in charge of the Civil Rights Division. (A sample letter requesting more information is shown in Appendix E.)

Under Section 5 the attorney general has 60 days in which to decide whether or not to object to a submission. This 60-day period, however, does not begin until additional information requested by the Department is received.[4/] When additional information is received from the submitting jurisdiction, notice of this is provided in the weekly list of Section 5 submissions.

The attorney or analyst responsible then studies the materials and undertakes whatever investigation is necessary to enable the Department to make its determination. This investigation may include a trip to the jurisdiction which made the submission. The analyst may conduct research on the purpose or the effect of the change, talk to officials of the submitting jurisdiction, and talk with blacks active in politics or other representatives of the black community. He also makes contact by letter and by telephone with individuals or groups who might have information or opinions concerning the possible discriminatory purpose or effect of the change.

Decision -- On the basis of the information which has been provided to the Department, the Department's own investigation, and applicable legal standards, the attorney or analyst then prepares a draft letter stating either that the Department objects or that it does not object. Along with the draft letter he prepares a memo justifying his recommendations. The draft letter and the memorandum are prepared within 40 days after the submission has been received or made complete. They are reviewed by higher officials in the Department of Justice. The final review and decision is made in most instances by the assistant attorney general in charge of the Civil Rights Division, although in some cases the attorney general himself makes the final decision. The letter which is finally sent to the submitting jurisdiction may be identical to the one originally prepared by the staff attorney or it may be modified by any of

the higher officials.

A copy of the notification letter to the submitting jurisdiction is sent to any person who has made a comment on the submission or to anyone else who requests to be notified of the decision.[5/] (Sample letters of objection and of non-objection are shown in Appendix E.)

The Department maintains a chronological file which summarizes, in order of the date of decision, the Section 5 determinations which it makes. The chronological file is open to the public.[6/]

Expedited consideration -- If the submitting jurisdiction has a justifiable need to put a change into effect before the end of the 60-day period it can ask the Department to give its submission "expedited consideration." If the Department feels that the need for fast action is legitimate, it will attempt to make a quick decision. The weekly list of submissions notes any submission for which expedited consideration has been requested.

Even if the Department has expedited a decision and has notified the submitting jurisdiction that it has decided not to object, it can still reconsider this decision if it receives further information about the case before the normal 60 days are up.[7/]

Reconsideration -- After the Department has objected to a change the submitting jurisdiction can ask the Department to reconsider its decision if it has new information which was not previously available. Notice of a requested reconsideration is

provided by the weekly list of submissions. The Department can withdraw its objection if the new information convinces it that the change is not discriminatory.[8/]

The Department will withdraw an objection on its own even without a request by the submitting jurisdiction if it decides that it made a mistake or applied the wrong legal standard.[9/]

Citizen Involvement

If no submission -- If a change has been made but there has been no submission, or if residents of the area were not sure whether there has been a submission or not, they may write to the Department of Justice informing it about the change. The letter should be sent to:

Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D.C. 20530

The envelope and first page of the letter should be marked "Comment, Section 5, Voting Rights Act."[10/] Marking the envelope in this way assures that the letter will reach the people working on Section 5 questions as quickly and directly as possible.

Weekly list of submissions -- To receive the weekly list of Section 5 submissions -- free of charge -- a person or organization should send his name and address to the Civil Rights Division (at the address indicated above), indicating that he wishes to be included in the "Registry of Interested Individuals and Groups" to receive the weekly list of Section 5 submissions.[11/]

(A sample letter of request for the weekly list is shown in Appendix E.)

Providing information -- Individuals or groups who have information which could be helpful to the Department should not wait to be contacted by the Department's attorney or analyst but should send a letter with this information to the Department or should phone the departmental attorney. Letters should be sent to the address shown on page 13.[12/] (A sample comment letter is shown in Appendix E.)

The Voting Section can be reached by phone at (202)739-2167.

The type of information which should be provided to the Department is discussed in the next chapter.

Confidentiality -- If the person providing information does not want his name known to the public he should indicate this in his letter and his identity will not be disclosed to anyone outside the Department. Furthermore, if the Department on its own determines that disclosure of the name of someone who has provided information could "jeopardize the personal safety, employment, or economic standing of the individual," it will not reveal the name to anyone outside the Department.[13/]

Public file -- The public file which the Department maintains for each Section 5 submission contains a copy of all the information the Department receives concerning a Section 5 submission and of all the correspondence with the exception of information held in confidence. Copies of the material in this file are available to the public. Persons interested in

commenting may obtain a copy of a submission by writing to the address on page 13 or by phoning (202)739-4191. The Department provides copies of material free of charge up to 30 pages, and at 10 cents per page above that. It may waive the charge entirely in appropriate cases, especially where the request comes from a person affected by the proposed submission.

4. Providing Information to the Justice Department

The opinions of individuals and groups and the information provided to the Department by individuals and groups can play an important role in the Department's deliberations concerning whether or not to object to a submitted change. In a close case, the Department might write an objection letter if the black or other minority people who would be affected by the change believe that it would be discriminatory and are concerned enough to send a letter.

Letters can be sent by organizations, officeholders or other politically active people, attorneys, and ordinary citizens. The letters do not have to be in any particular form, they do not have to be long, and they can be handwritten rather than typed. If you are writing, you should clearly indicate which change in law, regulations or procedures you are commenting on. If you are writing on behalf of a group, this should be indicated. Letters should be sent to the address shown on page 13. (A sample comment letter is shown in Appendix E.)

If possible, give your phone number so that Department of Justice personnel will be able to discuss the submitted change with you and contact you in the future concerning other changes which the jurisdiction submits.

If you do not want your name disclosed, indicate this in the letter, and the Department will not reveal it or show the letter to anyone outside of the Department.

While letters need not be long, it is helpful to the Department to receive letters which discuss the discriminatory nature of the change in detail and provide specific information which will help the Department to make its determination.

Nevertheless, do not be deterred from writing the Department because it seems that too much work is involved or that it would be too difficult to write. Furthermore, if you know what information would be helpful for the Department but do not have it yourself send a letter to the Department telling it what information to look for. The Department in this situation will then try to find the information itself.

It is also important to send letters to the Justice Department as soon as possible after you learn about the change affecting the right to vote or about a Section 5 submission. The earlier a letter is received the more likely it is that it will have an impact on the Department.

Here are the types of information which are important for the Department to have.

Discriminatory Nature of the Change

The most important thing to explain is how the change discriminates against black people or other minorities.

The letter can explain how the purpose of the change is to

discriminate or how the effect of the change will be discriminatory, whether or not the purpose is discriminatory.

If the change is discriminatory because it puts people with less money or with less education at a disadvantage, explain this.

If the change is discriminatory only because of a particular local situation, this should be explained. For example, a change in district lines could appear to be perfectly harmless, but might be used to move the residence of a prospective black candidate from a district with a black majority to a district with a white majority.

If there is no hard evidence that the change is discriminatory, but you suspect that it is discriminatory in some still undiscovered way, or even if you just have a hunch based on past experience that "they are up to something," this also should be explained to the Department.

The Black Community

The fact that the black or minority community considers a change to be discriminatory is often good evidence for the Department. The extent of the black opposition to the change can be measured partly by the volume of mail which the Department receives. In addition, information should be presented on how much opposition there was in the black or minority community when the change was under consideration.

Here are some pieces of evidence that can be sent to the Department:

--Leaflets concerning the proposed change distributed during the local debate.

--Description of meetings held by groups opposing the change, with an indication of the attendance.

--Information concerning the participation -- or lack of participation -- of blacks in formulating and approving the change. If hearings or other meetings were held to discuss the proposed change, describe participation of blacks in these meetings and the positions they took. If no such hearings or meetings were held, or if notice of them to the black community was inadequate, this should be stated.

--Names, addresses, phone numbers, and organizational ties of blacks (and whites) who can attest to the discriminatory nature of the change. If opinion in the black community is divided, say so. Send names of persons on both sides of the issue that the Department should contact, with relevant information about them, such as employment, organizational ties, and age.

--Newspaper articles about the proposed change and statements made by sponsors of the change or by government officials, whether made on the record or in informal settings, If these accounts or statements do not reveal the entire motivation for the change, you may give information on the background of the motivation. If possible, give the sources of this information. If the articles or statements are in terms which appear to be racially neutral but contain a hidden meaning that will be clear to most local residents, this should be indicated. More generally, explain anything in the articles or statements which is relevant to an understanding of the purpose or effect of the change but which an outsider would probably not understand.

Supporting Evidence of Discrimination

If possible, provide any other evidence or materials indicating either directly or indirectly that the change is discriminatory.

Population and voting statistics -- Discrimination is more likely if blacks appear to have a good chance of gaining political power. Therefore, you should include information about the political situation.

If possible, send the Department information on the racial breakdown of the voting district's population, the black percentage of the voting age population, and the black percentage of the registered voters. If these are estimates, indicate the source and the reliability of the estimates. Indicate if there have been recent changes, or if the changes are expected in the future. Describe any effect which the submitted change will have on present or potential black political power. The Department should be told how many votes black candidates have received in past elections and how the change would affect their support at the polls in the future.

White responsiveness -- The extent to which white voters support black candidates and the extent to which white officeholders are responsive to the needs of the black community may be relevant for the Department's determination. Likewise, you should describe any past attempts by blacks to gain political power which were opposed by the white community or thwarted by discriminatory practices.

Experience -- If there have been previous attempts to make the same or a similar change, or a change which would have the same effect as the present change, this should be indicated. Tell also whether any of these attempts was prevented by a

Section 5 objection or because of the fear of such an objection. If other jurisdictions in the area have instituted similar changes with the purpose or the effect of discriminating, name these jurisdictions and describe the effect of their example.

Maps -- Maps should be included with the materials sent to the Department if they would be helpful. This would probably be the case with respect to redistrictings, the use of at-large elections, annexations, polling place changes, and precinct line changes. Indicate on the map exactly what the change is and how it will be discriminatory. Mark the location of black residences, of natural boundaries, and of other information that might be helpful to the Department.

Implementation -- If the change has already been put into effect without Section 5 clearance, tell the Department.

Cooperation -- Finally, inform the Department if local or state government officials or employees are not cooperative with persons trying to gather information to be sent to the Department of Justice.

5. Types of Section 5 Submissions

Changes which affect the right to vote come in many different sizes and shapes. Some are big and obvious. Others are tiny. Many look quite fair, at least from an outsider's point of view.

This chapter will describe the various kinds of changes that the Justice Department has considered. It won't be able to detail all the variations in these types, however, and it won't be able to describe all the ways in which a certain kind of change can be discriminatory. Only you, at the local level, really know how a particular change may affect your rights.

Here are some examples of types of changes covered the Voting Rights Act that this chapter will discuss:

- Annexation
- At-large election
- Enabling legislation
- Full-slate requirement
- Home rule charter
- Literacy tests
- Majority requirement
- Multi-member districts
- Polling place
- Political parties
- Precinct lines
- Redistricting
- Referendum
- Registration and voting
  - methods of registration
  - assistance to illiterates
  - registration officials
- Reregistration
- Running for office
  - candidate requirements
  - filing fees
  - abolishing offices
  - ballot form
  - nominating petition
- Special election
- Staggered terms

Registration and Voting

Among the things covered by Section 5 are any changes in:

-- voter qualifications;

-- procedures and methods for registering or voting;

-- methods of selecting personnel to handle registration or voting; or

-- procedures for counting votes.

There are many ways in which these kinds of changes might be discriminatory.

For example, changes in qualifications might make it more difficult for illiterates to register or vote. Changes in the hours, dates, or places of registration or of voting may make it less convenient for blacks to register. The administration of absentee registration or voting might be designed to suit the convenience of whites but may be inconvenient for blacks. The methods by which illiterates receive assistance in voting can inhibit their right to vote for the candidates of their choice. Restrictions on poll watchers and on persons watching the counting of ballots can compromise the fairness or appearance of fairness of an election. Who supervises the registration or voting can have a substantial effect on how it is carried out.

Literacy tests -- The Voting Rights Act prohibits covered jurisdictions from using any "test or device" as a prerequisite to registration or voting. Under this provision no literacy test, test of good character, or any similar requirement can be

imposed. If any Section 5 submission made to the Department of Justice contains such a test the Department will normally enter an objection or obtain an assurance that the test will not be enforced.

The Department will also object to any requirement that acts as a hidden literacy test. Officials are not permitted to require an applicant for voter registration to be able to read or write a section of the state constitution[1/] or to require the applicant to make a "written" and "signed" statement.[2/]

Registration forms may not include any reference to a requirement which has been suspended by the Voting Rights Act, such as literacy or tax paying requirements.[3/]

Assistance to illiterate voters -- Because illiterates have the right to vote, they also have the right to assistance in voting. Otherwise their franchise would be worth little. The Department will object to changes in voting procedures which make it more difficult for illiterates to receive assistance, such as a reduction in the number of voters one person will be allowed to assist.[4/]

Registration and election workers -- The standards used for the selection of registration and voting personnel must not have the tendency to discriminate. The Department objected to a Georgia requirement that election and registration officers be "judicious, intelligent and upright electors" because "these qualifications are vague and subjective, and are subject to the same kind of discriminatory application that formed the basis

for invalidating tests and devices under the Voting Rights Act of 1965." 5/

Since the Voting Rights Act was enacted, there have been 411 changes submitted which affected voter registration and voting procedures, as of September, 1973. Of these, the Department has objected to 25. (A list of objection letters appears in Appendix F.)

Reregistration

Reregistration commonly comes about in two circumstances, either when there has been a redistricting or when the registration books have not been purged for a number of years.

In some circumstances, reregistration can be helpful to black political interests. It is generally in black voters' interest to have books kept current. Many of the non-current names are probably of whites, and their removal can cut down on fraud. Secondly, many estimates of potential black strength are overly optimistic because they do not consider the large numbers of blacks who move out of an area each year. In these situations a more realistic awareness of the actual registration figures can produce more effective campaigning and political work.

On the other hand, reregistration can have the potential effect of removing many eligible black voters from the new registration rolls and undoing registration campaigns which succeeded only with great effort.

Alternatives to reregistration exist which put less burden

on black voters. If there has been a redistricting, registration officials can administratively transfer the names of voters to registration books for the new districts. This has been done in many counties. If registration books are out of date, post cards can be sent to all the registered voters, and only those who do not respond by mail can be removed.

When faced with a reregistration submission the Department of Justice can do one of two things besides merely allowing the reregistration to take place. First, it can object to the reregistration altogether, which means that any person registered on the old registration books is still eligible to vote. Secondly, it can allow the reregistration to take place, but require that a longer time be allowed for its completion.

For example, in a series of Mississippi county reregistrations conducted shortly before elections in 1971, the Justice Department approved the changes only on condition that voters on either the old or new books be allowed to vote in the 1971 elections, and that the old books be retained until after the 1971 elections.[6/]

Here are the factors which the Department of Justice will review before deciding on a reregistration submission.

Number of blacks registered under reregistration -- If reregistration has begun before a submission is made to the Department, the Department will consider the extent to which blacks have been able to reregister.

Publicity -- Newspapers, radio, TV, civic clubs, organizations and church associations should be used to disseminate information. If no special effort is being made to reach black organizations, complaints should be filed with the Department of Justice.

Registration times and places should be accessible and well-advertised through the above organizations. If registration places are located only in the city, it is difficult for rural blacks to reach them. If the hours of registration are limited to normal working hours, many blacks who cannot afford to miss work will be denied access to the polls.

Race and number of registration officials -- Helpful registration officials can improve the chances of success of a re-registration drive. If the city has not appointed any blacks as deputy registrars or registration officials, the Justice Department should be informed.

When do the new rules go into effect? Find out whether the city plans to use both the new and the old registration rolls to determine qualified voters in the next election.

Wording of notices -- Is the language clear? Can anyone easily tell where to go and when the registration places are open?

The Voting Rights Act prohibits federally registered voters from being purged from the rolls through a reregistration. The Department will usually insist that these voters be administratively transferred to the new registration books and that they

be notified that they are still eligible to vote. If, however, state law required a reregistration at regular intervals, the Department requires that federally registered voters receive individual notice of the need to reregister but will not require that their names be administratively transferred.

Of 77 changes submitted to the Justice Department involving reregistration through September 10, 1973, the Department had objected to one (Jasper County, Miss., in June, 1971).

Polling Places

Polling places are usually changed because redistricting has caused a shift in precinct lines, or because the old polling place is unavailable.

The change in location can be discriminatory because of location or because of lack of notice to those voters who are affected by the change.

Intimidating location -- If the polling place is situated in a building or other location which might be intimidating to a black voter -- such as a private clubhouse -- an objection is likely.[7/]

Inconvenient location -- An objection is possible to a new polling place if it is hard to get to. Even in this situation, however, the Justice Department is not likely to object unless there is also evidence that voters in the affected precinct have few automobiles and convenient bus transportation to the polls is not available.

Lack of notice -- All voters assigned to new polling places should be notified in advance. The Justice Department objected to changes in Marshall County, Mississippi, because the new precincts did not have fixed boundaries. Many people did not vote because they did not know which polling places to use.[8/]

The Justice Department has filed 12 letters of objection to changes of polling places out of the 733 cases for which it had received submissions through September, 1973. (They are listed in Appendix F.)

Running for Office

Voting means choosing among various candidates for an office, so statutes or rules relating to running for office directly affect the right to vote and are therefore covered by Section 5.[9/] This includes qualifications for candidacy, the procedures by which one becomes a candidate, the form of ballots, and the abolition of elective offices.

Becoming a candidate -- Generally one becomes a candidate for an office by submitting a petition with the required number of signatures of registered voters or by paying a filing fee. The Department has objected in instances where the requirements have been made especially burdensome for potential black candidates.[10/]

For example, the Department in 1973 would not permit Mobile, Alabama, to impose a $360 fee on city council candidates. It also rejected two alternatives suggested by the city -- a

pauper's oath for those who could not afford the fee, or a requirement to file a petition with signatures of 2,000 registered voters. The oath, it said, would require those with marginal incomes -- most of whom are black -- to "dispose of or jeopardize their property just to run for office." The signature requirement was rejected because there were twice as many white voters as blacks, so that a larger proportion of blacks would have to sign to obtain the 2,000 signatures.

Independent candidates -- Because of problems that they perceive in working within the Democratic or Republican parties or in receiving nominations from these parties, blacks in the South have often sought to run as independent candidates. Because blacks more than whites have sought to run as independents, legislation increasing the burdens of independent candidacy has been objected to as discriminatory by the Department of Justice.[11/]

Abolishing offices -- Another way in which it becomes more difficult for blacks to be elected to office is for the office to be abolished or to be changed from elective to appointive. The Department of Justice has objected in instances where justification for the change has not been convincing enough to make up for lost political opportunity for blacks[12/] or where certain counties in the state have been picked out for special treatment on what appear to be racial grounds.[13/]

Qualifications for office -- Blacks can be at a disadvantage

if a person must have special qualifications to run for a particular office. For example, requiring that an officeholder be a high school graduate or a property owner could disqualify otherwise well qualified blacks.

Ballot form -- Ballot position can have an important effect on the number of votes a candidate will receive. For example, many voters tend to vote for the person whose name is on the top of the ballot.

Of the 171 charges filed with the Justice Department relating to running for office, it had challenged nine as of September, 1973. (See Appendix F.)

At-large Elections

In a typical at-large situation, blacks may constitute 40 percent of a city's population, and be concentrated in certain areas so that if the city governing body were elected by district, two of five seats might be elected by blacks. If the city holds elections at large, however, the 60 percent white majority controls the outcome of all five seats.

Ever since it has been clear that Section 5 covers changes from district to at-large elections,[14/] the Justice Department has consistently objected to this change.

The Justice Department will be interested in the local political situation to determine whether the change to at-large elections will in fact hurt blacks. For example, the Department will want to know the results of past elections and whether

existing governments have ever appointed blacks to offices. Any general information on the area's racial and political climate will be helpful to the Department.

In addition to looking over the general political situation, Justice also analyzes the minority population in each of the old election districts. If the minority group had a population majority within one or more of the old districts, it is likely that the Justice Department will write an objection.[15/] In other words, if at least one of the city's representatives could have been elected by a minority group, the Department will object.[16/] In some situations there may be no election district with a clear majority black population. In these circumstances the Justice Department analyzes population data to determine whether new district lines might result in a district with a black majority.

Multi-member districts can have the same discriminatory effect as at-large elections. For further information on this topic refer to the sections on minority representation and redistricting later in this chapter.

Sixty-two changes relating to at-large elections had been submitted to the Department as of September, 1973, and it had objected to 13 of them. (See Appendix F.)

Redistricting

The way lines are drawn for legislative districts has a significant impact on the ability of voters to elect the candidate of their choice.[17/]

The basic principle for drawing district lines is that all districts should have nearly the same population. This principle is called the "one person-one vote" rule. Some departure from strict equality will be allowed -- for example, if political boundaries have been traditionally and consistently respected. Generally, however, the chances that a court will accept a districting plan get better as the populations of the districts get closer to equality.

Section 5 does not deal with the equal population aspect of redistricting, only with its racial implications. Nevertheless, the Department is more likely to find a redistricting plan objectionable if it does not meet one person-one vote requirements, for in that case a dilution of black voting power cannot be justified by the explanation that the dilution was required to equalize district population.

A redistricting can be discriminatory if a majority black district is underrepresented or if districts are created in such a way that majority black districts are avoided. Where voting precincts are used as the basis for representation in political party committees, their boundaries should be considered like those of any other district.

Borderline majority district -- Even if a district has a black majority, that majority may be so slim that blacks still cannot control the outcome of an election. It is generally acknowledged that a district must be at least 60 percent black before an election contest is fair. Two factors account

for this: blacks have a slightly lower registration rate than whites, and compared to the white population, a smaller percentage of the black population is of voting age. Because of these two factors a 60 percent black district may mean only a 50 percent black district at the polls.

Underrepresentation -- A district which has a black majority can receive less than its fair share of representation. For example, suppose the average district has a population of 1,000 while a predominantly black district has a population of 2,000. The voters of this district have only one legislative representative while their population would entitle them to have two.[18/]

Elimination of majority black districts -- District lines can be redrawn to eliminate majority black districts which have existed in the past or to prevent the creation of new ones. For example, a black community could be divided in two, with each half submerged in a majority white district.

In one instance the Department objected when majority black urban areas were joined with majority white rural areas to form five districts, each with a white majority.[19/] has also objected when the creation of noncontiguous districts--that is, a district which is divided into two parts by another district drawn between them -- has diluted what might have been a majority black district.[20/]

The Department is likely to object if alternative plans are available which would dilute black voting strength less,

and when odd-shaped boundaries of a district make it appear that the district was created to minimize black voting strength.[21/]

Increasing district size -- The number of members of the legislative body -- and hence the number of election districts -- could be reduced, with the result that each district would have a larger population. If, for example, an old district had contained 800 blacks and 200 whites, it might be impossible to retain a majority black district if the new district were expanded to contain 2,000 people. The new district might have 1,200 whites and 800 blacks.[22/]

Multi-member districts -- Another technique which can submerge concentrations of black population is to use multi-member districts. For example, the old districting plan might contain two districts, each with a population of 1,000. The new plan might combine these into one district which elects two representatives. Let's say the first old district contained 800 blacks and 200 whites and the second old district contained 1,000 whites and no blacks. The new multi-member district would then contain 1,200 whites and 800 blacks. As a result, two whites probably would be elected, rather than one black and one white as was possible with the old single-member districts.[23/] (See the sections on minority representation, below, and on at-large elections, above, in this chapter.)

Overloading a majority black district -- Another way in which the voting power of blacks can be limited is by taking a

district which already has a black majority and which presumably will elect a black and adding to it as many additional blacks as possible from neighboring districts. This has the result of preventing any neighboring districts from having a black majority or substantial black minority.[24/]

Information -- The Department will object if it has not received enough information to determine whether a redistricting plan is discriminatory or not.[25/]

Enabling legislation -- On several occasions local redistricting plans have been drawn after the state passed "enabling legislation" which authorized local governments to redistrict themselves. In several cases, however, this enabling legislation was itself objected to when it was submitted to the Department. In such cases, the Department ordinarily objects to the redistricting plan because there is no authority for drawing it once the enabling legislation was objected to. For example, a state might pass legislation enabling counties to reduce the size of their county councils from 11 members to five members. The Department may object to this because it would make it more difficult for blacks to be elected to office with the reduced number of positions available. The Department would then also object if a county went ahead and reduced its county council from 11 to five members. There have been several objections on this basis.[26/]

Delays in implementing plans creating majority black districts -- There has been one instance in which the Department objected because a districting plan which created a majority black district was not to be implemented in the next election.[27/]

Of the 363 redistricting changes submitted by September, 1973, the Justice Department had objected to 35. (See Appendix F.)

Minority Representation

In most parts of the South, as elsewhere, blacks tend to be a minority, especially in registered voters. In this situation there are two methods by which a minority in a voting district can maximize its voting power and obtain representation.

First, the two major party candidates may both be white and the white vote may be split fairly evenly between the two. A black candidate running as an independent or for a third party might then win by receiving a plurality of the votes -- less than a majority but more votes than any other single candidate.

Secondly, in at-large elections, if blacks tend to vote for a single black candidate and no others, and white voters divide their votes among several white candidates, then the black candidate can get enough votes to win even though black voters are in a minority. This is called "single shot" or "bullet ballot" voting.

Voting laws are sometimes enacted, however, that destroy

the effectiveness of these techniques.

Majority or runoff requirement -- Laws can require a majority for victory, and provide for a run-off election if no candidate receives a majority. The run-off is between the two top candidates. If one of these is black and the other white, a white majority in the electorate can then elect the white candidate.

Anti-single shot law or full slate requirement -- Single shot voting can be directly countered by requiring each voter to vote for as many candidates as there are vacancies. Such a requirement is usually referred to as a "full slate" requirement. In an election for four council seats, for example, a black voter might be forced to vote for three white candidates he opposes in addition to the one black he favors.

Numbered posts, seats, or places -- Single shot voting can be indirectly countered by dividing the field in at-large elections into as many separate races as there are vacancies to be filled. This is most commonly done through the use of numbered posts.

For example, if three persons are to be elected at large to a city council, there will be designated posts, A, B and C. Each candidate must choose to run for one of these posts. A single black candidate would not compete against all the white candidates, only against the one (or more) running for the same post that he has chosen. Black voters would not be able to cast an effective ballot since a white voting majority would

control the election results for that post. When numbered posts are combined with a majority vote requirement, the chance for black voters to elect a black candidate becomes practically impossible unless blacks are in a voting majority.

Residence requirements -- This has the same effect as the numbered post system. If candidates are required to live in a certain district but are voted on at large, the result is to separate an at-large field into separate races. While this might appear to give representation to different areas it still has the discriminatory features of at-large elections because the voters of the entire district control the choice, not the voters of the small area in which residence is required. Even if one or more of the residence districts is overwhelmingly black, the majority white population of the rest of the city will still dictate who will represent that district -- unless it is exactly 100 percent black.

Staggered terms -- Staggered terms have the same effect as numbered posts, separating candidates for a number of otherwise identical positions into individual races.

Justice Department practice -- Since the middle of 1971, the Department of Justice has become quite sensitive to the use of these devices which hinder minority representation, objecting to their use in a large proportion of the instances which they have encountered -- 44 out of the 106 changes submitted as of September, 1973 (See Appendix F.)

Often these devices are used in combination and the Department's objection is to the cumulative effect of the combination.

For example, the Department has objected to the combination of a candidate residency requirement and a majority vote requirement,[28/] to a majority vote requirement where a numbered post system was already in use,[29/] and to a numbered post system where single shot voting was already prohibited and a majority vote already required.[30/]

The Department will object if the device limiting minority representation is instituted after a black has been elected to office or after there has been increased black political activity which might result in the election of blacks to office.[31/] If blacks have not been able to win any elective offices after such devices are imposed, evidence about this is also relevant.[32/]

The Department will also be suspicious if such anti-minority representation devices are imposed following an increase in size of the black electorate.[33/]

Finally, the Department will object to legislation requiring the use of anti-minority representation devices throughout a state. The Department objected to a Louisiana statute requiring use of numbered posts in all multi-member bodies in districts, parishes, municipalities, and wards in the state. This requirement would have been in addition to the pre-existing ban on single shot voting and majority vote requirement.[34/]

Annexation

Annexations have potential for discrimination where white suburbanites are added to a city, thus decreasing the black percentage of the population.[35/]

If the Department decides to object to an annexation, there are two positions it can take. It can object to the annexation entirely. Or it can allow the annexation but require that a method of voting be adopted which is fairer to black voters, such as requiring that the city council be elected from wards rather than at large.

In all cases so far where the Department has objected to an annexation, it has been in places where city council elections were held at large. In Richmond and Petersburg, Virginia, for example, the Justice Department indicated that it would withdraw its objection if the city modified its proposal to limit the discriminatory effect -- i.e., if the city simultaneously shifted to ward elections.[36/]

Population -- If there is a sizeable black population in the city before annexation, an objection is more likely. An objection will probably not be seriously considered unless the black population is at least 25 percent. The grounds for an objection grow stronger as the black population rises, and are of course strongest where there is a black majority.

The presence of a sizeable white population in the area to be annexed likewise increases the chance for objection.

Note, however, that figures for the total population may be misleading. In Lake Providence, Louisiana, for example, figures for total population made it appear that the annexation would have little effect on racial balance. But Justice

objected to this change because a racial breakdown for voting age population and registered voters showed that it did actually have a significant effect.[37/]

Vacant land -- An annexed area might include a large tract of vacant land. Although an annexation of vacant land would not change the percentage of black population, the Justice Department is interested in any long range plan for the land. For example, the land might be slated for development as a high income white residential area, and this addition of white population could significantly reduce the black population percentage.

Annexation history -- One annexation might not affect the percentage of black population of a city. However, a city might have a history of small annexations of white areas, and the sum of these small annexations could affect the racial population balance.

Economic need -- The economic need for the annexation reduces the possibility of an objection. The Justice Department is reluctant to interfere with expansion of a city's borders if it seems necessary for its economic survival. In Petersburg, Va., for example, blacks and whites agreed that annexation would be economically beneficial. The Justice Department objected, but indicated that it would approve the annexation if some change could be devised--such as a shift to single-member districts--which would minimize the discriminatory effect. It is unlikely that an annexation will be objected to altogether unless it can be shown that it was unnecessary or harmful to the city.

Exclusion of black areas -- The Justice Department is always interested in knowing what other areas outside the city boundaries might have been but were not annexed, especially if some of these areas are predominantly black. In Lake Providence, for example, one of the important factors was the city's refusal, two years before it annexed a white area, to annex a nearby black area. In such a case, it becomes easier to secure an objection because both the purpose and the effect of the annexation appear discriminatory, and because the claim that the annexation is necessary is seriously weakened. This factor may also strengthen the position of blacks who wish an area annexed. For example, in Jackson, Mississippi, the Justice Department approved annexation of a white area only because there was an agreement that a nearby black area would be annexed next.[38/]

Method -- One factor which should be relevant is the method by which the annexation is achieved. If blacks are excluded from the process, the annexation becomes more questionable. For example, the annexation may have been agreed upon by elected officials, all of whom are white or it may have been approved in a referendum restricted to property owners, who are more likely to be white than is the electorate generally.[39/]

Of 705 annexations submitted as of September, 1973, the Department had objected to five. (See Appendix F.)

Governmental Structure and Operations

The way governmental units are set up and the status of

officials of these governments affects the power of voters.

This covers such topics as municipal incorporation and consolidation; county consolidations; the creation of school districts; the powers, salaries, and terms of office of governmental officials; special elections; bond issue elections; referenda; the creation of boards, commissions, and courts; determination of the size of governmental bodies; home rule legislation, and the establishment of procedures for annexations and redistricting.

Such actions could affect minority voters in a discriminatory way. For example, salaries for elective offices might be reduced, making them accessible only to persons with a sufficient outside income. Voting in bond issue elections might be restricted to property owners. Procedural obstacles which have a discriminatory effect could hinder efforts to recall an elected official. 40/ City charters or home rule legislation might adversely affect the powers of cities in which blacks have a substantial influence. Procedures for annexations or redistricting might restrict deliberations to a small elite group. Unincorporated areas might incorporate in a way which excludes potential black residents. 41/

In 1966 the state of Mississippi amended its constitution to make it easier for neighboring counties to consolidate. The apparent purpose of this change in procedure was to enable majority white counties to merge with adjacent majority black counties, creating a new county with a white majority and thus

preventing blacks from gaining political power.[42/] A federal court in Mississippi held that this change was covered by Section 5. Because it had not been submitted to the Department of Justice, the court prevented the new constitutional procedure from going into effect.[43/] Since the court decision, the state has neither submitted the new constitutional provision nor attempted to implement it.

In one instance the Justice Department objected to a South Carolina act which provided for a referendum to establish a school district which would be split off from the rest of the Saluda County school district.[44/] Only persons living within the boundaries of the proposed district would be allowed to vote in the referendum, although the Department noted the apparent absence of authorization for this procedure in South Carolina law. Furthermore, the area to be split off for the new school district was "overwhelmingly white," although the county as a whole is about one-third black.

As of January, 1974, the Department had objected to four of the 376 submissions of this type. (See Appendix F.)

6. Legal Aspects of Section 5

This section discusses several legal questions of primary interest to those involved in litigation under Section 5.

Terminology

As is often the case in government, a specialized terminology has grown up around Section 5. Here are some of the special terms.

"Change affecting voting" or simply "change" -- This refers to the new practice or procedure that is the subject of the Section 5 inquiry or determination.[1/]

"Submission" -- A submission to the Department of Justice under Section 5 is a letter sent to the Department which includes the "change" and supporting material relevant to the determination as to whether or not the "change" is discriminatory.[2/]

"Submitting authority" or "Submitting jurisdiction" -- A Section 5 submission is made by the "chief legal officer" or "other appropriate officials" of the state or of a city, county school district or other political subdivision within the state which wishes to implement a change with respect to voting. A state may make the submission on behalf of local governments within the state.[3/]

"Objection" -- If the attorney general finds that the "change" is discriminatory or is unable to decide whether it is discriminatory or not, he "objects" to it, or "enters an objection" to it. Under Section 5, the attorney general never "approves" a change, he only notifies the submitting jurisdiction that he does not object.

Kinds of Practices Covered by Section 5

Two requirements must be met for a practice to be covered by Section 5. There must be a "change", and it must be "with respect to voting."

To determine whether there has been a change, the new practice to be instituted is compared to the practice in effect on November 1, 1964.[4/] If it is different, there has been a change; if it is not, there has not been a change.

The change may come about in any of several ways -- legislation passed by the state legislature; state constitutional amendment; referendum of the voters; ordinance of a city, county or other governing body; administrative regulation of any state or local government agency, or through the changed practice of any government agency or official, whether or not it is pursuant to any written law or regulation.

Furthermore, if legislation to establish a practice was enacted before November 1, 1964, but the practice was not actually instituted by that date, it is still covered by Section 5.

The phrase "with respect to voting" has been given a very broad interpretation. "Voting" is broadly defined by the Voting Rights Act to include all action necessary to make a vote for public or party office effective, from the time of registration or attempted registration to the actual counting of the votes.

Section 5 covers changing the requirements for voter registration, changing the place or hours of voting, changing the rules for assistance to illiterate voters, and changing the procedures for counting the votes.

It also covers any practice which may dilute the value of a vote or reduce the effectiveness of voting. Thus, changing an office from elective to appointive, changing the requirements for becoming a candidate, changing the districts for a legislative body, or changing the method of determining who will be the election day workers are covered.

It does not matter how trivial or seemingly trivial the change is, it is still covered. In fact Section 5 has been effective because it covers seemingly trivial changes. The history of Section 5 has shown that some of the most innocuous changes can have a discriminatory effect.

Finally, even if the change is one which seems to make it easier to register or vote or increases the voting power of blacks, it still is covered by Section 5. For example, increasing the number of registration or polling places or increasing the hours of registration or voting are changes covered by Section 5.[5/]

Purpose or Effect

Section 5 calls for a determination that neither the purpose nor the effect of a change is to "deny or abridge the right to vote on account of race or color." This makes it clear that there should be an objection not only where the change is motivated by the desire to keep black people from voting or using their vote effectively, but also where there is no racial motivation or purpose at all but the effect of the change is still harmful to black voting rights.

Because motivation is often hard to determine and because practices can be harmful even if their motivation is pure, this alternative test of either purpose or effect makes the work of the Justice Department easier and has led to the control of many practices that could not otherwise have been reached.

The Section 5 Decision-Maker

Section 5 provides for two alternative decision-makers. The voting change can be submitted either to the federal district court for the District of Columbia or to the U.S. attorney general.

Originally, the option of submission to the attorney general was designed as a simplified alternative for submissions which were expected to be noncontroversial. However, because the administrative procedure is more convenient and because of the developing expertise of the Department of Justice, all but one of the thousands of Section 5 submissions have been made to

the Department of Justice in the first instance.[6] Within the Department of Justice the attorney general has generally delegated to the assistant attorney general for civil rights the responsibility for making Section 5 determinations.

The 60-Day Period

If the attorney general decides to object, he must do so within 60 days of receiving the submission. Until the 60 days have passed the new practice or procedure cannot be implemented by the submitting jurisdiction. If the 60 days pass and the attorney general has taken no action or has not objected, the change can be put into effect. Under the Department's regulations the 60 days do not begin until the Department has received a complete submission, that is, until it has received all the information it considers necessary for making a determination of whether the change is discriminatory or not. Furthermore, the 60 days begin when the attorney general receives the submission, not when it is mailed by the submitting jurisdiction. The 60 day requirement is met if the Department mails out its objection on the 60th day, even if it is received several days later. Finally, if the 60th day falls on a weekend or a holiday, the Department has until the next working day to make its objection.[7]

Burden of Proof

In a factual dispute where a judge or other decision-maker has to decide between two versions of the facts, he will decide for the party whose version he believes. What will he do if he

cannot make up his mind between the two versions? In court cases there are elaborate rules concerning the burden of proof or the burden of persuasion which determine the outcome in this kind of situation. This problem often arises in cases of possible discrimination.

Before Secton 5 was implemented the burden was on those claiming that there was discrimination to convince the court that their claim was valid. Under Section 5, however, the jurisdiction submitting the change has the burden of showing that the new practice is not discriminatory.

Because discrimination or the absence of discrimination is often very difficult to show, this change in the burden of proof greatly reduces the difficulty of preventing discriminatory practices. Thus, if the attorney general is unable to decide during the allotted time period whether the new practice is discriminatory or not, he will enter an objection to it.[8/]

The Effect of Lack of Section 5 Clearance

Under Section 5, no distinction is made between a lack of preclearance resulting from an objection by the attorney general and that which results from a jurisdiction's failure to make a submission. Either the Department of Justice or private parties can bring suit in a three judge federal district court in the district where the change has occurred to enjoin the use of the new practice or procedure. In a suit of this kind, the issue whether the change is discriminatory or not is not in

question. The only issues before the court are whether there has been a change which is covered by Section 5 and whether that change has been cleared under Section 5.[9/]

If suit is filed against the implementation of an uncleared change before the election is held, the court will ordinarily bar the implementation of the change. For example, if the uncleared law limits the number of illiterate voters whom one person can assist, the court will order that the election be conducted without that restriction. If, however, the uncleared change is an integral part of the election machinery, the election may be postponed until the Section 5 question is resolved. For example, if the uncleared change calls for the use of numbered posts, the election will be enjoined until a method of election has been cleared by the Department.[10/]

If state procedures for challenging victorious candidates have not been cleared under Section 5, then a suit brought in a state court to challenge a winning black candidate could be removed to a federal court.

Appeal

If the attorney general objects to a submitted change, the submitting jurisdiction may bring an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change is not discriminatory. Only three cases of this kind have ever been brought.[13/] The court does not review the determination made by the Department of Justice but makes a com-

pletely new decision on the issue of discrimination, although the court is heavily influenced by the Department's determination. The burden of proof remains on the submitting jurisdiction.

If the attorney general fails to object to a change and if voters who are dissatisfied with this result want a court to overturn the Department's failure to object, the attorney general's decision is reviewable in some situations. There have been four cases of this kind, with conflicting results.[14/] In three cases courts have held the attorney general's failure to object reviewable where he has made a serious error of law.[15/] In another case, the Department's action was held not subject to review.[16/] This issue is now on appeal.[17/]

Section 5 and the 15th Amendment

The traditional method of attacking voting discrimination is by a suit under the 15th Amendment (which prohibits any governmental body from abridging or denying the right to vote on account of race). In its Section 5 determinations, the Justice Department is guided but not controlled by the law developed in court decisions under the 15th Amendment.

There are two main ways in which a Section 5 determination by the Department of Justice differs from a judicial finding under the 15th Amendment, however. First, as has been discussed, the burden of proof under Section 5 falls on the submitting jurisdiction--

there must be a finding of no discrimination before a new law or practice can be put into effect. Secondly, Section 5 requires an objection if either the purpose or the effect of a change is discriminatory. Courts acting under the 15th Amendment have taken varying positions on this standard.[18/]

Moreover, because Section 5 was designed by Congress to strike down new voting practices which have a discriminatory effect but which, because of their novelty, have not yet been considered by the courts under the 15th Amendment, the Department is not limited to objecting to practices which the courts have found discriminatory under the 15th Amendment.

Court-ordered Changes

According to the unexplained and ill-considered statement of the Supreme Court in Connor v. Johnson,[19/] if a change with respect to voting is ordered by a federal court it does not have to be submitted to the Department of Justice under Section 5. This exception has been interpreted to apply only with respect to changes--generally redistricting plans--which are formulated by a court.[20/] In addition, Section 5 review is probably not eliminated by a court decree entered in a case where issues of racial discrimination have not been considered.

A number of different approaches have been taken by courts to minimize potential problems arising out of the overlapping jurisdiction of courts and the attorney general. In some cases, courts have decided the 14th (and sometimes the 15th) Amendment issues before them, but have indicated that Section 5 approval

is still required.[21/] In other cases, courts have abstained from ruling on cases until the Section 5 determination has been made.[22/] Finally, in some cases, courts have proceeded to apply Section 5 standards themselves, for example, by shifting the burden of proof to the governmental body to prove that its change is not discriminatory.[23/]

Prior Discrimination

Because Section 5 is directed at practices and procedures different from those in effect on November 1, 1964, the problem eventually arises of what action the Department should take with respect to present practices which are discriminatory but which are not different from those in force on November 1, 1964. Although the Department's practices have not been consistent in this respect, a two-step process seems to be implied by Section 5 and by the Department's regulations.[24/]

The first step is to determine whether the practice to be implemented is different from that in effect in November, 1964, in any way which affects the right to vote. Thus if a new legislative districting plan is under consideration it is covered if it makes any change which could affect the right to vote.

The second step is to determine whether or not the new practice is discriminatory. The new practice can be found discriminatory and therefore objectionable under Section 5 even if the discriminatory aspect of it was also present in the old practice. For example, the discriminatory aspect of the new districting plan might be the combination of numbered posts and a majority.

vote requirement which was adopted prior to 1964.[25/]

In presenting information to the Department under Section 5 concerning a practice which was in effect prior to 1964, try to show how the old practice is an integral part of the change under consideration so that it should not be separated out for individual treatment. In addition, show how changed conditions transform an old practice into one which is essentially new.

If the Department declines to object to a practice because it was in use prior to 1964 even though it is discriminatory, litigation under the 15th Amendment is still possible against the practice.

Enabling Legislation

Enabling legislation is legislation passed by a state legislature which enables a county, city, or other political subdivision to do something which it would not otherwise be authorized to do. If the enabling legislation authorizes local practices which could affect the right to vote, then the enabling legislation must be submitted under Section 5. If any application of the enabling legislation would be discriminatory, if the legislation has a discriminatory purpose, or if the Department receives no assurance that changes made under the enabling legislation will be submitted, the Department will object to it.[26/] Otherwise, the Department of Justice will not object to enabling legislation but will review the application of the enabling legislation on a case-by-case basis.

Objection to enabling legislation removes the power of the local government to do what the enabling legislation would allow.. In 1969, the Department objected to Louisiana enabling legislation--Act 561 of the 1968 legislative session--which authorized school boards to redistrict themselves and which gave them the authority to hold their elections at large.[27/] The objection was based on the discriminatory potential of at-large elections. Following this objection the Department objected to school board redistricting in several parishes because the redistricting would not have been possible under state law but for the enabling legislation which had been objected to. In 1972 the Department withdrew its objection to Act 561 after the state attorney general interpreted the act to require redistrictings to be nondiscriminatory and to be submitted under Section 5.[28/]

Political Parties

Given the importance of political parties in the political process, and given the history of discrimination against blacks by political parties in the South, one would expect Section 5 to cover the rules and procedures of political parties. Indeed, Congress was careful in enacting the Voting Rights Act in 1965 to make sure that it would reach discrimination by political parties. It did this by defining the terms "vote" and "voting" to include:

> all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and such ballot counted properly and included in the appropriate

totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election. 29/

Nevertheless, there have been only six submissions made by political parties since 1965, 30/ and the Section 5 regulations of the Department of Justice do not mention political parties. There were some disputes over whether party rules for selecting delegates to the 1972 national party conventions were covered, but in any event it seems quite clear the state and local party matters are covered. In any event, since the regulations were published, the Department has come to the conclusion, at least tentatively, that political parties in areas covered by the Act must make Section 5 submissions when they change any rule or procedure which affects the right to vote. 31/

Thus, whenever a political party changes its procedures for choosing nominees for political office or changes its procedures for choosing delegates to party conventions or for choosing party officers, or changes the qualifications for participating in these selection processes, it should submit the change to the Department of Justice under Section 5.

Private Enforcement of Section 5

The normal action to take if a discriminatory voting change is implemented without Section 5 clearance is to notify the Department of Justice. In addition, if the change is likely to cause damage before the Department is able to take action, or if the Department fails to take action, private individuals or organizations may go to court to prevent the change from being implemented.

Also, if the Department objects to a change but does not take action necessary to prevent its implementation, private action is possible. In such cases it is not necessary to prove that the change is discriminatory, only that it affects voting and has not received Section 5 clearance.[32/] These cases are brought in three-judge federal district courts and appeals go directly to the U. S. Supreme Court.

7. Other Federal Laws Protecting the Right to Vote

Other provisions of federal law protecting the right to vote apply nationwide and are permanent.

Anyone who is otherwise qualified to vote under state law is entitled to vote "without distinction of race, color, or previous condition of servitude."[1/] It is illegal for officials or private citizens to interfere with a person's right to vote in any general or primary election for federal officials.[2/] Section 2 of the Voting Rights Act of 1965 provides that "no voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any state or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color."[3/]

These statutory provisions implement the 15th Amendment, which provides, "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color or previous condition of servitude." The rights established by the 15th Amendment and these statutory provisions may be enforced in the courts by private parties and by the attorney general.

The equal protection clause of the 14th Amendment is also important in protecting the right to vote. Supreme Court cases have established that practices which dilute the right to vote

should be treated like practices which deny the voter altogether, and that restrictions on the right to vote shall be subjected to special scrutiny and are rarely justifiable. The 24th Amendment to the Constitution prohibits the use of any poll tax as a prerequisite to voting in a federal election, and the Supreme Court has interpreted the equal protection clause of the 14th Amendment to prohibit poll taxes as a prerequisite to voting in state elections.

Notes

CHAPTER 1

1/ See U.S. Commission on Civil Rights, Political Participation 1-10, 15-17, 222-23 (1968) and A. Derfner, "Racial Discrimination and the Right to Vote", 26 Vanderbilt Law Review 523, 533-44 (1973).

2/ 42 U.S.C §§ 1973-1973p.

3/ 84 Stat. 314

4/ The 1970 Amendments extend coverage to any state or political subdivision of a state if it maintained on November 1, 1968, any test or device as a prerequisite to registration or voting and had a total voting age population of which less than 50 percent was registered or actually voted in the 1968 presidential election.

5/ 42 U.S.C. § 1973aa.

6/ Federal examiners have not been present in the South to enroll voters since the fall of 1971. The use of federal observers has also significantly declined. In 1972, for example, only 350 observers were sent to observe elections in the South; while in 1968, 1,093 observers had been sent (information provided by the Department of Justice).

CHAPTER 2

1/ The determination may also be obtained from the United States District Court for the District of Columbia.

2/ As of January 1968--two and one half years since the passage of the Voting Rights Act--all but one of the submissions received by the Department of Justice had come from South Carolina, which had submitted the extensive election law changes it had made in the spring of 1966. As of June 30, 1969, there still had been no submissions from North Carolina, and only 2 from Alabama, 3 from Louisiana, 10 from Virginia, and 18 from Mississippi (information provided by the Department of Justice).

Notes, Chs. 2, 3, and 5

3/ Mississippi, September 21, 1970.

4/ 36 Fed. Reg. 18186 (Sept. 10, 1971), 28 C.F.R. Part 51.

CHAPTER 3

1/ Section 5 Regulations, 28 C.F.R. §§ 51.5-15.8.

2/ 28 C.F.R. § 51.16.

3/ 28 C.F.R. § 51.26(a).

4/ 28 C.F.R. § 51.18.

5/ 28 C.F.R. § 51.20-51.21.

6/ 28 C.F.R. § 51.26(b) & (c).

7/ 28 C.F.R. § 51.22.

8/ 28 C.F.R. § 51.24.

9/ 28 C.F.R. § 51.25.

10/ 28 C.F.R. § 51.12.

11/ 28 C.F.R. § 51.13.

12/ 28 C.F.R. § 51.12.

13/ 28 C.F.R. § 51.12(c).

CHAPTER 5

1/ North Carolina, March 18, 1971.

2/ North Carolina, April 20, 1971.

3/ South Carolina, Oct. 2, 1967.

4/ Georgia, June 19, 1968.

5/ Georgia, July 11, 1968.

6/ See Washington Research Project, The Shameful Blight, 24-47, "Reregistration in Mississippi" (1972).

7/ St. Landry Parish, Louisiana, Dec. 6, 1972.

8/ Marshall County, Mississippi, Dec. 3, 1971.

9/ Allen v. State Board of Elections, 393 U.S. 544 (1969).

10/ Ocilla, Georgia, June 22, 1973; Mobile, Alabama, Aug. 3, 1973.

11/ Mississippi, May 21, 1969, (see Allen v. State Board of Elections, 393 U.S. 544, 551 (1969); Alabama, Aug. 1, 1969; Alabama, Aug. 14, 1972.

12/ Alabama, Dec. 26, 1972 (justice of the peace): Hollandale, Mississippi, July 9, 1973 (town clerk).

13/ Mississippi, May 21, 1969, (superintendent of education in 11 Counties).

14/ See Allen v State Board of Elections, 393 U.S. 544 (1969).

15/ However, if past elections reveal that blacks have had success in at-large races or that blacks can form effective coalitions with white candidates, Justice may not consider the at-large change to have a discriminatory impact.

16/ Under certain conditions an at-large election scheme could be advantageous to blacks; especially if there is no significant geographical concentration of blacks.

17/ See Allen v. State Board of Elections, 393 U.S. 544 (1969), and Georgia v. United States, 411 U.S. 526 (1973).

18/ Tate County, Mississippi, Dec. 3, 1971.

19/ Warren County, Mississippi, Feb. 13, 1973.

20/ Tate County, Mississippi, Nov. 28, 1972.

21/ New Orleans, Louisiana, Jan. 15, 1973; Georgia, March 3, 1972; Georgia, Feb. 11, 1972.

22/ St. James Parish, Louisiana, Nov. 2, 1971.

Notes, Ch. 5

23/ Lafayette, Louisiana, June 16, 1972.

24/ New Orleans, Louisiana, Aug. 20, 1971.

25/ Warren County, Mississippi, April 4, 1971; Marion County, Mississippi, May 25, 1971; Hinds County, Mississippi, July 14, 1971.

26/ See Enabling Legislation, Chapter VI.

27/ St. Helena Parish, Louisiana, March 17, 1972.

28/ Sumter County, Georgia, July 13, 1972; Thomasville, Georgia, Aug. 27, 1973.

29/ Ocilla, Georgia, June 22, 1973.

30/ Indianola, Mississippi, April 20, 1973.

31/ Hogansville, Georgia, Aug. 2, 1973.

32/ Cuthbert, Georgia, April 9, 1973.

33/ Hinesville, Georgia, Oct. 1, 1971.

34/ Louisiana, April 20, 1973.

35/ See Perkins v. Matthews, 400 U.S. 379 (1971).

36/ Richmond, Virginia, May 7, 1971; Petersburg, Virginia, Feb. 22, 1972. Petersburg refused, and instead took its case to court, where the court ruled that the Justice Department's position was correct and that the annexation could be allowed only if the city shifted to fairly drawn single-member districts. This decision has been upheld by the Supreme Court. City of Petersburg v. United States, 354 F. Supp. 1021 (D.D.C. 1972), aff'd 410 U.S. 962 (1973), aff'd sub nom. Diamond v. United States, 412 U.S. 901 (1973). Richmond has also taken its case to court. City of Richmond v. United States, Civil No. 1718-72 (D.D.C. filed Aug. 25, 1972).

With respect to the annexations in both Richmond and Petersburg the argument was made--but rejected by the Department of Justice and the courts---that the annexation should not be allowed even if the city council is changed to single member districts since some offices, such as city treasurer, city clerk and the like, are necessarily elected from the city at large, and the black

voting power with respect to these offices would be diluted if the annexation were allowed.

37/ Lake Providence, Louisiana, Dec. 1, 1972.

38/ Jackson, Mississippi, Aug. 6, 1971.

39/ In North Charleston, South Carolina, an annexation was approved despite the fact that it was accomplished by a referendum which was limited to property owners and which therefore excluded most of the blacks from voting (Feb. 20, 1973). This was probably a peculiar case since it involved blacks who did not wish to be annexed; if the question were of excluding blacks who wished to be brought in, the argument about the method might carry more weight.

40/ Arizona, Oct. 9, 1973, Jan. 7, 1969.

41/ Pearl, Mississippi, Nov. 21, 1973 (objection withdrawn after modification, Jan. 3, 1974).

42/ See U.S. Commission on Civil Rights, Political Participation 25-26 (1968).

43/ Mississippi Freedom Democratic Party v. Johnson, 299 F. Supp. 93 (S.D. Miss. 1969).

44/ Saluda County, South Carolina, Nov. 13, 1972.

CHAPTER 6

1/ 28 C.F.R. § 51.2(b).

2/ 28 C.F.R. § 51.2(c) & 51.5-51.10.

3/ 28 C.F.R. § 51.2(e).

4/ The comparison date is November 1, 1968 for jurisdictions brought under the coverage of the Act by the 1970 Amendments to the Voting Rights Act.

5/ 28 C.F.R. § 51.4.

6/ The exception is Vance v. United States, Civil No. 1529-72 (D.D.C. Nov. 30, 1972).

7/ 28 C.F.R. § 51.3. These procedures for determining the beginning and the duration of the 60-day period were upheld by the Supreme Court in Georgia v. United States, 411 U.S. 526 (1973).

Notes, Ch. 6

8/ 28 C.F.R. § 51.19. See Georgia v. United States, 411 U.S. at 536-37.

9/ Perkins v. Matthews, 400 U.S. 379, 383-85 (1971)

10/ See Holt v. City of Richmond, 406 U.S. 903 (1972), and Johnson v. West, Civil No. 72-680 (D.S.C. June 14, 1972).

11/ See United States v. Garner, 349 F. Supp. 1054 (N.D. Ga. 1972).

12/ See Thompson v. Brown, 434 F.2d 1092 (5th Cir. 1970); Mashburn v. Daniel, Civil No. 73J-138(R) (S.D. Miss. Aug. 17, 1973); and Thompson v. Bolton Mun. Dem. Exec. Comm. Civil No. 73J-131(N) (S.D.Miss. Order of Sept. 14, 1973).

13/ City of Petersburg v. United States, 354 F. Supp. 1021 (D.D.C. 1972), aff'd 410 U.S. 962 (1973), aff'd sub nom. Diamond v. United States, 412 U.S. 901 (1973); City of Richmond v. United States, Civil No. 1718-72 (D.D.C. filed Aug. 25, 1972); Beer v. United States, Civil No. 1495-73 (D.D.C. Jan. 4, 1974, March 15, 1974).

14/ Evers v. State Bd. of Election Comm., 327 F. Supp. 640 (S.D. Miss. 1971); Common Cause v. Mitchell, Civil No. 2348-71 (D.D.C. Mar. 30, 1972); Perkins v. Kleindienst, Civil No. 1309-72 (D.D.C. Nov. 2, 1972); Harper v. Kleindienst, 362 F. Supp. 744 (D.D.C. 1973); appeal pending Civil No. 73-1966.

15/ Harper v. Kleindienst,note 14 above; Perkins v. Kleindienst, Note 14 above.

16/ Common Cause v. Mitchell, note 14 above.

17/ Harper v. Kleindienst, note 14 above.

18/ See Twiggs v. West, Civil No. 72-1106 (D.S.C. 1972) and Holt v. City of Richmond, 459 F. 2d 1093 (1972).

19/ 402 U.S. 690 (1971).

20/ See Johnson v. West, Civil No. 72-680 (D.S.C. June 14, 1972).

21/ Scott v. Burkes, Civil No. 4782, (S.D. Miss. April, 1971) London v. East Feliciana Parish Police Jury, 347 F. Supp. 136 (M.D. La. 1972).

22/ DeLee v. Branton, Civil No. 73-902, (D.S.C. Jan 31, 1974).

23/ Sims v. Amos, 365 F. Supp. 215 (M.D. Ala. 1973), and Zimmer v. McKeithen, 467 F.2d 1381 (5th Cir. 1973).

24/ 28 C.F.R. § 51.2(b)

25/ The Supreme Court, in Georgia v. United States, 411 U.S. at 531, seems to have adopted this position:

> Despite the fact that multi-member districts, numbered posts, and a majority runoff requirement were features of Georgia election law prior to November 1, 1964, the changes that followed from the 1972 reapportionment are plainly sufficient to invoke § 5 if that section of the Act reaches the substance of those changes Section 5 is not concerned with a simple inventory of voting procedures, but rather with the reality of changed practices as they affect Negro voters.

26/ Mississippi, Sept. 10, 1971. The Department objected to legislation allowing counties to adopt at-large elections because no assurance was made that uses of the enabling legislation would be submitted.

27/ Louisiana, June 26, 1969.

28/ Louisiana, April 14, 1972.

29/ 42 U.S.C. § 1973-1(c)(1)

30/ Alabama Republican Party, no objection, July 12, 1972; North Carolina Democratic Party, no objection, July 14, 1972; New York Democratic Party, submission Feb. 26, 1972, no determination because coverage of counties in New York State was ended, Virginia Democratic Party (See note 29) and two submissions from party commissions in Louisiana which the Department determined were improperly submitted, July 3, 1972. In addition, the Alabama Democratic Party sought Section 5 approval from the District Court for the District of Columbia. Vance v. United States, Civil No. 1529-72 (D.D.C. Nov. 30, 1972) See also Virginia Democratic Party, letters of Feb. 22, 1972 and July 26, 1973.

Notes, Chs. 6, and 7

31/ July 26, 1973 the Department wrote, with respect to a new plan of organization and primary plan of the Virginia Democratic Party;

> While the question of coverage is still somewhat unsettled, we believe that the Virginia Democratic Party Plan is subject to the pre-clearance provisions of the Voting Rights Act.
>
> ....The changes the Democratic Party seeks to administer are changes contemplated by Section 5. Allen, et al. v. State Board of Elections, et al., 393 U.S. 544 (1969). The fact that the changes have been made by the Virginia Democratic Party with regard to the Party's nominating procedures, rather than by the State of Virginia, does not remove the changes from the pre-clearance procedures of Section 5 especially where the procedures involve the conduct of essential Government functions. Williams v. The Democratic Party of Georgia, C.A. No. 16286 (N.D. Ga. April 6, 1972); aff'd 409 U.S. 809 (1973); MacGuire v. Amos, 343 F. Supp. 119 (M.D. Ala. 1972), Vanover v. Maloney, Misc. No. 581 (4th Cir. July 16, 1969).

32/ See Allen v. State Board of Elections, 393 U.S. 544, 556-57 (1966).

CHAPTER 7

1/ 42 U.S.C. § 1971 (a) (1).

2/ 42 U.S.C. § 1971 (b).

3/ 42 U.S.C. § 1973.

Voting Rights Act. § 4. 79 Stat. 438 (1965), as amended. 84 Stat. 315 (1970), 42 U.S.C.A. 1973b (Supp. 1972)

(a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this subchapter, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff.

An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

Required factual determinations necessary to allow suspension of compliance with tests and devices; publication in Federal Register

(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.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 1973d or 1973k of this title shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

Definition of test or device

(c) The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

Required frequency, continuation and probable recurrence of incidents of denial or abridgement to constitute forbidden use of tests or devices

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color if (1) incidents of such use 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.

Voting Rights Act, § 4, 79 Stat. 438 (1965), as amended, 84 Stat. 315 (1970), 42 U.S.C.A. 1973b (Supp. 1972)

Completion of requisite grade level of education in American-flag schools in which the predominant classroom language was other than English

(e)(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

Voting Rights Act, § 5, 79 Stat. 439 (1965), as amended, 84 Stat. 315 (1970), 42 U.S.C.A. § 1973c (Supp. 1972)

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, 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, except that neither 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. 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.

Appendix B

Coverage of the Voting Rights Act

As of March 1974 the following states or political subdivisions of states are covered by the provisions of the Voting Rights Act;

Alabama

Georgia

Louisiana

Mississippi

South Carolina

Virginia

39 counties in North Carolina; Anson, Beaufort, Bladen, Camden, Caswell, Chowan, Cleveland, Craven, Cumberland, Edgecomb, Franklin, Gaston, Gates, Granville ,Greene, Guilford, Halifax, Harnett, Hertford, Hoke, Lee, Lenoir, Martin, Nash, Northampton, Onslow, Pasquotank, Perquimans, Person, Pitt, Robeson, Rockingham, Scotland, Union, Vance, Wake, Washington, Wayne, and Wilson.

9 counties in Arizona; Apache, Cochise, Coconino, Mohave, Navajo, Pima, Pinal, Santa Cruz, and Yuma.

2 counties in California; Monterey and Yuba

1 county in Idaho; Elmore

3 counties in New York; Bronx, Kings, New York

1 county in Wyoming; Campbell

Appendix C

Section 5 Submissions to the Attorney General

By Year

Year	Number of Changes Submitted	Number of Objections
1965	1	0
1966	50	0
1967	61	3
1963	179	6
1969	156	15
1970	360	4
1971	1339	63
1972	1010	50
1973*	643	24

*First eight months. As of September 10, 1973, there were 313 submissions pending.

Source: Department of Justice

****

By Type of Change

Type of Change	Number of Changes Submitted	Number of Objections
Voter Registration and Voting	411	25
Reregistration	77	1
Polling Places	733	12
Running for office	171	9
At-large Elections	62	14
Redistricting	363	35
Minority Representation	106	44
Annexation	705	5
Governmental Structure & Operations	376	1

Source: As of September 10, 1973. This table is based on an analysis of statistics provided by the Department of Justice.

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

Subpart A—General Provisions

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51.1 Purpose.
51.2 Definitions.
51.3 Computation of time.
51.4 Requirement of action for declaratory judgment or submission to Attorney General.

Subpart B—Procedures for Submission to the Attorney General

Sec.
51.5 Form of submissions.
51.6 Time of submissions.
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51.8 Party responsible for submitting.
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51.10 Contents of submissions.
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Subpart C—Communications From Individuals or Groups

51.12 Communications concerning voting changes.
51.13 Establishment and maintenance of registry of interested individuals and groups.
51.14 Communications concerning voting suits.
51.15 Action on communications from individuals or groups.

Subpart D—Processing of Submissions

51.16 Notice to registrants concerning submission.
51.17 Return of inappropriate submissions.
51.18 Obtaining information regarding submissions.
51.19 Standard for decision concerning submissions.
51.20 Notification of decision not to object.
51.21 Notification of decision to object.
51.22 Expedited consideration.
51.23 Reconsideration on request.
51.24 Decision after reconsideration.
51.25 Withdrawal of objection.
51.26 Records concerning submissions.

Subpart E—Petition To Change Procedures

51.27 Petitioning party.
51.28 Form of petition.
51.29 Disposition of petition.

AUTHORITY: The provisions of this Part 51 issued under sec. 5, 84 Stat. 315; 5 U.S.C. 301, 28 U.S.C. 509, 510, 42 U.S.C. 1973c.

SOURCE: The provisions of this Part 51 contained in Order 467-71, 36 F.R. 18186, Sept. 10, 1971, unless otherwise noted.

Subpart A—General Provisions

§ 51.1 Purpose.

Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, prohibits the enforcement in any jurisdiction covered by section 4(a) of the Act, 42 U.S.C. 1973b, of any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage, until the authority proposing enforcement either (1) obtains from the U.S. District Court for the District of Columbia a declaratory judgment that the plan does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or (2) the plan has been submitted to the Attorney General and he has interposed no objection within a 60-day period following submission. In order to carry out his responsibilities under this section of the Voting Rights Act and to make clear his interpretation of the responsibilities imposed on other individuals and entities thereunder, the procedures in this part shall govern the administration of section 5.

§ 51.2 Definitions.

(a) The terms "vote" and "voting" are used herein as defined in the Voting Rights Act of 1965, to include all action necessary to make a vote effective in any primary, special, or general election, including but not limited to, registration, listing pursuant to the Voting Rights Act of 1965, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

(b) The term "change affecting voting," as used herein, shall mean any voting qualification, prerequisite to voting, standard, practice or procedure different from that in force or effect on the date used to determine coverage by section 4(a) (November 1, 1964 or November 1, 1968, as the case may be) and shall include, but not be limited to, the examples given in § 51.4(c).

(c) The term "submission" as used herein shall mean presentation to the Attorney General by an appropriate official of any change affecting voting and an explanation of the difference between the change and the existing law or practice and such appropriate supporting materials as are included to demonstrate that the voting qualification, prerequisite to voting, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

(d) "Attorney General" shall mean the Attorney General of the United States or his delegate.

(e) The term "submitting authority" shall mean the party responsible for submitting a voting change on behalf of a State or political subdivision under § 51.8 or any other person or persons empowered to represent or act on behalf of a State or political subdivision with respect to a submission under section 5.

§ 51.3 Computation of time.

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

(b) The 60-day period shall commence upon receipt by the Department of Justice of a submission from an appropriate official, which submission satisfies the requirements of § 51.10(a). Procedures for requesting additional material and for determining the commencement of the 60-day period when a submission is inadequate are described in § 51.18.

(c) The 60-day period shall mean 60 calendar days, provided that if the final day of the period should fall on a Saturday, Sunday, or national holiday the Attorney General shall have until the close of the next full business day in which to interpose an objection. The date of the Attorney General's response shall be the date on which it is mailed to the submitting authority.

(d) When the Attorney General objects to a submitted change affecting voting, and the submitting authority seeking reconsideration of the objection brings additional information to the attention of the Attorney General, the Attorney General shall decide within 60 days of receipt of a request for reconsideration (provided that he shall have at least 15 days following a conference held at the submitting authority's request) whether to withdraw or to continue his objection.

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

Section 5 requires that, prior to enforcement of any change affecting voting, the State or political subdivision which has enacted or seeks to administer the change affecting voting must obtain either a judicial or an executive determination that denial or abridgment of the right to vote on account of race or color is not the purpose and will not be the effect of the change. It is illegal to enforce a change affecting voting without complying with section 5. The obligation to obtain such judicial or executive

review is not relieved by illegal enforcement.

The Attorney General may bring suit or take other appropriate action to prevent or redress any denial of the right to vote on account of race or color. See 42 U.S.C. 1973j.

(a) All changes affecting voting, even though the change appears to be minor or indirect, to expand voting rights or to remove the elements which caused objection by the Attorney General to a prior submission, must either be submitted to the Attorney General or be made the subject of an action for declaratory judgment in the U.S. District Court for the District of Columbia.

(b) A submission to the Attorney General does not affect the right of the submitting authority to bring a suit in the U.S. District Court for the District of Columbia at any time, seeking a declaratory judgment that the change affecting voting does not have a racially discriminatory purpose or effect.

(c) Legislation and administrative actions constituting changes affecting voting covered by section 5 include, but are not limited to, the following examples:

(1) Any change in qualifications or eligibility for voting;

(2) Any change in procedures concerning registration, balloting, or informing or assisting citizens to register and vote;

(3) Any change in the constituency of an official or the boundaries of a voting unit (e.g., through redistricting, annexation, or reapportionment), the location of a polling place, change to at-large elections from district elections or to district elections from at-large elections;

(4) Any alteration affecting the eligibility of persons to become or remain candidates or obtain a position on the ballot in primary or general elections or to become or remain officeholders or affecting the necessity of or methods for offering issues and propositions for approval by voting in an election;

(5) Any change in the eligibility and qualification procedures for independent candidates;

(6) Any action extending or shortening the term of an official or changing the method of selecting an official (e.g. a change from election to appointment);

(7) Any alteration in methods of counting votes.

Subpart B—Procedures for Submission to the Attorney General

§ 51.5 Form of submissions.

Submissions may be made in letter or any other written form, as long as the change affecting voting that is being submitted is clearly set forth in compliance with § 51.10(a) and the name and title of the individual and the State or political subdivision which he represents are disclosed. Submissions should be made in duplicate.

§ 51.6 Time of submissions.

Changes affecting voting should be submitted as soon as possible after the enactment or administrative decision is made and are required by law to be submitted prior to enforcement.

§ 51.7 Premature submissions returned.

The Attorney General will return without decision on the merits any proposal for a change affecting voting which has been submitted prior to final enactment or final administrative decision, provided that regarding a change as to which approval by referendum or by a court is required (e.g., an amendment to a State constitution or a reapportionment plan), the Attorney General may consider and issue a decision concerning the change prior to the referendum or the action of the court if all other action necessary for adoption has been taken.

§ 51.8 Party responsible for submitting.

Changes affecting voting shall be submitted by the chief legal officer or other appropriate official of the State or political subdivision in which the change is proposed to be effective. When one or more counties within a State will be affected, the State may submit a change affecting voting on behalf of the covered county or counties.

§ 51.9 Address for submissions.

Changes affecting voting shall be delivered or mailed to: Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530. The envelope and first page of any submission shall be clearly marked: Submission under section 5, Voting Rights Act.

§ 51.10 Contents of submissions.

(a) Each submission shall include:

(1) A copy of any legislative or administrative enactment or order embodying a change affecting voting, certified by an appropriate officer of the submitting authority to be a true copy.

(2) The date of final adoption of the change affecting voting.

(3) Identification of the authority responsible for the change and the mode of decision (e.g., act of State legislature, ordinance of city council, redistricting by election officials).

(4) An explanation of the difference between the submitted change affecting voting and the existing law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the existing and proposed situation with respect to voting. When the change will affect less than the whole State or subdivision, such explanation should include a description of which subdivisions or parts thereof will be affected and how each will be affected.

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

(6) With respect to redistricting, annexation, and other complex changes, other information which the Attorney General determines is required to enable him to evaluate the purpose or effect of the change. Such other information may include items listed under paragraph (b) of this section. When such other information is required, the Attorney General shall notify the submitting authority in the manner provded in § 51.18(a).

(b) In addition to the requirements listed in paragraph (a) of this section, each submission may include appropriate supporting materials to assist the Attorney General in his consideration. The Attorney General strongly urges the submitting authority to include the following information insofar as it is available and relevant to the specific change submitted for consideration:

(1) A statement of the reasons for the change affecting voting.

(2) A statement of the anticipated effect of the change affecting voting.

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

(4) A copy of any other changes in law or administration relating to the subject matter of the submitted change affecting voting which have been put into effect since the time when coverage under section 4 of the Voting Rights Act began and the reasons for such prior changes. If such changes have already been submitted the submitting authority may refer to the date of prior submission and identify the previously submitted changes.

(5) Where any change is made that revises the constituency which elects any office or affects the boundaries of any geographic unit or units defined or employed for voting purposes (e.g., redistricting, annexation, change from district to at-large elections) or changes the location of a polling place or place of registration, a map of the area to be affected showing the following:

(i) The existing boundaries of the voting unit or units sought to be changed.

(ii) The boundaries of the voting unit or units sought by the change.

(iii) Any other changes in the voting unit boundaries or in the geographical makeup of the constituency since the time that coverage under section 4 began. If such changes have already been submitted the submitting authority may refer to the date of the prior submission and identify the previously submitted changes.

(iv) Population distribution by race within the existing units.

(v) Population distribution by race within the proposed units.

(vi) Any natural boundaries or geographical features which influenced the selection of boundaries of any unit defined or proposed for the new voting units.

(vii) Location of polling places.

(6) Population information: (i) Population before and after the change, by race, of the area or areas to be affected by the change. If such information is contained in the publications of the U.S. Bureau of the Census, a statement to that effect may be included.

(ii) Voting-age population and the number of registered voters before and after the change, by race, for the area to be affected by the change. If such information is contained in the publications of the U.S. Bureau of the Census, a statement to that effect may be included.

(iii) Copies of any population estimates, by race, made in connection with adoption of the proposed change, preparation of the submission or in support thereof and the basis for such estimates.

(iv) Where a particular office or particular offices are involved, a history of

the number of candidates, by race, who have run for such office in the last two elections and the results of such elections.

(7) Evidence of public notice or opportunity for the public to be heard. In examining submissions, consideration may be given, where appropriate, to evidence of public notice and opportunity for interested parties to participate in the decision to adopt or implement the proposed change and to indications that such participation in fact took place, or to evidence of notice to the public that a submission has been made soliciting comment by the public to the Department of Justice. Examples of materials demonstrating public notice or participation include:

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

(ii) Copies of public notices (and statements regarding where they appeared, e.g., newspaper, radio, or television, posted in public buildings, sent to identified individuals or groups) which describe the proposed change and invite public comment or participation in hearings, or which announce submission to the Attorney General and invite comments for his consideration.

(iii) Minutes or accounts of public hearings concerning the proposed changes.

(iv) Statements, speeches, and other public communications concerning the proposed changes.

(v) Copies of comments from the general public.

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

(8) Where information requested herein is relevant but not known and not believed to be available, submissions should so state.

(9) Where information furnished reflects an estimation, submissions should identify the individual and state his qualifications to make the estimate.

(10) Submissions should identify in general the source of any information they supply.

(11) When a submitting authority desires the Attorney General to consider any information which has been supplied in connection with an earlier submission, incorporation by reference may be accomplished by stating the date and subject matter of the earlier submission and identifying the relevant information therein.

§ 51.11 Request for notification concerning voting litigation.

When a State or political subdivision subject to section 5 becomes involved in any litigation concerning voting, it is requested that prompt notification be sent to the Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530. Such notification will not be considered to be a submission under section 5.

Subpart C—Communications From Individuals or Groups

§ 51.12 Communications concerning voting changes.

Any individual or group may send to the Attorney General information concerning a change affecting voting in an area to which section 5 of the Voting Rights Act applies.

(a) Communication may be in the form of a letter stating the name and address of the individual or group, describing the alleged change affecting voting and setting forth evidence regarding whether the change has or does not have a discriminatory purpose or effect or simply stating a desire that the change be called to the attention of the Attorney General. Two copies of each communication should be mailed to the Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530. The envelope and the first page of each communication should be marked: Comment, section 5, Voting Rights Act.

(b) Comments by individuals or groups concerning any change affecting voting may be submitted at any time; however, they should be submitted as soon as possible after the change affecting voting is brought to the attention of the individual or group.

(c) Department of Justice officials and employees shall comply with the request of any individual that his identity not be disclosed to any person outside the Department. In addition, whenever it appears to the Attorney General that disclosure of the identity of an individual who provided information regarding a change affecting voting could jeopardize the personal safety, employment, or economic standing of the individual, the identity of the individual shall not be disclosed to any person outside the Department of Justice.

(d) When an individual or group desires the Attorney General to consider information which has been supplied in connection with an earlier submission, incorporation by reference may be accomplished by identifying the earlier submission by date and subject matter and identifying the relevant information or related communication.

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

The Attorney General shall establish and maintain a Registry of Interested Individuals and Groups. Such registry shall contain the name, address, and telephone number of any individual or group that requests inclusion therein for purposes of receiving notice of section 5 submissions. Each registrant shall specify the area of areas with respect to which notification is requested.

§ 51.14 Communications concerning voting suits.

Individuals and groups are urged to notify the Assistant Attorney General, Civil Rights Division, of litigation concerning voting in areas subject to section 5.

§ 51.15 Action on communications from individuals or groups.

(a) If the person or entity responsible for submitting the change affecting voting has submitted the change to the Attorney General, any evidence from individuals or groups shall be considered along with the materials submitted and materials resulting from any investigation.

(b) If no submission (as defined in § 51.2(c)) has been made, the Attorney General shall advise the person or entity responsible for the alleged change of the duty to seek a declaratory judgment or to make a submission to the Attorney General before enforcement.

(c) Where no submission has been made and no declaratory judgment has been sought and a change affecting voting is enforced or is about to be enforced in a covered jurisdiction, the Attorney General may bring suit or take other appropriate action to enforce compliance with section 5 and to prevent or redress any denial or abridgment of the right to vote on account of race or color. See 42 U.S.C. 1973j.

Subpart D—Processing of Submissions

§ 51.16 Notice to registrants concerning submission.

When the Attorney General receives a section 5 submission, prompt notice thereof shall be given to the individuals and groups who have registered for this purpose in accordance with § 51.13. Such notice shall be sent to each such registrant who has requested notification concerning the area or areas affected by the submitted change.

§ 51.17 Return of inappropriate submissions.

The only changes authorized by section 5 to be submitted to and passed upon by the Attorney General are those affecting voting rights. The Attorney General shall therefore examine and make a response on the merits to only those submissions affecting voting. All others shall be returned to the submitting party without comment on their merits.

§ 51.18 Obtaining information regarding submissions.

(a) If the submission does not satisfy the requirements of § 51.10(a), the Attorney General shall request such further information as is necessary from the submitting authority and advise the submitting authority that the 60-day period will not commence until such information is received by the Department of Justice. The request shall be made as promptly as possible after receipt of the original inadequate submission.

(b) After receipt of a submission which satisfies the requirements of § 51.10(a), the Attorney General may at any time during the 60-day period:

(1) Request additional information from the submitting authority,

(2) Request information from other local authorities or interested individuals or groups,

(3) Conduct such investigation or inquiry as he deems appropriate.

(c) If the submission does not contain adequate evidence of notice to the public, and the Attorney General believes that racial purpose or effect is possible, he may take steps to provide public notice sufficient to invite interested citizens to provide evidence as to the presence or absence of racially discriminatory purpose or effect. The authority responsible for the submission shall be advised when any

such steps are taken by the Attorney General.

§ 51.19 Standard for decision concerning submissions.

Section 5, in providing for submission to the Attorney General as an alternative to seeking a declaratory judgment from the U.S. District Court for the District of Columbia, imposes on the Attorney General what is essentially a judicial function. Therefore, the burden of proof on the submitting authority is the same in submitting changes to the Attorney General as it would be in submitting changes to the District Court for the District of Columbia. The Attorney General shall base his decision on a review of material presented by the submitting authority, relevant information provided by individuals or groups, and the results of any investigation conducted by the Department of Justice. If the Attorney General is satisfied that the submitted change does not have a racially discriminatory purpose or effect, he will not object to the change and will so notify the submitting authority. If the Attorney General determines that the submitted change has a racially discriminatory purpose or effect, he will enter an objection and will so notify the submitting authority. If the evidence as to the purpose or effect of the change is conflicting, and the Attorney General is unable to resolve the conflict within the 60-day period, he shall, consistent with the above-described burden of proof applicable in the District Court, enter an objection and so notify the submitting authority.

§ 51.20 Notification of decision not to object.

(a) If the Attorney General decides to interpose no objection to a submitted change affecting voting, the submitting authority shall be notified to that effect.

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

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

§ 51.21 Notification of decision to object.

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

(b) The submitting authority shall be advised that the Attorney General will reconsider his objection upon a request by the submitting authority within 10 days of such objection, for an opportunity to present further substantiating or explanatory information which was not previously available to the submitting authority. In appropriate cases, the Attorney General may request that local public notice of the request for reconsideration be given by the submitting authority.

(c) The submitting authority shall be advised further that it may request a conference with a representative of the Department of Justice to reconsider an objection when such new information has become available.

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

§ 51.22 Expedited consideration.

When a submitting authority demonstrates good cause for special expedited consideration to permit enforcement of a change affecting voting within the 60-day period following submission (good cause will, in general, only be found to exist with respect to changes made necessary by circumstances beyond the control of the enacting or submitting authorities), the Attorney General may conside. the submission on an expedited basis. Prompt notice of the request for expedited consideration will be given to interested parties registered in accordance with § 51.13. When a decision not to object is made within the 60-day period following receipt of a submission which satisfies the requirements of § 51.10(a), the Attorney General may reexamine the submission if additional information comes to his attention during the remainder of the 60-day period which would require objection in accordance with § 51.19.

§ 51.23 Reconsideration on request.

(a) If a submitting authority requests a conference to produce information not previously available to it in support of reconsideration of an objection by the Attorney General, a meeting shall be held at a location determined by the Attorney General.

(b) When a submitting authority requests that a conference be held concerning a change affecting voting to which the Attorney General has objected, individuals or groups that commented on the change prior to the Attorney General's objection or that seek to participate in response to any public or other notice of a request for reconsideration shall be notified and given the opportunity to confer.

(c) Such a conference shall be conducted by the Assistant Attorney General, Civil Rights Division, or his designee in an informal manner. Those present will be permitted to present facts in support of their positions.

(d) The Assistant Attorney General or the person he has designated to conduct the conference may, in his discretion, choose to hold separate meetings to confer with the submitting authority and interested groups or individuals.

§ 51.24 Decision after reconsideration.

An objection shall be withdrawn if the submitting authority can produce information not previously available to it which satisfies the Attorney General that the change does not have a racially discriminatory purpose or effect. The Attorney General shall notify the submitting authority within 60 days of the request for reconsideration (provided that the Attorney General shall have at least 15 days following any conference that is held in which to decide) of his decision to continue or withdraw an objection, giving the reasons for his decision. A copy of the notification shall be sent to any party that has commented on the submission or has requested notice of the Attorney General's action thereon.

§ 51.25 Withdrawal of objection.

Where there has been a substantial change in fact or law, the Attorney General may, if he deems it appropriate, withdraw an objection on his own motion if he determines that the objection is not in accord with the standard for decision in § 51.19. Notification of the withdrawal of an objection shall be sent to the submitting authority and to any party that commented on the submission or has requested notice of the Attorney General's action thereon.

§ 51.26 Records concerning submissions.

(a) Section 5 files: The Attorney General shall maintain a section 5 file for each submission, containing the submission, related written materials, correspondence, notations concerning conferences with the submitting authority or any interested individual or group and a copy of any letters from the Attorney General concerning his decision whether to object to a submission. Communications from individuals who have requested confidentiality or with respect to whom the Attorney General has determined that confidentiality is appropriate under § 51.12(c) shall not be included in the section 5 file. Investigative reports and internal memoranda shall not be included in the section 5 file.

(b) Chronological file: Brief summaries regarding each submission and the Department of Justice investigation and decision concerning it will be prepared when the decision whether to interpose an objection has been made. A chronological file of these summaries, arranged by the date upon which such decision is made, will be maintained.

(c) The contents of the above-described section 5 and chronological files will be available for inspection and copying by the public during normal business hours at the Civil Rights Division, Department of Justice, Washington, D.C. Consistent with the Department of Justice regulation implementing the Public Information Section of the Administrative Procedure Act, 28 CFR 16.4, the fees for copying the contents of these files will be 50 cents for the first page and 25 cents for each additional page.

(d) The Attorney General may, at his discretion, call to the attention of the submitting authority or an interested individual or group information or comments related to a submission.

Subpart E—Petition To Change Procedures

§ 51.27 Petitioning party.

Any interested individual or group may petition to have these procedures amended by new provisions.

§ 51.28 Form of petition.

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

§ 51.29 Disposition of petition.

The Attorney General will consider a petition under this section and make a disposition thereof. Prompt notice, accompanied by a simple statement of the reasons, shall be given to the petitioner if the petition is denied in whole or in part.

1550

CHAPTER 1--DEPARTMENT OF JUSTICE

PART 16--Production or Disclosure of Material or Information

§ 16.9 Fees for provision of records.

(a) When charged. User fees pursuant to 31 U.S.C. 483a (1970), shall be charged according to the schedule contained in paragraph (b) of this section for services rendered in responding to requests for Department records under this subpart unless the responding official of the Department determines in conformity with the provisions of 31 U.S.C. 483a, that such charges or a portion thereof, are not in the public interest. Such a determination shall ordinarily not be made unless the service to be performed will be of benefit primarily to the public as opposed to the requester, or unless the requester is an indigent individual. Fees shall not be charged where they would amount, in the aggregate, for a request or series of related requests, to less than $3. Ordinarily, fees shall not be charged if the records requested are not found, or if all of the records located are withheld as exempt. However, if the time expended in processing the request is substantial, and if the requester has been notified of the estimated cost pursuant to paragraph (c) of this section and has been specifically advised that it cannot be determined in advance whether any records will be made available, fees may be charged.

(b) Services charged for, and amount charged. For the services listed below expended in locating or making available records or copies thereof, the following charges shall be assessed:

(1) Copies. For copies of documents (maximum of 10 copies will be supplied) $.10 per copy of each page.

Appendix E

Sample Copies

Weekly List

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the Division Indicated and Refer to Initials and Number

DJ 166-012-3

NOTICE SEP 7 1973

The following submissions to the Attorney General pursuant to Section 5 of the Voting Rights Act were received during the week ending September 1, 1973. The Attorney General has 60 days from the date of receipt to respond to each submission. In order to assure that comments and information from interested parties may be considered in reaching our determination, such comments and information should be received by this Department no later than 30 days from the date of this notice.

8/27/73 Grifton (Pitt County), North Carolina
Increases terms of office from two to four years; staggers terms of office

King William County, Virginia
Use of voting machines

8/30/73 Bogalusa (Washington County), Louisiana
New city charter, including a residential post requirement for city council

Columbia (Richland County), South Carolina
Annexation

Gerald W. Jones

GERALD W. JONES, Chief
Voting & Public Accommodations

Submission

PUBLIC AFFAIRS RESEARCH COUNCIL OF LOUISIANA, INC.

300 Louisiana Avenue · P.O. Box 3118 · Baton Rouge, Louisiana 70821 · (504) 343-9204

August 29, 1973

Attorney General
United States Department of Justice
Washington, D. C. 20530

Dear Sir:

The Commission Council of the City of Bogalusa, Louisiana has appointed a Charter Commission to draft a new charter for the city. State law (R. S. 33:1383) requires that municipal charter commissions be composed of five members—one being a representative of the local governing authority, one a representative of labor, one a representative of business, one a representative of the professions and one a representative of veterans.

The members of the Bogalusa Charter Commission are:

Robert D. Lawrence, Jr., Chairman
William Bailey, Jr.
Richard F. Knight
Norman Koonce
Herbie Thomas

The Charter Commission retained the Public Affairs Research Council, a private, nonprofit governmental research organization, to provide technical assistance.

At present, the city government of Bogalusa is organized under a commission plan as provided in a special legislative charter granted by Act 14 of 1914, as amended. All executive and legislative power is granted to a 5-member commission council. City Commissioners and the City Attorney are nominated by part primary and are elected at large for 4-year terms of office.

The Charter Commission has adopted a plan for electing a five member city council under the proposed mayor-council form of goverament. One councilman would be elected from each of 5 geographic districts by the qualified electors of the city at large. A mayor also would be elected at large. Pursuant to Section 5 of the Voting Rights Act, the Charter Commission asked that we submit the method of electing the proposed governing body to your office.

It should be noted that the Charter Commission's decision to have the council representative of geographic areas and elected at large was unanimous and that Commission member Bailey, who just recently retired as President for more than 27 years of the Bogalusa Chapter of the NAACP, seconded the motion.

The proposed method of election of council members was decided upon after deliberation of available alternatives and takes into consideration not only a desire to facilitate minority group representation but also the strong neighborhood identification and sense of community that has traditionally existed in Bogalusa due to natural boundaries that intersect the city.

The Charter Commission is of the opinion that effective local government in Bogalusa has been hamstrung in the past because the structure provides no one who has overall authority and responsibility for governmental services. They feel that the mayor-council form of government would correct the past problem as to structure but that because of local traditions, a city council elected totally or predominantly from single member districts would still leave the city with a system where overall city needs and priorities are ignored.

The Charter Commission plans to submit the proposed charter to the city commissioners in late October or early November of this year. The governing body is required by law to submit the proposed charter to the voters and the governing body can make no change in document as adopted by the Charter Commission. The Charter Commission would like to have your approval or disapproval in advance of their submitting the plan to the city commission so that needed changes could be made prior to finalizing the document.

The following material is enclosed for your information:

(1) Table 1, showing population by race of each qualifying district.
(2) Table 2, showing estimated voter registration by race of each qualifying district.
(3) A map outlining proposed qualifying district boundaries, and
(4) A copy of the proposed home rule charter for the City of Bogalusa (second draft).

If you need additional information or have any questions, please do not hesitate to contact us.

Sincerely,

Arthur R. Thiel

Arthur R. Thiel
Research Director

ART:per
Enclosures

Comment

COPY

1318 Colorado Avenue
Bogalusa, La. 70427
July 5, 1973

Dear Friend:

I believe the contents of this letter will be of interest to all of our citizens who want and wish for a more ideal situation to exist in our local city government.

I have reference to the provision of the newly proposed city charter and its plan to have five (5) districts from which candidates would be elected by vote of the entire city-wide voting population.

I believe this plan to be unconstitutional, undemocratic and unacceptable to the Department of Justice! It very much limits the rights of minority people (Blacks, American Party, Republicans, women and youth) of ever having a chance to serve our city. Theoretically, a person could receive every single vote in his district and still lose because of the need to have citizens in other parts of the city vote upon him. Also, a person would have to raise 4 or 5 times more money in order that he might campaign in every part of the city. For example, if a person should have $250 to spend within his district, he would now have to have $1000 to cover every segment of the voting population. How many of us can afford this type of unnecessary expense?

We do not ask that the citizens of Hammond and Baton Rouge approve our choice of state senator or legislator; nor do we ask Shreveport and Monore to approve our choice of U.S. Congressman. Why then, if a definite district line is drawn, must we have people from the western part of the city approve a candidate representing the northern section of the city? The charter-study proposal is very much similar to those much disliked constitutional amendments which asks us here in Bogalusa to approve or disapprove a new drainage system in Lake Charles. It is not a very good plan. I believe the members of the charter-study should reconsider this particular proposal.

Should you wish the members to hear your opinion, please attend the next meeting on Thursday, July 21, 1973 at 4:45 P.M. at City Hall. I'm sure they wyould welcome you and your views on this important issue.

Sincerely,

-83-

Merlin Duke

50-471 O - 75 - pt.2 - 40

Letter of Objection

COPY

October 29, 1973

Mr. Robert D. Lawrence, Jr.
Chairman
Bogalusa Charter Commission
121 Ruth Babington Parkway
Bogalusa, Louisiana 70427

Dear Mr. Lawrence:

This is in response to your submission of the Proposed Home Rule Charter for the City of Bogalusa, Louisiana pursuant to Section 5 of the Voting Rights Act of 1965.

On the basis of our review and analysis of the submission, with the exception of Section 2-01 of Article II, the Acting Attorney General does not interpose an objection to the changes involved. With respect to these changes, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that our failure to object does not bar any subsequent judicial action to enjoin the enforcement of these acts should such action become necessary.

Section 2-01 of Article II requires that candidates for City Council must qualify for a particular district even though they must run at-large. Our analysis has shown that where there is increasing participation in the political process by the black community, as in Bogalusa, the utilization by residency requirements in an at-large election system, which requires only a plurality for election, has the effect of diluting the potential for minority electors to elect candidates of their choice. This result is even more prevalent when a state, such as Louisiana, has an anti-single shot (full slate) voting requirement.

Recent court decisions delaing with voting issues of this nature, and to which we feel obligated to give great weight, indicate that the use of residency requirements under circumstances such as those involved here has the effect of abriding minority voting rights. Zimmer v. McKeithen, et al., (C.A. 5, No. 71-2649, Sept. 12, 1973); White v. Regester, 37 L.Ed. 2d 314 (1973); Whitcomb v. Chavis, 403 U.S. 124 (1971).

cc: Public File (Rm. 920)

These cases also suggest that a state and its political subdivisions which utilize an at-large voting system may have an affirmative duty to eliminate or sufficiently modify that system of election to insure that minority groups will be fairly represented in the election process.

On the basis of these court decisions and all the available facts and circumstances, the Acting Attorney General is unable to conclude, as he must under the Voting Rights Act, that the change involving the implementation of residency requirements in an at-large election system will not have a discriminatory racial effect on voting. Therefore, the Acting Attorney General must interpose an objection to the implementation of Section 2-01 of Article II. However, while objecting to the superimposition of a residency requirement upon an election system with pre-existing at-large, full slate and plurality features, we wish to point out that the Acting Attorney General does not interpose any objection to Section 2-02 and, more specifically, to those provisions establishing the five election districts for Bogalusa.

Of course, as provided for by Section 5, you have the alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that the change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

More Information Request

COPY

May 30, 1973

William A. Wiltshire, Esquire
Wiltshire and Wilman
Attorneys at Law
Post Office Drawer 527
120 South Broadway
McComb, Mississippi 39648

Dear Mr. Wiltshire:

This is in reference to your letter dated January 11, 1973, with which you enclosed a copy of the Ordinance of the City of McComb City, Mississippi, expanding the city's existing municipal boundaries by annexing two tracts contiguous to the city, which Ordinance was submittted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, and received by this Department on February 7, 1973. Additional information was requested on April 2, 1973, and some of the data was received on March 31, 1973.

The deadline for decision is 60 days after receipt of all necessary information, and would end today. We have received within the last 24 hours a petiton signed by 186 residents of Beartown alleging, in effect, their efforts to be reannexed to the city have been continuing ones and have been unsuccessful. The contention is made that the city has following a policy of selective annexation which has as its purpose or effect, excluding the Beartown residents from the city because of their race. Due to the shortness of time remaining, we have been unable to fully evaluate these contentions but do conclude, that if the city had such a selective policy, actions taken pursuant thereto would be objectionable under the Voting Rights Act.

The Attorney General's regulations provide that if the Attorney General is unable to resolve conflicting facts within the 60 day period he shall object. See 28 C.F.R. 51.19. Accordingly, I must on behalf of the Attorney General interpose an objection to the use of the expanded city limits for voting purposes. Because of unusual circumstances here we are undertaking an expedited consideration of the issues raised in connection with this submission and will reexamine the matter as soon as possible. If at that time we determine that the objection interposed here should be withdrawn, we will so advise you.

COPY

Would you please assist us in resolving the conflict now before the Attorney General by providing us with the following information:

1. Copies of any letters, petitions or other documents city officials have received since 1965 requesting annexation of areas contiguous to McComb, and in particular, any such documents relating to the Beartown or South McComb area. This should include any record of conversations with persons concerning requested annexations.

2. Copies of any documents reflecting the costs of annexing section I of your submission.

3. Any information the city may have showing improvements which have been made to the Beartown area since February 1964.

If you have any questions concerning this letter, please contact my office or Gerald W. Jones (202-739-2167) of my staff.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

Letter of Nonobjection

COPY

September 12, 1973

Mr. William A. Wiltshire
Wiltshire & Walman
Attorneys at Law
Post Office Drawer 527
120 South Broadway
McComb, Mississippi 39648

Dear Mr. Wiltshire:

This is in reference to my previous letter of May 30, 1973, in which you were advised of the Attorney General's objection to the 1971 changes in the municipal boundary lines of the City of McComb which had been submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act. This is also in reference to your June 27, 1973, letter submitting additional information which was received on July 13, 1973.

After a careful examination of the circumstances involved, the Attorney General withdraws his objection to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of the changes.

I wish also to mention again the contention made by some of the Beartown area residents that the City of McComb, in failing to reannex that area, has followed a policy of selective annexation which has the purpose and effect of discriminating on the basis of race. While our evaluation of the instant submission did not lead us to agree with that contention, I do wish to point out that future annexations of white or prospectively white areas without giving realistic consideration to the request of Beartown area residents also to be annexed, may substantially strengthen such a contention in the future.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

Request to Receive Weekly List

March 15, 1974

Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D. C. 20530

Re: Weekly List of Section 5 Submissions

Dear Sirs:

I would like to be included on the "Registry of Interested Individual and Groups" so that I can receive the weekly list of Section 5 submissions. Please send the weekly list to the following address:

Armand Derfner, Esq.
4 Gillon Street
Charleston, South Carolina 29401

Thank you for your cooperation.

Sincerely,

Armand Derfner

Appendix F

Objection Letters*

Voting Registration and Voting Procedures

	Jurisdiction	Type	Date
1.	South Carolina	literacy test and poll tax	Oct. 2, 1967
2.	Georgia	assistance to illiterate voters	June 19, 1968
3.	Georgia	qualification of registration and election workers	July 11, 1968
4.	Georgia	tests or devices	Aug. 30, 1968
5.	Alabama	signature requirement	Nov. 13, 1969
6.	Mobile, Ala.	signature requirement	Dec. 16, 1969
7.	Alabama	assistance for absentee registration	Mar. 13, 1970
8.	North Carolina	literacy test	Mar. 18, 1971
9.	North Carolina	literacy test	Apr. 20, 1971
10.	Albany, Ga.	election date	Jan. 7, 1972
11.	Alabama	assistance to illiterate voters	Apr. 4, 1972

Reregistration

Jurisdiction	Date
Jasper County, Miss.	June 8, 1971

*The number of objection letters listed is not the same as the number of objections listed in Appendix C because a single letter of objection may object to more than one change. Letters may also be listed under more than one heading.

Polling Places

	Jurisdiction	Date
1.	Webster Co., Ga.	Dec. 12, 1968
2.	Lafayette Co., Miss.	July 6, 1971
3.	Caroline, Miss.	Sept. 10, 1971
4.	Albany, Ga.	Nov. 16, 1971
5.	Marshall Co., Miss.	Dec. 3, 1971
6.	Tate Co., Miss.	Dec. 3, 1971
7.	Atlanta, Ga.	Nov. 7, 1972
8.	St. Landry Parish, La.	Dec. 6, 1972
9.	New Orleans, La.	July 17, 1973

****

Running for Office

	Jurisdiction	Type	Date
1.	Mississippi	abolition of office	May 21, 1969
2.	Alabama	discrimination against independent candidates	Aug. 1, 1969
3.	Alabama	discrimination against independent candidates	Aug. 14, 1972
4.	Alabama	abolition of office	Dec. 26, 1972
5.	Ocilla, Ga.	filing fees	June 22, 1972
6.	Hollandale, Miss.	abolition of office	July 9, 1973
7.	Mobile, Ala.	filing fee & petition requirement	Aug. 3, 1973
8.	Clarendon County, S. C.	abolition of office	Nov. 13, 1973
9.	Albany, Ga.	filing fee	Dec. 7, 1973

At-large Elections

	Jurisdiction	Type of Body	Date
1.	Mississippi	County Bds. of Supervisors	May 21, 1969 (resubmission objection Sept. 10, 1971)
2.	Grenada, Miss.	City Council	Mar. 30, 1971
3.	Attala Co., Miss.	Bd. of Supervisors	June 30, 1971
4.	Grenada Co., Miss.	Bd. of Supervisors	June 30, 1971
5.	Assumption Parish, La.	School Bd.	July 8, 1971
6.	St. Charles Parish, La.	Police Jury	July 22, 1971
7.	DeSoto Parish, La.	Police Jury	Aug. 6, 1971
8.	Bibb Co., Ga.	Bd. of Education	Aug. 24, 1971
9.	East Feliciana Parish, La.	Police Jury	Sept. 20, 1971
10.	Waynesboro, Ga.	City Council	Jan. 7, 1972
11.	Autauga Co., Ala.	Bd. of Commissioners, School Bd.	Mar. 20, 1972
12.	Twiggs Co., Ga.	County Commissioners	Aug. 7, 1972

Redistricting

	Jurisdiction	Type of Body	Date
1.	Copiah Co., Miss.	Bd. of Supervisors	Mar. 5, 1970
2.	Leake Co., Miss.	Bd. of Supervisors	Jan. 8, 1971
3.	Warren Co., Miss.	Bd. of Supervisors	Apr. 4, 1971
4.	Virginia	State House*	May 7, 1971 (Objection withdrawn June 10, 1971)

Redistricting (contd)

	Jurisdiction	Type of Body	Date
5.	Virginia	State Senate	May 7, 1971
6.	Marion Co., Miss.	Bd. of Supervisors	May 25, 1971
7.	Jeff Davis Parish, La.	Police Jury*	June 4, 1971
8.	Assumption Parish, La.	School Bd.	July 8, 1971
9.	Franklin Parish, La.	Police Jury*	July 8, 1971
10.	Hinds Co., Miss.	Bd. of Supervisors	July 14, 1971
11.	Yazoo Co., Miss.	Bd. of Supervisors	July 19, 1971
12.	Jeff Davis Parish, La.	School Bd.	July 23, 1971
13.	Ascension Parish, La.	School Bd.*	July 23, 1971
14.	Bossier Parish, La.	School Bd.	July 30, 1971
15.	Clarke Co., Ga.	School Bd.	Aug. 6, 1971
16.	East Baton Rouge, La.	Parish Council	Aug. 6, 1971
17.	Pointe Coupee Parish, La.	Police Jury*	Aug. 9, 1971
18.	Louisiana	State House*	Aug. 20, 1971
19.	Louisiana	State Senate*	Aug. 20, 1971
20.	Natchitoches Parish, La.	School Bd.*	Sept. 20, 1971
21.	East Feliciana, La.	Police Jury*	Sept. 20, 1971
22.	St. Helena Parish, La.	Police Jury	Oct. 8, 1971
23.	Caddo Parish, La.	School Bd.	Oct. 8, 1971

Redistricting (contd.)

	Jurisdiction	Type of Body	Date
24.	St. James Parish, La.	Police Jury	Nov. 2, 1971
25.	Tate Co., Miss.	Bd. of Supervisors	Dec. 3, 1971
26.	Mecklenberg Co., Va.	County Council	Dec. 7, 1971
27.	East Feliciana Parish, La.	Police Jury*	Dec. 28, 1971
28.	St. Mary Parish, La.	School Bd.	Jan. 12, 1972
29.	Georgia	U.S. House of Representatives	Feb. 11, 1972
30.	Georgia	State Senate	Mar. 3, 1972
31.	Georgia	State House*	Mar. 3, 1972
32.	South Carolina	State Senate*	Mar. 6, 1972
33.	St. Helena Parish, La.	School Bd.	Mar. 17, 1972
34.	Georgia	State House	Mar. 24, 1972
35.	Ascension Parish, La.	School Bd.*	Apr. 20, 1972
36.	East Feliciana Parish, La.	School Bd.*	Apr. 22, 1972
37.	Pointe Coupee Parish, La.	School Bd.*	June 7, 1972
38.	Lafayette Parish, La.	School Bd.*	June 16, 1972
39.	Tate Co., Miss.	Bd. of Supervisors	Nov. 28, 1972
40.	New Orleans, La.	City Council	Jan. 15, 1973
41.	Warren Co., Miss.	Bd. of Supervisors	Feb. 13, 1973
42.	New Orleans, La.	City Council	July 9, 1973
43.	Grenada Co., Miss.	Bd. of Supervisors	Aug. 9, 1973

	Jurisdiction	Type of Body	Date
44.	South Carolina	State House*	Feb. 14, 1974

*Objections marked by an asterisk (*) involved the use of multi-member districts.

Minority Representation

	Jurisdiction	Type of Anti-minority Device	Date
1.	Portsmouth, Va.	40% vote requirement	June 26, 1970
2.	Grenada Co., Miss.	residency requirement	June 30, 1971
3.	Attala Co., Miss.	residency requirement	June 30, 1971
4.	Birmingham, Ala.	numbered posts	July 9, 1971
5.	Talladega, Ala.	anti-single shot law	July 23, 1971
6.	North Carolina	numbered posts	July 30, 1971
7.	North Carolina	numbered posts	Sept. 27, 1971
8.	Hinesville, Ga.	majority requirement, numbered posts	Oct. 1, 1971
9.	Newnan, Ga.	numbered posts	Oct. 13, 1971
10.	Conyers, Ga.	majority requirement, numbered posts, staggered terms	Dec. 2, 1971
11.	Waynesboro, Ga.	majority requirement	Jan. 7, 1972
12.	Jonesboro, Ga.	majority requirement	Feb. 4, 1972
13.	Georgia	majority requirement, numbered posts	Mar. 3, 1972
14.	South Carolina	majority requirement, numbered posts	Mar. 6, 1972
15.	Grenada, Miss.	majority requirement, numbered posts	Mar. 20, 1972
16.	Autauga, Ala.	majority requirement	Mar. 20, 1972

Minority Representation (contd.)

	Jurisdiction	Type of Anti-minority Device	Date
17.	Lafayette Parish La.	staggered terms	June 16, 1972
18.	South Carolina	numbered posts	June 30, 1972
19.	Newnan, Ga.	majority requirement	July 31, 1972
20.	Twiggs Co., Ga.	residency requirement	Aug. 7, 1972
21.	Thomasville, Ga.	majority requirement numbered posts	Aug. 24, 1972
22.	Aiken, S. C.	numbered posts residency requirement	Aug. 25, 1972
23.	Harris Co., Ga.	residency requirement	Dec. 5, 1972 (Objection withdrawn Mar. 30, 1973)
24.	Cochran, Ga.	majority requirement	Jan. 29, 1973
25.	Cuthbert, Ga.	numbered posts	Apr. 9, 1973
26.	Louisiana	numbered posts	Apr. 20, 1973
27.	Indianola, Miss.	numbered posts	Apr. 20, 1973
28.	Ocilla, Ga.	majority requirement	June 22, 1973
29.	Sumter Co., Ga.	majority requirement residence requirement	July 13, 1973
30.	Hoganville, Ga.	majority requirement numbered posts	Aug. 2, 1973
31.	Darlington, S. C.	residency requirement	Aug. 7, 1973
32.	Perry, Ga.	majority requirement numbered posts	Aug. 14, 1973
33.	Thomasville, Ga.	residency requirement	Aug. 27, 1973
34.	Bogalusa, La.	residency requirement anti-single shot law	Oct. 29, 1973
35.	South Carolina	majority requirement numbered posts	Feb. 14, 1974

Annexation

	Jurisdiction	Date
1.	Richmond, Va.	May. 7, 1971
2.	Petersburg, Va.	Feb. 22, 1972
3.	Lake Providence, La.	Dec. 1, 1972
4.	McComb, Miss.	May 30, 1973 (Objection withdrawn, Sept. 12, 1973)
5.	Newellton, La.	June 12, 1973

Governmental Structure and Operations

	Jurisdiction	Nature of Change	Date
1.	Saluda Co., S. C.	creation of new school district	Nov. 13, 1972
2.	Pearl, Miss.	incorporation	Nov. 21, 1973 (Objection withdrawn after modification, Jan. 3, 1974)
3.	Arizona	procedures for recall	Oct. 9, 1973
4.	Arizona	procedures for recall	Jan. 7, 1974

Appendix G

Important Court Decisions Concerning Section 5

Allen v. State Board of Elections, 393 U.S. 544 (1969), page 6

Baker v. St. Helena Parish Police Jury, Civil No. 71-293 (E.D. La. Dec. 1, 1971)

Bailey v. Washington Parish Police Jury, Civil No. 70-2861 (E.D. La. Mar. 28, 1971)

Beer v. United States, Civil No. 1495-73 (D.D.C. Jan. 4, 1974, Mar. 15, 1974)

Chargois v. Vermilion Parish School Board, 348 F. Supp. 498 (W.D. La. 1972)

City of Petersburg v. United States, 354 F. Supp. 1021 (1972) aff'd, 410 U.S. 962 (1973), aff'd sub nom. Diamond v. United States, 412 U.S. 901 (1973)

City of Richmond v. United States, Civil No. 1718-72 (filed Aug. 25, 1972)

Common Cause v. Mitchell, Civil No. 2348-71 (D.D.C. Mar. 30, 1972)

Conner v. Board of Supervisors of Oktibbeha County, 334 F. Supp. 280 (N.D. Miss. 1971)

Conner v. Johnson, 402 U.S. 690 (1971), page 55

DeLee v. Branton, Civil No. 73-902 (D.S.C. Jan. 31, 1974)

Dyer v. Love, 307 F. Supp. 974 (N.D. Miss. 1969)

Evers v. State Bd. of Election Comm., 327 F. Supp. 640 (S.D. Miss. 1971)

Hadnott v. Amos, 394 U.S. 358 (1969)

Hall v. Issaquena County Board of Supervisors, 453 F.2d 404 (5th Cir. 1971)

Harper v. Kleindienst, 362 F. Supp. 744 (D.D.C. 1973) appeal pending, No. 73-1966, (D.C. Cir.)

Holt v. City of Richmond, 334 F.Supp. 228 (E.D. Va. 1971), 459 F.2d 1093 (4th Cir. 1973), 406 U.S. 903 (1972)

Howell v. Mahan, Civil No. 105-71-N (E.D. Va., Order of May 24, 1971)

Jackson v. Land, Civil No. 72-680, (W.D. La. Feb. 11, 1974)

Johnson v. St. Martin Parish School Board, Civil No. 16965 (W.D. La. June 5, 1972)

Johnson v. West, Civil No. 72-680 (D.S.C. June 14, 1972)

London v. East Feliciana Parish Police Jury, Civil No. 71-306 (M.D. La. May 16, 1972)

MacGuire v. Amos, 343 F. Supp. 119 (M.D. Ala. 1972)

Mashburn v. Daniel, Civil No. 73J-138(R) (S.D. Miss. Aug. 17, 1973)

Mississippi Freedom Democratic Party v. Johnson, 299 F. Supp. 93 (S.D. Miss. 1969)

Moore v. Leflore County Board of Election Commissioners, 351 F. Supp. 848 (N.D. Miss. 1971)

Perkins v. Matthews, 400 U.S. 379 (1971), on remand 336 F. Supp. 6 (S.D. Miss. 1971), page 6

Perkins v. Kleindienst, Civil No. 1309-72, (D.D.C. Nov. 2, 1972)

Scott v. Burkes, Civil No. 4782 (S.D. Miss., April, 1973)

Sheffield v. Itawamba County Board of Supervisors, 439 F.2d 35 (5th Cir. 1971)

Sims v. Amos, 365 F. Supp. 215 (M.D. Ala. 1973)

South Carolina v. Katzenbach, 383 U.S. 301 (1966)

Thompson v. Bolton Mun. Dem. Exec. Comm., Civil No. 73J-131(N) (S.D. Miss., Order of Sept. 14, 1973)

Thompson v. Brown 434 F.2d 1092 (5th Cir. 1970)

United States v. Cohan, 358 F. Supp. 1217 (S.D. Ga. 1973), 470 F.2d 503 (5th Cir. 1972)

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United States v. Garner, 349 F. Supp. 1054 (N.D. Ga. 1972)

United States v. Georgia, 411 U.S. 526 (1973)

United States v. Post, 297 F. Supp. 46 (W.D. La. 1969)

Vanover v. Maloney, Misc. No. 581 (4th Cir. July 16, 1969)

Williams v. Democratic Party of Georgia, Civil No. 16286 (N.D. Ga. April 6, 1972), aff'd 409 U.S. 809 (1973)

Zimmer v. McKeithen, 467 F.2d 1381 (5th Cir. 1973)

Appendix H

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APPENDIX 4

COMMON CAUSE,
Washington, D.C., April 1, 1975.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights,
House Judiciary Committee,
Washington, D.C.

DEAR CHAIRMAN EDWARDS: On behalf of Common Cause, I am submitting the attached statement concerning extension of the Voting Rights Act for inclusion in the hearing record being developed by your subcommittee.

We greatly appreciate this opportunity to present Common Cause's views on this issue of urgent importance.

Sincerely,

DAVID COHEN,
Acting President.

STATEMENT ON EXTENSION OF THE VOTING RIGHTS ACT.—DAVID COHEN, ACTING PRESIDENT OF COMMON CAUSE, SUBMITTED FOR THE RECORD TO THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS, HOUSE JUDICIARY COMMITTEE, APRIL 1, 1975

Common Cause from its start has worked to increase citizens' access to their governmental institutions, to enhance their impact on the governmental process by enabling them to participate more fully in it. Certainly there has been no more fundamental impediment to such citizen access than practices which have inhibited individuals' ability to register and vote. And certainly no act of Congress has done as much to eliminate offensive, discriminatory practices than the Voting Rights Act of 1965 and its five-year extension in 1970.

Some argue that ten years undee the Voting Rights Act is enough. But we agree with Arthur S. Flemming, Chairman of the U.S. Civil Rights Commission who has concluded that:

"Ten years . . . has not been enough time to overcome centuries of exclusion. Resistance to minority political participation has abated, but it has not been eradicated. Evidence . . . indicates that progress under the act has been real, but limited and uneven, and that discrimination continues to impede the exercise of minority voting rights in jurisdictions covered by the act."

The facts clearly show the progress to date—and the vital importance of prolonging the life of those temporary provisions of the Voting Rights Act which are scheduled to expire in August of this year.

Between 1964 and 1972 over 1 million new black voters were registered in the seven covered Southern states. As a result, the percentage of eligible blacks registered shot up from 29 percent to more than 56 percent.

Before the Voting Rights Act went into effect, less than 75 blacks held elective office in the covered Southern states. By the end of 1974, there were more than 1100 black elected officials, 191 in Mississippi alone.

Yet the gap between black and white registration rates in the covered jurisdictions remains substantial. Recent statistics compiled by the U.S. Commission on Civil Rights show that in 1972 the registration rates for blacks averaged 11.2 percent lower than the rates for whites in the covered states. In 1974, the black registration rate ran 16 percent lower than that of whites in Louisiana, 17.8 percent lower in North Carolina.

Also, a closer look at the kinds of offices held by blacks shows that very few are offices of any real power or significance. Although the black population in the covered states is more than 25 percent, blacks hold only 7 percent of the lower house seats and 2.5 percent of the upper house seats. Although 36.8 percent of the population of Mississippi is black, no black state senator and only one black state representative has been elected. There are only 5 black elected judges and 4 black sheriffs in the seven covered Southern states, none in Mississippi.

These statistics bear out the recent observation of U.S. Assistant Attorney General for Civil Rights, J. Stanley Pottinger, who noted, "Some of the gains of the past ten years are more apparent than real." Despite a diminished gap between white and black political participation rates in the covered jurisdictions, significant disparities—indicative of significant lingering problems—still remain. Without the protections afforded by the Voting Rights Act, the substantial gains made during the last 10 years could quickly be undone.

It is for these reasons that Common Cause wants to take this opportunity to add its voice to those calling for an extension of the Voting Rights Act. Specifically, we advocate the following:

(1) We urge that the temporary provisions of the Voting Rights Act be extended for ten more years.

(2) We urge that section 4's suspension of literacy tests be made permanent.

(3) We urge the retention of section 5's crucial pre-clearance mechanism.

(4) We urge the retention of section 6–9's provision for federal examiners and observers.

(5) We urge that the Congress act to assure full protection under the Act for Americans of Spanish origin.

Before expanding upon each of these recommendations, I would like to briefly review the content and purpose of the key provisions of the Voting Rights Act. Against this backdrop, the reasons for our recommendations become clear.

Although some provisions of the Voting Rights Act are permanent legislation of general application, other provisions (sections 4–9) are temporary, with special application. The temporary provisions, which were initially established for 5 years and were extended for 5 more years in 1970 are the key to the law's effectiveness. As such we feel they must be perpetuated.

SECTION 4

Section 4 sets up an automatic formula or "trigger" mechanism by which States or their political subdivisions are covered and made subject to the Act's remedies. Automatically covered by this section were any jurisdictions which used tests or devices as a prerequisite to registering or voting as of November 1, 1964, and in which voter registration or turnout in the 1964 Presidential election was less thon 50 percent of the jurisdiction's voting age population. Section 4 explicitly prohibits the use of such tests or devices, and in 1970 it was amended to include within its coverage jurisdictions that had maintained a test or device on November 1, 1968, and had less than 50% registration or voter turnout in that year's Presidential election. One important feature added to section 4 in 1970 was a 5-year nationwide suspension of literacy tests in effect at that time.

SECTION 5

Section 5 has become the pivotal provision of the Voting Rights Act, since it is designed to prevent the imposition of new discriminatory practices. It requires that covered jurisdictions submit changes in the registration and election laws to the U.S. Attorney General or to the U.S. District Court for the District of Columbia for a determination that the changes are not discriminatory in purpose or effect. This section, however, was not meaningfully enforced until 1971, when the Justice Department issued implementing regulations. There were more laws and procedures submitted for pre-clearance, and more objections raised, in 1971 than during the first six years of the Act. In 1971, there were 1,339 submissions and 63 objections, compared to a total of 797 submissions and only 28 objections during the previous six years. Since 1971 the level of objections has remained high—50 objections were made in 1972, 26 in 1973, and 41 in 1974. Just last September, the Attorney General entered 15 objections, a record number for any month.

The laws and procedures objected to, span the spectrum of discriminatory practices—discriminatory changes in district boundaries, use of at-large elections, relocation of polling places to sites inconventien to minority voters, and imposition of burdensome filing fees are but a few of the changes which have been invalidated under section 5.

The consequences of section 5's enforcement have often been dramatic. For example, South Carolina proposed to change from single-member to multi-member districts for elections to the state legislature. The Attorney General refused to grant section 5 clearance of this change, finding that it would dilute the voting strength of the black voters. As a result of the objection, the South Carolina legislature adopted a single-member plan, which was approved by the Justice Department, and in last November's election—the first held under the new plan—the number of blacks elected to the South Carolina House increased from 4 to 13.

In addition to the obvious effects of section 5 enforcement—as seen in the objections raised during the pre-clearance procedure—there is a second, more subtle but equally important consequence: its unquestionably strong deterrent effect. Covered jurisdictions are more reluctant to adopt discriminatory changes

in their election laws and procedures when they recognize that these changes must obtain federal approval. In Bessemer, Alabama, for example, the city rescinded an increase in filing fees rather than submit it for preclearance.

SECTION 6–9

Sections 6 through 9 of the Voting Rights Act allow the Attorney General, in his discretion, to assign Federal examiners to "list" eligible persons for registration by State officials in the covered jurisdictions and to appoint Federal observers to report on the conduct of elections in covered jurisdictions. These provisions, though utilized rather sparingly during the life of the Voting Rights Act, provide additional useful tools in the arsenal of weapons which strengthen efforts to prevent discrimination in registration and voting procedures. As with section 5, the deterrent effect of these sections is a major argument for their continuation. Also, if these important provisions of the Voting Rights Act were allowed to expire, litigation would be the only remedy available, and resort to court action on a case by case basis has historically proven a highly ineffective way to enforce voting rights.

In view of the record of effective action under these temporary provisions of the Voting Rights Act, and in recognition of the likelihood of a reversion to discriminatory practices if the Act is allowed to expire, Common Cause considers it imperative that sections 4–9 of the Act be extended. We urge that the extension be for ten more years, rather than five, in order to assure that the Act's protections will be in effect at the time of the 1980 census, when reapportionment will be required in every state. Over 120 objections to discriminatory redistricting plans have already been entered under section 5, many directed at plans adopted as a result of reapportionment required aftef the 1970 census. Unless the strength of the Voting Rights Act remains intact until after the 1980 census, the prospects for widespread discrimination achieved through racially gerrymandered redistricting will be very great indeed.

We urge that section 4's suspension of literacy tests now be made permanent. No evidence has been cited that such tests do anything to ensure that voters are better informed or that their elimination has had any discernible effect on elections other than requiring that illiterate voters be given assistance in casting their ballots. We fully concur with the sentiments expressed by former Chairman of the U.S. Civil Rights Commission, Rev. Theodore Hesburgh, when he recently testified that "literacy tests do not disqualify 'unintelligent' voters or assure the registration of only 'intelligent' voters."

Today, when a majority of Americans receive their information on current events from radio and television, it is indefensible to condition the right to vote on the ability to read the printed word. While intensive efforts to end illiteracy must be continued, there is no valid rationale for allowing literacy tests to be reinstated. If election officials are allowed to administer literacy tests—and test, for example, prospective voters' understanding or interpretation of complicated constitutional provisions—there is a tremendous potential for the selective disenfranchisement of literate as well as illiterate individuals. Despite their suspension, such tests remain on the books in 14 states across the country. They present such great opportunities for abuse that they simply must be abolished permanently.

We urge the retention of section 5's crucial pre-clearance mechanism which, as discussed previously, has proven so instrumental in thwarting the institution of new discriminatory election law changes. The Act's inclusion of the procedures required by section 5 was premised on the recognition that the advances made by section 4's suspension of literacy tests could readily be undermined by adoption of new, more subtle but equally effective discriminatory practices. Section 5's preclearance requirements has proven to be the Voting Rights Act's most ingenious—and most potent—feature. Since the Justice Department only began actively enforcing section 5 in 1971, it is all the more important that its life be extended for ten years.

We urge the retention of sections 6–9's provision for federal examiners and observers. These sections have proven to be useful in providing the Federal Government with additional means of insuring that the purposes of the Act are carried out. They should be retained.

Finally, *we urge that the Judiciary Committee act to assure adequate protection for the voting rights of Spanish-speaking Americans.* These individuals who live predominantly in the five Southwestern and Western states of Texas, New Mexico, Arizona, California and Colorado, have also been subject to significant discrimination in their efforts to register and vote. Not only have Spanish-speaking Americans experienced many of the same kinds of discrimination blacks have encountered,

but they have suffered from other difficulties stemming from being forced to use registration and voting materials printed only in English.

The factual record regarding the effects of discriminatory practices against Spanish-speaking minorities unfortunately has not been as well developed as the voluminous record as to discrimination against black Americans. But enough figures are available to raise serious questions as to the adequacy of existing protections under the Voting Rights Act for Spanish-speaking Americans. According to the Census Bureau, only 46 percent of Mexican-Americans are registered to vote, and only 37.5 percent actually voted in 1972. The comparable statistics for whites show 73.4 percent registered to vote and 64.5 percent actually voting.

The predictable result of this underrepresentation has been a low percentage of Mexican-Americans elected to office. For example, in Texas, where Mexican-Americans comprise 18 percent of the population, only 6.2 percent of the elective offices were held by Mexican-Americans as of 1970.

Assistant Attorney General Pottinger, Civil Rights Commission Chairman Flemming and other distinguished witnesses have expressed some concern about the adequacy of factual data documenting patterns of discrimination against Americans of Spanish origin. They have also raised important questions as to the best way to draft amendments to strengthen the Act's protection of Spanish-speaking minorities. We do not, however, believe that these considerations argue against including clear and effective coverage for Spanish-speaking Americans. Rather, they argue that this committee approach the matter with deliberation and precision to accomplish the desired result of full coverage.

We believe that H.R. 5551, recently introduced by Reps. Herman Badillo, Barbara Jordan, and Edward Roybal, provides the committee with an excellent vehicle for considering the issues involved. The three sponsors have given strong and thoughtful leadership to the efforts to assure adequate protection for Spanish-speaking minorities and we think their bill has gone a long way toward resolving many of the difficult technical and constitutional problems raised in drafting such legislation.

During the last ten years the Voting Rights Act has made possible unprecedented gains in removing barriers to full participation in the political process by minority groups. Nevertheless, there is clear evidence of the continuing existence of efforts to deny many Americans the right to vote and to dilute their electoral strength on the basis of their race or ethnic background. It is foolhardy to expect that five or ten years under the Voting Rights Act can wipe out the patterns of discrimination and intimidation which have developed over the last 100 years. Common Cause urges the Judiciary Committee, and the Congress, to act expeditiously to extend the Voting Rights Act for another ten years in order to insure that its promise is fulfilled. Without such action by the Congress, the impressive progress of the last ten years may be quickly negated and the vital work of enfranchising this country's disenfranchised may grind to a sudden halt.

STATEMENT OF THE HONORABLE JERRY APODACA, GOVERNOR OF NEW MEXICO, TO THE HOUSE JUDICIARY SUBCOMMITTEE ON CIVIL RIGHTS AND CONSTITUTIONAL RIGHTS, MARCH 20, 1975

In the ten years since the adoption of the Voting Rights Act of 1965, millions of minority Americans have participated in the democratic process for the first time. Yet there is much to be done, and Congress should extend this vital legislation and strengthen it to include minorities previously not covered.

The right of all Americans to participate in the democratic process is unquestioned, but for too many years various means have been used to exclude those whose skin is a different color or whose skills in the English language are lacking.

In New Mexico, we have a population that is 30 percent Mexican-American and 7 percent Indian. To many of our citizens, English is a second language which is infrequently used in day-to-day life. Most of our schools have bi-lingual education programs that preserve our children's native languages.

Those whose first language is other than English are no less good citizens and good voters than those whose first language is English. Our state law requires that all election regulations, information, and ballots be printed in both English and Spanish. Many of our governmental officials are fluent in both languages.

This legislation would have no effect on New Mexico, but I think it important that Spanish-speaking people in other states be as well protected as New Mexicans. Mexican-Americans, Cuban-Americans, Spanish-Americans, Puerto Rican-Americans, and Indians are too often denied their sacred right to vote simply because English is not their first language.

If the promise of the American dream is to become a reality, all Americans, regardless of color or national origin, must participate in the democratic process.

Only then can they be first-class citizens and share in the benefits and responsibilities of our democratic society.

STATEMENT OF ROGER C. GRIFFIN, JR., PRESIDENT SOUTH RICHMOND COUNCIL OF CIVIC ASSOCIATIONS

As a white resident of a suburban area in Virginia I plead for extension of the Voting Rights Act and especially for the extension and continuation of Section 5. Even more strenuously I plead for a drastic improvement in the means for enforcing the provisions of the act.

Since 1969 I have been governed by a white political power structure in the city of Richmond, Virginia which "annexed" the area in which I live from the county of Chesterfield. It has been proven in several courts and I have been told by several city councilmen, a city manager, and a city attorney that this was done because, "we cannot let the blacks get political control of the City," My fellow citizens and I were not permitted to vote on whether we wanted to be annexed. Some were not permitted to be represented in the court trial that granted the annexation. Under Virginia Law annexations must be ratified by the governing bodies concerned (i.e. City Council and County Board of Supervisors). This was not done.

All attempts by annexed citizens to halt the implementation of the annexation prior to Jan. 1, 1970 were turned aside by State and Federal Courts. Meanwhile a black citizen of Richmond, Mr. Curtis Holt, Sr. was being rebuffed by the Justice Dept. of the United States in his attempt to halt the dilution of his vote.

In 1971, the City belatedly decided it had violated Section 5 of the Voting Rights Act, but the City Attorney slated no intentions to seek approval of the annexation.

When I and others asked the Justice Dept. to force the City to seek approval or to order the City to de-annex, we were told they had no jurisdiction. Mr. Norman, Asst. Attorney-General, told me the Civil Rights Division was interested only in protecting the voting rights of minorities. When I asked about my rights and the equal protection of the law he replied that this was of no concern to the government of the United States.

Our contention was and is that, when a black citizen's vote was diluted by annexing a mass of white citizens against their will, the voting rights of all citizens, black and white, were infringed. No lawyer would take our case. We had "no standing in the courts."

By chance we discovered that Curtis Holt, a man of limited means, was desirous of bringing a suit under the Voting Rights Act and under the 14th and 15th Amendments. We lent our financial support to Mr. Holt's suits as the only means we could seek justice and the end (deannexation) that we desire.

When the City learned of Mr. Holt's intent to sue, they sought approval from the Justice Dept. Based on evidence submitted by us through Mr. Holt's attorney, this request was denied. When asked what further the city would do, the City Attorney replied, "Nothing, unless we are forced to."

At this point we had established the city had violated the law. But no agency would force compliance.

The first Holt case went to trial and the 1st District U.S. Court found the city guilty of racially discriminatory motive in violation of Articles 14 & 15. Yet still no order was given to deannex. (See exhibit 1 attached.)

No one can understand the bitterness and frustration of a group of people who know they have been victimized, who see the perpetrator found guilty, and then see him go free on the grounds it would hurt him to be punished! The Courts ruled in Holt 1 that to deannex would "hurt the city" and therefore it should not be ordered. Since no other satisfactory remedy could be conceived, none was applied!

The second Holt case was brought under Section 12 of the Voting Rights Act to force the City either to get approval of the annexation (by appeal of the Justice Department's ruling) or to cease implementation of the annexation. At this point the City, having failed to obtain approval of a mixed at-large/ward plan of voting from the Justice Department, filed an appeal with the 3-Judge District of Columbia Federal District Court. Holt-2 was suspended pending results of this third case. Meanwhile the U.S. Supreme Court granted an injunction against further elections in the City of Richmond until this issue become resolved.

A Master heard the case and recommended deannexation as the only proper remedy. The 3 judges upheld his findings, stated they had the power to deannex, but remanded the case to the local District Court (i.e. Holt 2) for final remedy. (See Exhibit 2 attached).

The Holt 2 court refused to take any further step pending the City's appeal to the U.S. Supreme Court of the afore-mentioned denial of approval. During the

hearing at which this refusal took place the attorney for the city, Mr. Edwards, on questioning from the bench, stated he did not believe any court had the power to order deannexation and that all Richmond had to do was to repetitively bring new ward plans to the Attorney-General, appeal denials to the U.S. Supreme Court and then start over, ad infinitum.

Meanwhile we continue to be governed and taxed by a government illegally elected, not of our choosing, and dominated by the very persons involved in the original violation of law. Armed with our tax dollars, backed by a press that they control or influence, and protected in office by the injunction we invoked, they are quite content to rule, and rule, and rule, and rule. (It is the injunction against elections that is beginning to apply some pressure.)

Surely this instance must convince any reasonable body of men that the Voting Rights Act is a vital necessity to protect all citizens, not just minorities. It should apply to all states equally. Only those who intend to violate a law, protest loudly against it. It is not onerous to seek federal approval of routine changes, and most are readily granted.

This law becomes onerous only to those who would seek to violate someone's voting rights.

It should also be apparent that the machinery for enforcement of Section 5 is woefully inadequate. Five years have gone by and still no enforcement in our case. In the opinion of U.S. Supreme Court, Perkins v. Matthews, the majority held:

"Moreover, based upon ample proof of repeated evasion of court decrees and of extended litigation designed to delay the implementation of federal constitutional rights, Congress expressly indicated its intention that the States and subdivisions, rather than citizens seeking to exercise their rights, bear the burden of delays in litigation."

We submit that the intent of Congress has been subverted. A State, City, or subdivision may deliberately flout Section 5 and no agency of government will intervene. The burden and cost of litigation to enforce compliance now lies on the citizen, who is least able to bear it.

In summary, Congress should extend the Act both in time and in coverage; it should apply to all States and provide protection to all citizens. Machinery for mandatory enforcement should be provided, to include injunctive relief where applicable. Individual citizens should have the means for seeking redress of violations at no cost to the citizen.

ROGER C. GRIFFIN, Jr.,
President, South Richmond Council of Civic Associations.

EXHIBIT 1

This paper is a condensation of the Memorandum of Law (18 pages) submitted to the U.S. District Court in Richmond by Attorney W. H. C. Venable on behalf of Curtis Holt, Sr. in the Civil Action known as Holt vs City of Richmond, et. al., or "Holt 2." As you are all familiar with "Holt 1", the case brought under Constitutional issues, no extensive reference will be made to it, except as follows:

The Holt 1 trial established the facts of the Richmond annexation case and tried to prove, in addition to the racially discriminatory result, that the City had a racially discriminatory motive in attaining the annexation, which violated Articles 14 and 15 of the U.S. Constitution. U.S. District Court 1 (Judge Merighe) found the facts in our favor but refused the remedy sought (deannexation). The 4th Circuit Court of Appeals disputed the motivation while accepting the remaining facts and overruled Merighe's call for a special election. The U.S. Supreme Court refused to review—thus ending the action under Holt 1.

We gained some advantages from Holt 1, the most important ones' being establishment of facts in the case, and ultimately the convincing of three Federal judges that the doctrine "cities must grow territorially to survive" is not true. This latter point has already had effect on the judicial climate in Washington, D.C. We also gained disapproval by the U.S. Attorney General of the City's belated request for approval of our annexation.

WHAT'S THE CURRENT SITUATION UNDER HOLT 2?

Holt 2 has been brought under the provisions of the 1965 Voting Rights Act. Its purpose is to ask the Court to order enforcement of Section 5 of that Act. The right to do this is spelled out in Section 12 of the Act, which provides the "machinery for bringing civil actions as well as criminal actions against jurisdictions that do not comply with Section 5."

Section 5 states that no jurisdiction (state, country, city or subdivision) covered by the Act may enforce any voting qualification or prerequisite to voting, or

standard, practice, or procedure with respect to voting, different from that in effect on 1 November 1964, unless and until the U.S. District Court for the District of Columbia determines that such change does not have the purpose or effect of discriminating on account of race or color. (It also permits the jurisdiction to put the new enactment into effect, if, after submission of the proposed change to the U.S. Attorney General, he does not within sixty (60) days object to it).

The Perkins Case (1971) spelled out that annexations constitute a "change" within the scope of Section 5. The City has argued they didn't know they had to get approval until Perkins and thus shouldn't ge punished.

The Allen Case (1969) stated (reaffirmed in Perkins) that "Congress intended to reach any state enactment which altered the election law—in even a minor way" and "all changes, no matter how small, (are subject) to Section 5." The City should have known prior to 1 January 1970 it had to get approval.

Under Section 12 any "victim" who believes his civil rights have been abridged by a change in voting practices may bring action in Federal Court to accomplish the following:

1. To have a three judge court appointed to determine whether or not the change comes under the Voting Rights Act, Section 4 and Section 5. Since this was admitted by both sides in Holt 1, we have won this relief without such a trial.

2. To have the three judge court order the jurisdiction to seek approval from the U.S. District Court in the District of Columbia. The City of Richmond refused at first to seek any approval. Then they asked for and were denied approval by the U.S. Attorney General. Instead of going to the Court, they tried to get the Attorney General to change his mind without success. Finally, as a result of Holt 2, the City a few weeks ago filed a case in the D.C. Court seeking approval. Thus we have won this relief.

3. To have the three judge court enjoin any new elections under the new system until approval shall have been obtained. Richmond held an election in 1970 and prepared to hold another election in 1972. The three judge court appointed to hear Holt 2 refused an injunction against the latter. The U.S. Supreme Court issued an injunction based on our petition. Thus we have won this relief.

4. To have the three judge court enjoin the jurisdiction from putting the change into effect until approved. This is the relief we are seeking now. The City has illegally put into effect the annexation and continues to do so. We are asking the Court to order them to stop and to return to us our previous status. We believe the law requires this to be done. We also believe the City will fail to get approval from the U.S. Court in D.C.—which will be appealed to the U.S. Supreme Court. Thus there will continue to be a delay. The law clearly states the burdens of delay in putting a change into effect must fall upon the jurisdiction (the City) not upon those affected.

WHAT IS THE ARGUMENT ALL ABOUT? ISN'T THE LAW CLEAR?

The hangup in obtaining our final relief lies within the Justice Department and their interpretations of the Voting Rights Act and the intent of Congress. Our side contends that the Attorney General of the United States, when he became aware of the impending Richmond Annexation (in defiance of Section 5), should have ordered or obtained a Court order preventing Richmond from putting the annexation into effect. Failing this, when he finally received their request for approval and decided to deny it, he should have declared or obtained a Court order declaring the annexation void.

The Attorney General contends that it was not the intent of Congress to "hold up such changes." In testimony before a House Judiciary Subcommittee hearing Mr. Turner said, "we have told the authorities in Richmond, where we recently objected to their annexation, that our objection does not void the annexation. It merely means they can't have an election at which the right to vote could conceivably be denied." (or abridged).

This is why we seek relief from the Court. This is why the case hangs primarily on interpretation of Section 5 of the Voting Rights Act; that is what it means as written, what it means as interpreted by the Courts, and what it means as intended by Congress.

INTENT OF CONGRESS

The intent of Congress is evident from several sources:

a. Report 91-397 of the House Judiciary Committee of 28 July 1969

b. The Congressional Record, December 10/11 1969—both concerning renewal of Section 5 of the Act

c. Hearings (May/June 1971) and Report (January 1972), Civil Rights Oversight Subcommittee, House Judiciary Committee

d. U.S. Supreme Court South Carolina vs Katzenbach
e. U.S. Justice Department
a. House Judiciary Report 91-397 (Paraphrased Extracts)
"In order to preclude future State or local circumvention of the remedies and policies of the 1965 Act, Section 5 provides no political subdivision may enforce—(any change)—unless and until the—Court—determines such change does not have the purpose and will not have the purpose and will not have the effect—"
Separate report by Poff (Virginia):—"Section 5 provides (State) cannot implement any new voting law—until (approval)"
"A Federal law which raises a presumption of illegality against a law newly enacted by a State legislature and suspends its operation until" (approval) . . .

DISSENTING REPORT BY FLOWERS (ALABAMA)

"The Act * * * requires that * * * every proposed change in their election process" (must be submitted * * * for prior approval."
b. Congressional Debate (Paraphrased from 12 Proponents and 7 Opponents of the Bill)
"Section 5 requires the * * * political subdivision * * * to obtain * * * approval * * *. If there is no objection by the U.S. Attorney General, such changes may be enforced. If he objects (they) may not be enforced * * *"
"nothing would be gained and much would be lost if preclearance of new voting laws as required in Section 5 were eliminated?
"Section 5 requires a jurisdiction must clear new voting laws and practices * * * before they become effective"
b. Congressional Debate continued
"the key part of the Act is that States may not change their voting laws without submitting them first (for approval)"
"before a State (voting) law can go into effect * * * the State must come here to get Federal permission."
"the Act requires that States * * * must submit every proposed change * * * for prior approval * * *"
"the State cannot change any part of its Constitution or statutory law that concerns elections without first getting (approval)"
"Section 5 requires * * * all statutes and ordinances * * * be submitted * * * with the proviso * * * (if objected to) * * * they shall not be effective"
"There is no doubt that a case-by-case approval * * * has not worked in the past * * * that fact * * * triggered the Voting Rights Act of 1965."
"The Act forbids * * * "States and counties * * * to put into effect any voting laws without approval * * *"
"The act prohibits * * * State and counties from making any changes "without first obtaining approval" * * * "this protection is the crux * * * of the Act."
c. Hearings—May/June 1971 (Harold Glickstein, Staff Director, U.S. Commission on Civil Rights)
"Section 5 provides that before States can enforce changes they must submit the proposed changes to * * * etc. * * *. Section 5 contemplates * * * they may not seek to administer any change unless (approval has been obtained)
The Richmond annexation is a serious problem. Elections have already been held under that situation. Our position is that the annexation was void until it was submitted under Section 5 (and approved)
"It seems to me that (the enactment of a new voting practice, etc.) has absolutely no effect at all until it is submitted and approved.
Report of the Subcommittee:
"Section 5 was intended to prohibit enforcement of all changes affecting voting until a determination had been made that the change did not have the purpose and would not have the effect of discriminating on the basis of race or color."
"It imposes a new legislative procedure upon changes affecting voting: in addition to whatever steps are made necessary by State or local law for a proposed change to become law, Section 5 requires federal approval. Without (it) * * * the change is only a proposed change. Proposed changes are not law and are not enforceable."
d. U.S. Supreme Court—South Carolina vs Katzenbach
The Brief submitted by David Norman for U.S. Department of Justice, describes Section 5 as "a prohibition against the putting into effect of new voting qualifications and procedures until they had been screened * * * and found harmless."
U.S. Supreme Court decision, ibid:—"Section 5 prescribes a second remedy, the suspension of all new voting regulations pending review by Federal authorities * * *."

"the Act automatically *suspends* the operation of voting regulations enacted after 1 November 1964, and furnishes mechanisms for enforcing the suspension."

e. U.S. Justice Department Testimony (May/June 1971 hearings) Congressman Waldie, Conyers and Wiggins vis-a-vis Mess'rs Norman and Turner of Justice Department.

Cong. W. "I don't understand * * * if a plan, altering boundaries for example, is obviously discriminatory and has not been submitted to you, is the * * * authority permitted to enforce that plan (without) your approval?

Mr. N. * * * (evasive)

Cong. W. "That is not what I asked. Do you stop them?"

Mr. N. * * * "Yes."

Cong. W. "It is not your understanding that the Congress intended all of those acts to be held in limbo until approval was granted under Section 5?"

Mr. T. * * * (evasive)

Cong. W. * * * (Re-stated the question)

Mr. T. * * * (evasive)

Cong. W. "For your information, at least one member of Congress, who voted (for) and considered that act, has an entirely different understanding." (than you). "It is my understanding that the requirements of prior approval for those plans was implicit in its contention that the plans without approval could not go into effect."

CONCLUSIONS

1. Section 5 was designed to prevent enforcing of any change prior to receiving approval.

2. Any other interpretation of Section 5 would transform it into an impotent expression of Congressional will which the states could ignore at their pleasure. It would be bitter irony if Section 5 were construed to allow (the City) to flout its very purpose.

3. There can be no question that annexations are "changes in practice or procedure" which must be approved before being put into effect.

4. It has been admitted that the disapproval of the Richmond annexation by the U.S. Attorney General is now over 16 months old yet the first attempt (by the City) for a declaratory judgement by the District Court of Columbia was only recently sought (3 years after the annexation court decree).

5. The plaintiff has entered a plea of intervention with the aforesaid Court seeking to have the annexation not approved.

6. The current situation places the intolerable burden of delay upon the plaintiff and upon the annexed citizens who are innocent tools of the discriminatory act.

7. Thus the Richmond annexation remains legally void, and an injunction should therefore issue compelling the Cityito cease and desist from exercising any further dominion and control over the annexed area.

[From the Richmond News Leader, May 30, 1974]

TEXT OF RULING BY 3-JUDGE PANEL OF D.C. FEDERAL DISTRICT COURT ON RICHMOND DEANNEXATION

Following is the text of yesterday's ruling by a three-judge panel of the U.S. District Court for the District of Columbia in the city of Richmond's deannexation case:

The City of Richmond, Virginia instituted this action seeking a declaratory judgment, pursuit to Section 5 of the Voting Rights Acts of 1965, that its annexation of approximately 23 square miles of adjacent county land does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

Richmond subsequently adopted a change in its method of electing its City Council from its previous system to a nine-ward, single-member district plan. The City now requests that we approve under Section 5 the annexation as modified by this ward plan. Under Rule 53 (c) of the Federal Rules of Civil Procedure, we referred the case to a Master to hold a hearing and to take testimony on "whether the City of Richmond annexation plan as amended has the purpose or the effect of diluting the black vote in that City." The Master found that the City had failed to carry the burden imposed on it by Section 5 of proving that the annexation, even as modified, did not have such a discriminatory purpose or effect. We concluded that this finding, far from being "clearly erroneous," was compelled by the record before the Master. We therefore decline to grant Richmond the declaratory judgment it seeks.

HEAVY RESPONSIBILITY

Before discussing the Master's findings and the record in this case, we think it appropriate to delineate and stress the heavy responsibility placed on this court by Section 5 of the Voting Rights Act of 1965. The origin and meaning of Section 5 were eloquently and thoroughly set forth by Judge Robinson in Beer v. United States. Judge Robinson's exposition, as well as several previous opinions of the Supreme Court, make clear that our responsibility is no less than to ensure realization of the Fifteenth Amendments' promise of equal participation in our electoral process.

Although we need not retrace all of Judge Robinson's comprehensive analysis of the historical evolution of Section 5, in order to gain a full appreciation of our responsibility it is necessary to consider briefly the section's significance, especially as relevant to the expansion of urban boundaries in those states covered by the section.

In language tracked by Section 5, Section 1 of the Fifteenth Amendment proclaims that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." Since the post Civil War enactment of the amendment, this language has been invoked to invalidate a host of devices and procedures designed by certain Southern states to deny the franchise to our nation's black citizens.

VOTING RIGHTS

However, state legislatures desirous of abridging the voting rights of blacks proved themselves resilient and ingenious in erecting new obstructions to black voting. In 1957 Congress, employing the power vested in it by Section 2 of the Fifteenth Amendment, "to enforce this (amendment) by appropriate legislation," authorized the Attorney General to seek injunctions against interference with the right to vote on racial grounds. But the persistent state legislatures seemed able to avert even this power by delaying litigation and by turning to discriminatory devices not covered by the injunctions obtained. Though Congress made further efforts in 1960 and 1964 to make accessible the electoral process to all Americans regardless of race, the impact on black voter registration was still not substantial. In 1965 Congress acted again, this time with a "firm intention to rid the country of racial discrimination in voting" by "a complex scheme of stringent remedies."

Section 5 of the 1965 Act, working in tandem with Section 4, is a central part of that scheme. Section 4 suspended use of any test or device in determining eligibility to vote in states which were using a test or device in 1964 and where voter participation was below a minimum 50 per cent level in that year. Section 5 protects the effectiveness of Section 4. To ensure that the covered states would not resort to the "stratagem of contriving new rules" to evade efforts to secure blacks their rights to equal participation in the electoral process, this section effectively "freezes the election laws" of states covered by Section 4.

SPECIAL COURT

Before one of these cities can administer any new "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting, "it must obtain the approval of the Attorney General or a declaratory judgment from a three-judge District Court for the District of Columbia that the new practice or procedure (1) does not have the purpose and (2) will not have the effect of denying or abridging the right to vote on account of race or color.

As the Supreme Court has repeatedly made clear, Congress thus shifted the burden of proof in voting rights litigation on to the states, requiring them to prove both the absence of a discriminatory purpose and the absence of a discriminatory effect before instituting new procedures which have any potential for abridging or denying voting rights of blacks.

In Allen v. State Board of Elections, the Supreme Court determined that the "Voting Rights Act was aimed at the subtle, as well as the obvious" state schemes for denying voting rights and that Congress thus intended that the Act be given its "broadest possible scope."

In its next decision involving Section 5, Perkins v. Matthews, the Court held that a change in a city's boundary lines "which enlarge(s) the city's number of eligible voters also constitutes the change of a 'standard, practice, or procedure with respect to voting,' " and thus is covered by Section 5. The Perkins Court reasoned that when a city expands its boundaries and adds new citizens to its voting rolls the votes of its old citizens are inevitably diluted.

Quoting Reynolds, it stressed that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." Perkins left implicit the obvious: If the proportion of blacks in the new citizenry from the annexed area is appreciably less than the proportion of blacks living within the city's old boundaries, and particularly if there is a history of racial bloc voting in the city, the voting power of black citizens as a class is diluted and thus abridged.

In August 1965 it was determined that Virginia was one of the states covered by Section 4 and thus by Section 5. It is therefore our responsibility under Section 5 to deny approval to Richmond's annexation of new voters unless Richmond can carry the burden of proving that the annexation, as modified by the ward plan, (1) does not have the purpose of abridging black voting power and (2) will not have such an effect. "This is a heavy burden for a community in a state with Virginia's history of past racial discrimination." (City of Petersburg, Va. v. United States).

With Richmond's burden of proof in mind, we turn to an examination of the Master's report and the facts of this case. The parties stipulated to the record in Holt v. City of Richmond, a previous Fifteenth Amendment suit brought against the annexation, and the Master based his finding on this record as well as on the three days of testimony before him.

Most of the primary findings of fact from which the Master derived his ultimate finding that Richmond had failed to carry its burden of proving the annexation, as amended, was without discriminatory purpose and effect were not challenged by any of the parties. We are thus able to set forth most of the history of the annexation for which Richmond seeks approval without direct reference to the record.

This history began in 1962 when the City filed an annexation suit against contiguous Chesterfield County seeking to obtain 51 square miles of territory. This suit lay dormant for several years, during which time Richmond unsuccessfully attempted to annex land from another adjacent county. It was settled in 1969 by compromise resulting in the annexation in suit of approximately 23 of the originally sought 51 square miles.

The period of the suit's dormancy witnessed a significant growth in black voting strength in Richmond. Blacks were rapidly becoming a majority of the population, and "while in 1968 there were more whites than Negroes registered to vote, about 50 per cent of the registered Negroes voted as against approximately 30 per cent of the white registered voters." Racial bloc voting was evident and a black civic organization—intervenor Crusade for Voters—had gained substantial electoral power, rivaling its white counterpart—Richmond Forward.

In the 1968 at-large City Council elections, Crusade-endorsed candidates won three of the nine Council seats from Richmond Forward endorsees. The Master's findings indicate that these developments caused the Richmond white political leadership great concern that the black voting bloc would be able to elect a majority to the City Council in the 1970 elections.

ELECTORAL CONTROL

The Richmond mayor, white incumbent city councilmen, the city attorney, and other representatives of the City and its white political leadership expressed their sentiments to Chesterfield County officials, to a state commission studying Richmond's expansion, and to residents of the City. These expressions reflected a conviction that annexation of part of Chesterfield County was necessary to keep the black population from gaining control of the city in the 1970 elections.

Further unchallenged findings of the Master on the record before him strongly suggest that this conviction motivated Richmond's negotiation and acceptance of the 1969 annexation suit settlement agreement for which it now seeks Section 5 approval.

The 1969 annexation negotiations with Chesterfield County were conducted for Richmond by its white mayor, city councilman, Phil J. Bagley. During the course of these negotiations, Mayor Bagley held meetings and conferences concerning their progress with the other five members of the Richmond City Council whose election had been endorsed by Richmond Forward, the predominantly white citizens group; the three members of the Council who had been endorsed by Crusade for Voters, the predominantly black citizens organization, were excluded from all of these meetings.

WHITE VOTERS

Richmond's focus in the neogtiations was upon the number of new white voters it could obtain by annexation; it expressed no interest in economic or geographic considerations such as tax revenues, vacant land, utilities, or schools. The mayor

required assurances from Chesterfield County officials that at least 44,000 additional white citizens would be obtained by the City before he would agree upon settlement of the annexation suit. And the mayor and one of the city councilmen conditioned final acceptance of the settlement agreement on the annexation going into effect in sufficient time to make citizens in the annexed area eligible to vote in the City Council elections of 1970.

The annexation suit settlement to which the six Richmond Forward-backed members of the City Council agreed, obtained for Richmond 60 per cent of the total population and 59 per cent of the school-age children, but only 51 per cent of the value of tax assessable property and 46 per cent of the total land area, of the original portion of Chesterfield County for which annexation was sought.

The annexation seemed to have the impact the Richmond officials who supported it desired. The 1970 census revealed that the black population within the old boundaries of Richmond was 52 per cent, but within the expanded boundaries it was only 42 per cent. The white citizenry was increased by the annexation by 45,705, while the black citizenry was increased by only 1,557. The 1970 councilmanic elections were held on an at-large basis with the annexed Chesterfield County citizens participating. Candidates endorsed by the white citizens organization maintained their 6–3 majority on the City Council and only one black councilman was elected. None of the six elected councilmen who were endorsed by the white citizens organization received more than 8.4 per cent of the black vote.

ILLEGAL ELECTION

It is conceded here that Richmond conducted these elections illegally in violation of Section 5. It did not, prior to diluting by annexation the votes of the citizens residing within the old Richmond boundaries, obtain the approval of the Attorney General or a declaratory judgment for this court that this dilution did not have the purpose and would not have the effect of abridging the right to vote on account of race or color.

Richmond has held no councilmanic elections since 1970; the illegally elected City Council continues to serve to this time. It was only after the decision in Perkins v. Matthews, and after the Attorney General had informed Richmond that it was in violation of the Voting Rights Act, that the City made its belated attempts to conform to the commands of Section 5.

On March 8, 1971 Richmond submitted the annexation and the concomitant changes in its election practices to the Attorney General. On May 7, 1971 the Attorney General interposed an objection to the election practice changes resulting from the annexation. On December 9, 1971 Curtis Holt Sr., a black citizen living with the old Richmond boundaries and an intervenor in the case at bar, filed an action in the District Court for the Eastern District of Virginia seeking a judgment that the annexation was without effect for lack of prior approval by the Attorney General or this court. On August 25, 1972, five days prior to a scheduled hearing in this Virginia District Court case, more than a year after the Attorney General objected to the annexation under Section 5, and almost two years after it had conducted its 1970 councilmanic elections in violation of Section 5, the City finally filed the instant suit in this court.

FULLY SUPPORTED

As originally filed, this suit asked us to declare nondiscriminatory in purpose and effect the annexation and concomitant changes in election practices as instituted in 1970. It could hardly be clearer that on the Master's unchallenged and fully supported factual findings we could not have issued such a declaration. The City apparently was moved in 1962 to file its annexation suit against Chesterfield County by legitimate goals of urban expansion.

However, Richmond, which we again emphasize must carry under Section 5 the heavy burden of proving the absence of a discriminatory purpose as well as the absence of a discriminatory effect, offered no evidence to explain why the suit was settled in 1969 by negotiations focusing on the number of white citizens the City would obtain and after the City's controlling white officials had stated that the annexation was necessary in 1969 to avert a black political takeover of the City.

In addition, given the Master's unchallenged finding that there was controverted evidence of racial bloc voting in Richmond and the fact that almost all of the annexed citizens were white, we cannot say that the expansion of Richmond's

boundaries and the concomitant changes in its election practices instituted in the 1970 councilmanic elections did not have the effort, as well as the purpose, of diluting the black vote.

We conclude, then, that Richmond's 1970 changes in its election practices following upon the annexation were discriminatory in purpose and effect and thus violative of Section 5's substantive standards as well as the section's procedural command that prior approval be obtained from the Attorney General or this court.

NINE-WARD PLAN

The primary thrust of Richmond's present arguments before this court, however, is that any discriminatory purpose and effect of the annexation was purged by the City's adoption, on April 25, 1973, of a single-member district, nine-ward plan for future councilmanic elections. Richmond amended its complaint in this action and now asks us to declare that the changes in its election practices resulting from the annexation as modified by the ward plan do not have a discriminatory purpose or effect. The City thus directs its attack on the finding in the Master's report that the ward plan does not remove the discriminatory taint from the annexation.

Richmond undertook to develop a ward plan after the decision in City of Petersburg, Va. v. United States, and it now relies on Petersburg to argue that the annexation was made lawful by the adoption of its single-member district plan.

In Petersburg, court was asked to approve under Section 5 an annexation which eliminated a black population majority in Petersburg. In light of evidence of a history of voting along racial lines in Petersburg, the court held that the City could not prove that its submitted annexation plan would not have the effect of diluting black votes. However, emphasizing the legitimate financial and geographic interests of Petersburg in the annexation and the absence of any evidence that the annexation was accomplished for the purpose of diluting black voting power, the court suggested that if the City changed from an at-large system for electing its city council to a ward system "calculated to neutralize to the extent possible any adverse effect upon the political participation of black voters," the annexation could pass Section 5 scrutiny.

TWO DIFFERENCES

The Master concluded that Richmond did not, under Petersburg, purge its annexation of illegality by its adoption of a ward plan. We agree for two reasons.

First, initially we find this case distinguishable from Petersburg in one significant respect: Richmond, unlike Petersburg, has not proved that it did not expand its boundaries for the purpose of abridging the voting rights of its black citizens.

Second, we cannot, in any case, find that the Petersburg standard as to effect has been set by Richmond. We are not convinced that the ward plan adopted by Richmond was "calculated to neutralize to the extent possible any adverse effect upon the political participation of black voters."

LEGITIMATE REASONS

We will address first the importance of Richmond's failure to prove, as Petersburg did, that its annexation did not have a discriminatory purpose. We do not agree with the Master's conclusion that a city which has originally annexed territory for the purpose of maintaining a white voting majority could never prove that it no longer had such a discriminatory purpose in retaining the annexed area after adaption of a single-member district ward plan. However, we also do not agree with Richmond that a city's showing that it has made some effort to remove the discriminatory effect of an annexation by adoption of a ward plan is sufficient to prove that it does not retain the annexed voters for a discriminatory purpose.

We realize that cities with histories af racial discrimination and bloc voting in states covered by Sections 4 and 5, even cities in which the number of black citizens is approaching a majority, may have legitimate economic reasons for desiring to expand their boundaries into surrounding areas which coincidentally contain many more white than black citizens. We think that when such a city demonstrates that its boundary expansion is not motivated by a desire to dilute black voting power, a ward plan calculated to minimize any dilution that could

occur should, as stated in Petersburg, save the annexation from illegality under Section 5.

However, when such a city violates the Voting Rights Act by proceeding, without approval of the Attorney General or this court, with annexation of a large number of white citizens for the purpose of diluting the vote of its black citizens, an extra burden rests on that city to purge itself of discriminatory taint, as well as to show that the annexation will not have the prohibited effect. To convince a court that such a city, by adoption of a ward plan, has purged itself of a discriminatory purpose in an annexation of new voters, it would have to be demonstrated by substantial evidence (1) that the ward plan not only reduce, but also effectively eliminated, the dilution of black voting power caused by the annexation, and (2) that the city has some objectively verifiable, legitimate purpose for annexation.

CITY'S FAILURE

In this case Richmond has failed to present substantial evidence that its original discriminatory purpose did not survive adoption of the ward plan. The Master concluded that the "City has failed to establish any counterbalancing economic or administrative benefits of the annexation."

The Master's conclusion was predicated upon findings of fact supported by direct testimony before him. The Master further found that the return of the annexed area to Chesterfield would actually save the City at least $8.5 million of operating loss per year and $21.3 million of required capital outlay. The Master also found that only 6.25 per cent of the vacant land received by Richmond in the settlement annexation was capable of development.

He further concluded from the testimony of a Chesterfield County official that the County is not only financially and administratively able and willing to reassume control over the annexed area and to reimburse the City for its previous expenditures in the area, but could do so without any significant inconvenience to or detrimental effect on the annexed citizens.

Richmond did not offer any testimony before the Master to controvert those findings. It objects, however, to the Master's conclusion that there are no economic administrative reasons to retain the annexed area on the basis of the record and decision in Holt v. City of Richmond.

The City cites from this record an estimate that revenues from the annexed area for fiscal year 1971–72 exceeded appropriation from it by about $1.5 million. Richmond further quotes a portion of the Holt decision containing the opinion of the Richmond City Manager that deannexation would be a job to "boggle the mind" and the opinion of the Holt court that Richmond would be in a weak bargaining position in any deannexation negotiations.

These evidentiary references to Holt were, of course, considered by the Master in making his findings. They do not persuade us that the Master's findings are wrong, nor do they dissipate the evidence of illegal purpose which permeates this record.

Moreover, because the City has failed to demonstrate that its ward plan effectively removes the dilution of black voting power caused by the annexation, even if we were convinced that Richnond now has legitimate reasons for annexation and for resisting deannexation, we would still not be convinced that the City's discriminatory purpose does not linger. City maintains that its ward plan actually enhances black voting power in Richmond. The single-member districting plan adopted by the City includes four wards with heavy white population majorities, four wards with heavy black population majorities, and one ward which is 40.9 per cent black.

Richmond contends that this plan assures the black citizenry of four seats on the Council and at least gives them some hope of caputuring a fifth seat. Richmond argues that this is more political power than blacks could have in an at-large system within Richmond's old boundaries because, while blacks have a population majority within these boundaries, they still comprise only 44.8 per cent of the voting-age population. Although Richmond's argument has considerable force on its surface, we were not convinced by it that Richmond's ward system sufficiently compensates for the dilution of black voting power caused by the annexation.

First, we think it our responsibility under Section 5 to thwart attempts of covered states to dilute the potential future voting power of black citizens as well as their present voting strength. The fact that the percentage of Richmond blacks of voting age is appreciably less than the percentage of blacks in the total population of course means that there are proportionately more black youngsters.

We, like the white political leadership of Richmond, can anticipate that the present black population majority within Richmond's old boundaries will translate in a few years into a voting-age majority. In an at-large system such a majority would mean that none of the nine City Council seats was occupied by a candidate who appealed only to a white voting bloc ignoring the needs and aspirations of Richmond's black citizens.

The unchallenged findings of the Master indicate that the Richmond white political leadership in the late 1960's feared that absent annexation the black population would gain an electoral majority some time in the 1970's. We cannot say, in light of population growth trends in Richmond, that the Richmond City Council was not still motivated by that fear in adopting a ward plan to avoid deannexation.

Second, it is not clear to us that Richmond's black citizenry would not have greater actual political power in an at-large, de-annexed system than in a single-member ward, annexed system even before their overall population majority resulted in a voting-age majority.

FIVE SEATS

The Master's findings on the concerns of the City's white leadership, as well as testimony of the black Richmond leadership before the Master, suggest that political power in Richmond turns on controlling five majority seats on the City Council; three or even four seats provide forum from which to voice dissents, but not to wield effective power. There is good reason to think that blacks would have a greater opportunity to elect five councilmen responsive to their concerns and interests in an at-large system in Richmond's old boundaries than in a ward system operating within the expanded boundaries.

We note that, because past recent voting has only been roughly along racial lines, three councilmen who have predominantly appealed to black voters were elected in 1970 in the face of a black voting-age minority of 37.3 percent. If the black voting-age minority was increased by deannexation to 44.8 percent, two or more additional candidates who appealed to black voters might well be elected. The potential for this happening may be greater than the potential for election of a fifth black voting bloc-supported councilman from what the City has characterized as the "swing ward" in their ward system. For though the City stresses a 40.9 percent overall black population percentage in this ward, the black voting age population is only 38.5 percent.

Since substantial doubt exists that the dilution of the black vote caused by the annexation was eliminated by adoption of the ward plan, it appears that the white political leadership presently in control of Richmond adopted the ward system for the purpose of doing what they could to maintain the dilution of the black vote produced by annexation. Richmond did not carry the heavy burden we think must be imposed on a city which argues that adoption of a single-member district ward plan purges its discriminatory purpose in annexing white citizens.

'TO NEUTRALIZE'

In addition to a discriminatory purpose, the annexation also had a discriminatory effect under the Petersburg standard since the ward plan was not "calculated to neutralize to the extent possible any adverse effect upon the participation of black voters." The Master did not find, and indeed on the basis of the evidence before him could not find, that Richmond fashioned its ward plan to neutralize to the extent possible" the dilution of black voting power caused by the annexation. As found by the Master on the basis of undisputed testimony before him, Richmond's ward plan was drawn by Dallas H. Oslin, senior planner for the city, without reference to the racial living patterns in Richmond. Oslin, a lone-wolf worker, testified before the Master that the only direction he received from the City was to keep the wards within a four to five per cent variance from population density and that he did not even know, beyond rough impressions, the locations of Richmond's black population.

Oslin framed the ward plan on the basis of factors such as "compactness," "physical boundaries," and "likeness of area." While Richmond could have legitimately taken these factors into account, they should have been accommodated to the goal of minimizing dilution of the black vote.

'SWING WARD'

Our conclusion that the City's ward plan does not "to the extent possible" minimize dilution of the black vote is further buttressed by an alternative ward plan developed and submitted to the court by intervenor Crusade for Voters. The Crusade plan provides for four heavily white wards, four heavily black wards, and a "swing ward" with a 47.8 per cent black population. Since this "swing ward," much more than the 40.9 per cent black "swing ward" in the city's plan, provides a candidate supported by blacks an opportunity to be elected to the critical fifth seat on the City Council, Crusade's plan suggests that the City could have done more to compensate for the dilution of black voting power caused by the annexation.

Thus even if Richmond had placed this case in the posture of Petersburg by providing the absence of any discriminatory purpose, it would still be an abuse of the heavy responsibility placed upon us by Section 5 to grant the declatory judgment the City seeks.

STRONG EQUITIES

Our denial of Richmond's request for a declaratory judgment does not end this case for intervenor Holt, nor did it end the case for the Master. Holt requests and the Master recommends that this court enjoin Richmond to deannex the land obtained from Chesterfield County in order that a new councilmanic election can be immediately held within the old boundaries of Richmond.

There are indeed strong equities in favor of such an injunction. Since those individuals who were annexed by Richmond must be permitted to be full voting citizens of the community in which they reside, a Richmond election which denied these individuals the vote would require deannexation.

Yet the citizens of Richmond living within the old boundaries can voice a strong claim for the immediate conduct of an election within the old boundaries to remove the present City Council. These citizens have not had an opportunity since 1968 to cast a ballot in an election which was not violative of the 1965 Voting Rights Act. The present City Council was elected in the 1970 elections and serves today several years after Richmond was notified that these elections were held in violation of Section 5. The 1970 elections were illegal because they were conducted pursuant to a change in a practice or procedure of voting without approval being obtained from this Court or the Attorney General.

Our denial of Richmond's request for ex post facto approval of its 1970 change in election-practices underscores the illegality of those elections. The Supreme Court has stated that Section 5 essentially freezes the election laws of the covered states unless a declaratory judgment is obtained in the District Court for the District of Columbia holding that a proposed change is without discriminatory purpose or effect. (Georgia v. United States.)

"FREEZING" EFFECT

For four years now, Richmond has avoided this intended "freezing" effect; intervenor Holt asks only that we return Richmond to the position it would be in today had it followed the procedures of Section 5 in accordance with congressional intent.

The city of Richmond and the Attorney General argue that, whatever the equities, this court does not have jurisdiction to order deannexation. We disagree. Richmond and the Attorney General base their argument on the first opinion in Beer v. United States. The Beer I court was asked by the City of New Orleans, Louisiana to declare nondiscriminatory in purpose and effect a plan of redistricting for councilmanic elections. New Orleans had not held elections under the new plan for which it sought approval. Several nonincumbent candidates for the City Council in New Orleans petitioned the Beer I court, during its consideration of New Orleans' request, to establish a schedule for councilmanic elections. The court refused to consider the merits of the candidates' petition, stating that it was without power to grant the relief requested.

We think the Beer I case distinguishable on its facts. We are asked merely to employ our equitable power to enforce the mandate of Section 5 that election procedures be frozen in covered states until a declaratory judgment of approval

has been obtained from this court. We are asked to declare void and remove the effects of those procedures and practices which were not to be implemented without the approval of this court—an approval which we herein deny.

FAIT ACCOMPLI

The Beer I court, which was not presented as are we with the fait accompli of a past election held under illegal practices and procedures, itself enjoined future elections under New Orleans' unapproved redistricting plan. The Beer I court only balked when it was asked to schedule local councilmanic elections and thus to probe issued "tangential" to the command of Section 5 that election practices and procedures not be changed without prior approval.

We do not assent to any language in the Beer I opinion which does suggest that this court has jurisdiction only to grant or deny a declaratory judgment sought by a covered state of its subdivision. Such a limitation on our power would remove from us the broad equitable jurisdiction that inheres in courts to give effect to the policy of the legislature which they oversee. The Supreme Court again made clear this year that a court is presumed to be able to wield "the inherent powers of an equity court" in implementing a congressional policy with which it is entrusted.

DIRECT COMMAND

We perceive no clear indication in the Voting Rights Act or its legislative history that Congress, when entrusting this court with responsibility under Section 5, meant to limit our power to enforce the section's direct command that voting practices and procedures not be changed without prior approval.

The Beer I court stressed that Allen v. State Board of Elections, made clear that, while a local three-judge District Court can determine whether a given administrative change is covered by Section 5 and can enjoin its implementation prior to approval if it is covered, only a three-judge District Court in the District of Columbia can declare that a covered change does not have a discriminatory purpose or effect. But we do not think it evident that Section 5's limitation on the power of local three-judge District Courts by placing declaratory judgment authority exclusively in our hands limits our equitable jurisdiction by making this declaratory authority exclusive of all other power.

LOWER COURT

Though we believe we do have jurisdiction to enforce the direct command of Section 5 by enjoining the annexation in order that councilmanic elections within Richmond's old boundaries can be immediately held, we nonetheless refrain from doing so. Our restraint derives from the same considerations which we suspect ultimately underlay the Beer I court's hesitancy "to become involved in the intricacies of local political redistricting . . . or . . . to take over the traditional responsibility of a local court to resolve questions more conveniently litigable before its bench."

We are particularly influenced by the Supreme Court's handling of the remedial issue in Perkins v. Matthews. Though the Perkins Court held that Canton, Mississippi had violated Section 5 by allowing annexed citizens to vote in its 1969 elections without obtaining prior approval from this court or the Attorney General, the Court refused to set aside the 1969 elections and order immediate new elections within Canton's old boundaries.

The Court instead remanded the case to the local three-judge District Court, emphasizing that since the local court was "more familiar with the nuances of the local situation than are we," "the question of the appropriate remedy is for that court to determine, in the first instance . . ."

Perkins involved review of a local District Court's failure to require Canton to submit its changed procedures for approval, and the Supreme Court suggested that the case for ordering new elections under old procedures would be stronger if, as in our case, approval was sought and not obtained. However, we think the local District Court's familiarity "with the nuances of the local situation" is as relevant here as in Perkins; we are no more aware of these nuances in our case than was the Supreme Court in Perkins. The local District Court can better balance all relevant factors, including our refusal to grant Richmond a declaratory judgment, in deciding whether to order deannexation.

As noted above, intervenor Holt has already filed in the District Court for the Eastern District of Virginia an action seeking a judgment; that the annexation was without effect for lack of prior approval by the Attorney General or this court. Proceedings in that action have been stayed pending decision in this case.

We perceive no reason why Holt cannot repair to the District Court in Virginia and obtain not only fair, but also more fully informed, consideration of his request for deannexation.

It should be totally clear by this point, however, that our refusal to order deannexation and immediate new elections does not mean that Richmond is free to hold more elections within its expanded boundaries. Because of our denial of the declaratory judgment it sought, Richmond continues to be restrained by Section 5 from holding elections in which individuals residing within the annexed area are permitted to participate.

The application for declaratory judgment is denied.

J. Skelly Wright, U.S. Circuit Judge; William B. Jones, U.S. District Judge; June L. Green, U.S. District Judge.

Judge Jones dissented from the part of the opinion which states that the court has jurisdiction "to enforce the direct command of Section 5 by enjoining the annexation in order that councilmanic elections within Richmond's old boundaries can be immediately held . . ."

STATEMENT

The posture of these issues at this juncture stem from plaintiff's motion for summary judgment and memorandum on one narrow point of relief.

As stated in the motion itself, there are no contested issues of fact. This Court has already found the instant annexation to be within and subject to Section 5 of the Voting Rights Act. The defendants admit, and the Court has taken notice of the fact, that the annexation was submitted under the act and was and continues to be disapproved by the United States Attorney General.

Since the filing of the motion for summary judgment by the plaintiff, the defendants have filed for a declaratory judgment in the United States District Court for the District of Columbia.

It is and has been the contention of the plaintiff, from the beginning of this cause that the issues before this Court are simple and the relief limited.

Specifically, the issue is whether the annexation itself remains unenforceable until such time as it is either approved by the Attorney General or declared to be of no discriminatory purpose or effect by the District of Columbia Court.

Under the Voting Rights Act the private litigant was given the right to seek a declaratory judgment from a three-judge Court on the issue of coverage along.

Relief obtainable from the local three-judge Court would have to be injunctive in nature, i.e., enjoining enforcement of the annexation, enjoining elections and possibly causing the City ot affirmatively seek approval from the Washington Court.

This Court denied a requested injunction barring municipal elections but the same was later granted upon plaintiff's petition to the United States Supreme Court. Within the past several weeks the City had filed for approval from the District Court of Columbia. Thus two areas of relief have been secured.

There remains the one issue of enforceability for this Court to decide.

"A declaratory judgment brought by the State pursuant to § 5 requires an adjudication that a new enactment does not have the purpose or effect of racial discrimination. However, a declaratory judgment action brought by a private litigant does not require the Court to reach this difficult substantive issue. The only issue is whether a particular state enactment is subject to the provisions of the Voting Rights Act, and therefore must be submitted for approval before enforcement." *Allen* vs. *State Board of Elections* 393 U.S. 544, 89 S. Ct. 817, 828 (———).

It is to this issue that this memorandum is directed.

FUNCTION OF THE COURT

The function of this Court in the present case is stated in *Allen* vs. *State Blard of Elections*, supra, and again in *Perkins* vs. *Mathews*, 400 U.S. 379, 91 S. Ct. 431 (———).

In *Allen* the Court stated "The only issue is whether a particular State enactment is subject to the provisions of the Voting Rights Act, and therefore must be submitted for approval before enforcement" p. 828.

In referring to the opinion of a lower single district judge the *Perkins* Court stated: "He correctly observed . . . although there was no proof [before it] that the challenged annexations which changed the City's boundaries were made for the purpose of denying anyone any voting right . . . the case of *Allen* v. *State Board of Elections* held it is not the function or prerogative of this Court,

even if it were now setting as a three judge court, to determine the motive of the City in extending its boundary." *Perkins* supra at p. 384.

The Court further pointed out that a three-judge Court should not close its eyes to the purpose of Section 5 and then spelled out that purpose: "To prevent the institution of changes which might have the purpose or effect of denying. . . ." Supra at p. 385.

The function then of this Court is easily defined in this respect, namely, where the change (annexation) has not been approved, or if it has been disapproved, to effectuate the congressional intent of Section 5 and prevent institution of the change, i.e., enjoin enforcement of the annexation.

SECTION 5—ITS PURPOSE AND LEGISLATIVE HISTORY

It is the contention of the plaintiff that the purpose of Section 5 and its application is to preclude the effectuation, implementation or enforcement of any change in "practice or procedure" by the covered states and their localities until such time as federal scrutiny has determined that there is no impermissible purpose or effect in the change. Stated another way, the Congress, aware of the failure of a "case by case" approach, determined that the only effective voting rights legislation would be that which shifted the burden from the people to the state and localities. It is legislation which imposed a presumption of illegality upon any change in "practice or procedure" and prohibited the state or locality from effectuating or enforcing any such change until such time as the state or locality satisfied the federal scrutiny and secured for the proposed change a clean bill of health.

The above statement of the purpose and application of Section 5 is fully supported by the case law and the legislative history of the act. Every legislator who considered the legislation, whether proponent or opponent, all the courts that have construed the Section, and all legislative officers who have commented upon it, accepted the above interpretation of the act. Only Attorneys General Mitchell and Kleindienst differ, having apparently grasped a limited interpretation of Section 5 with respect to the Richmond and Petersburg annexations.

The following excerpts are taken from the Congressional Record—House, December 10 and December 11, 1969, at indicated page references. The occasion was floor debate on whether to extend Sections 4 and 5 of the Voting Rights Act for an additional five years. The comments are most instructive in that the Congressmen were focusing upon the subject matter of Section 5 and, in either speaking for or against extention, spelling out the purpose and application of a law already four years old.

Congressman Smith (Calif.): proponent. "Section 5 of the Voting Rights Act requires a State or political subdivision covered by the act which seeks to change any voting law to first either obtain the approval of the Attorney General or sue for approval in the District Court of the District of Columbia. If there is no objection by the Attorney General within 60 days, such changes may be enforced. If he objects such changes may not be enforced until the district court rules such changes are acceptable because they do not have the effect of denying any person the right to vote because of race or color." H12065.

Congressman Celler (N.Y.): proponent. "Under the act there are three central remedies which apply to those areas covered by the statutory formula. These include: First, suspension of literacy tests and similar devices: Second, prohibition against enforcing new voting rules or practices pending Federal review to determine whether their use would perpetuate voting discrimination . . . Under Section 5 of the act, the enforcement of voting qualifications or procedures different from those in force and effect in November 1964 . . . is prohibited unless and until judicial approval or acquiescence of the Attorney General of the United States is obtained." H12071.

Congressman Gerald Ford (Michigan): opponent. "Today, any State or county which is under the shadow of the 1964 formula cannot make any change in its election laws without coming to Washington for permission. Under the 1965 act it is assumed that any such change is intended to cheat the law and circumvent the Constitution. The fundamental presumption of innocence is denied these six or seven States." H12075.

Congressman Rodino (N.J.): proponent. "Further, the act prohibits the covered States and counties from enforcing changed voting qualifications without first obtaining the approval of the district court of the District of Columbia or the acquiescence of the U.S. Attorney General." H12077.

"The Voting Rights Act prohibits covered areas from enforcing any new election law or practice which would perpetuate discrimination * * * Section 5 of the act was designed to protect against subterfuges which might be attempted to escape the act's purposes. * * * It thus remains essential to continue the requirement that covered jurisdictions submit new voting laws or regulations for Federal review. This requirement keeps the burden where it belongs, namely, on the covered jurisdiction to show that any given change does not violate the 15th Amendment * * * nothing would be gained and much would be lost if preclearance of new voting laws as required in Section 5 of the act were eliminated. * * * Those who propose, as the administration apparently does, to scrap Section 5 and return instead to case-by-case litigation, would turn the clock back 4 years." H12078.

Congressman McCullock (Ohio): proponent. "Section 4 of the act attacks the discriminatory use of literacy tests, Section 5 of the act attacks all the other ingenious methods of discrimination in voting. * * *

"Section 5 of the act is a remedy aimed at all the other forms of discrimination in voting. * * *

"Section 5 now requires that a jurisdiction covered by Section 4 must clear new voting laws and practices with the Attorney General or the district court in the District of Columbia before they become effective. * * *

"Fourth. The burden of proof under Section 5 is rightfully placed upon the jurisdiction to show that the new voting law or procedure is not discriminatory. * * * " H12136.

Congressman Corman (Calif): proponent. "Yes, sir. The key part of the Voting Rights Act is that States may not change their voting laws without submitting them first to the Attorney General * * * " H12137.

Congressman Dennis (Ind): opponent.

"Mr. DENNIS. Mr. Chairman, will the gentleman yield?

"Mr. CORMAN. I yield to the gentleman from Indiana.

"Mr. DENNIS. Mr. Chairman, I was wondering if the gentleman has any concern at all for another principle of our Federal Government known as our federal system, in passing a law which requires that before a State law can go into effect, whether it has been challenged or not, the State must come here and get Federal permission." H12138.

Congressman Flowers (Alabama): opponent. "Second, the Voting Rights Act of 1964 requires that States covered by said act must submit every proposed change in their election process to the Attorney General or the Federal district court in Washington for prior approval." H12138.

Congressman Poff (Va) (now Justice Poff, Va. Sup. Ct.) opponent. "Section 5 is the section which is triggered and spells out the consequences which flow from coverage under the trigger. The consequences is that the State covered by the trigger * * * can not change any part of its Constitution or its statutory law that concerns elections without first getting the approval of the Attorney General or, in the alternative, the approval of the District Court of the District of Columbia.

"This means that a State which is covered today cannot pass a redistricting statute following the 1970 census without the prior permission of the Attorney General of the United States or the District Court in the District of Columbia.

"I think it is unwise to alter State sovereignty by requiring prior Federal approval of new State laws." H12138.

Congressman McClory (Illinois): proponent. "Consider Section 5 of the present law which requires that in those States and counties where literacy tests and other practices are nullified, all statutes and ordinances are required to be submitted by the chief legal officer of the State in question to the Attorney General with the proviso that if the Attorney General shall interpose an objection within 60 days, the State or local requirement shall not be effective unless a declaratory judgment in the district court in the District of Columbia shall first be obtained—Section 5." H12141.

Congressman Ryan (N.Y.): proponent. "If Section 5 is allowed to expire, a State would not be required to obtain the approval of the U.S. district court, or the acquiescence of the Attorney General before putting into effect changes in voting laws or procedures." H12143.

Congressman Broyhill (Va): opponent. "Further, by requiring these few States to seek approval of the Federal District Court for the District of Columbia before making any change in qualifications or procedures for voting we not only deny them the right to set qualifications but also violate the principle of separation of the legislative and judicial powers. * * * we will have to come to Washington,

hat in hand, and ask the U.S. Attorney General or the Federal courts for their approval." H12145.

Congressman Meskill (Conn): opponent. "Section 5 provides that such a State cannot legislate new voting laws until it has either: first brought a suit in the District court for the District of Columbia and proved that the new law does not have the purpose or effect of racial discrimination: or, second, submitted the new law to the Attorney General of the United States and persuaded him for a period of 60 days not to interpose an objection." H12149–50.

Congressman Wiggins (Calif): proponent. "A third point I wish to make is this, and I ask Members to please listen to me well on this point.

"There is no doubt that a case-by-case approach to the problem of equal voting rights has not worked in the past. It is the realization of that fact which triggered the Voting Rights Act of 1965. But do not be misled. The Voting Rights Act of 1965 has eliminated the case-by-case approach to the solution of problems.

"Let me tell the way it works according to the testimony. If a State covered by the act, one of the Southern States, wishes to change a voting procedure, it is supposed to go to the Attorney General or file an action before a three-judge district court in the District of Columbia." H12150.

Congressman Annunzio: proponent. "Congress undertook a different approach in 1965—the approach by administrative instead of judicial enforcement of voting rights. The Voting Rights Act of 1965 * * * forbids States and counties covered by the Act to put into effect any new voting laws without approval of the Federal district court for the District of Columbia or of the Attorney General." H12154.

Congressman Tunney (Calif): proponent. "The present Voting Rights Act prohibits States and counties from making any changes in their voting laws, without first obtaining the approval of the Attorney General or the District Court for the District of Columbia. * * * This protection is the crux of the Voting Rights Act." H12155.

Congressman Leggett: proponent. "Finally, the most damaging provisions of the Administration substitute—the elimination of preclearance requirements. This provision would critically weaken the Voting Rights Act by shifting the burden of proof to the Government in evaluating electoral legislation cleverly designed to thwart Negro voting. It would mean a return to dependence upon the slow litigation process which has shown to be so ineffective and regressive in the past." H12160.

Congressman Anderson (Ill): proponent. "And I ask you what is the purpose of Section 5—which I agree with the gentleman from California is the very heart and soul of this statute? The purpose of Section 5 is not to punish; it is to deter, it is to serve notice upon those who would use sophisticated methods, who would be the adoption of various strategems seek to change voting practices and procedures either by altering boundary lines, by abolishing districts, by changing districts, by changing election to selection, and by changing filing fees—and you could go on and on—it is to deter.

"The whole purpose of Section 5 is to deter that kind of illegal conduct—not to punish. If their hands are in fact clean—if they come before the Attorney General—the present Attorney General of the United States with clean hands, with any legitimate change that they desire to make in their voting procedures. I have every reason to believe—I have every confidence that the Attorney General will grant the proposed change and that there will not even be the necessity to go before the District Court here in the District of Columbia to ratify that particular change." H12164-654.

Congressmen Andrews (Alabama): opponent. "The Voting Righs Act of 1965 given the Attorney General the power to veto State legislation, in those few selected States, that in any way amends or modifies existing laws or which enacts any new regulations regarding any aspect of the election processes.

"Therefore, these Southern States must come to Washington hat-in-hand to get Justice Department approval before any of these State laws can take effect." H12173.

The foregoing excerpts clearly point to the purpose and application of Section 5 as set forth by the plaintiff. In short, until approval is granted, no change of any kind can be effected, implemented or enforced by the States or their localities.

Further corroboration is found in the "House of Representatives" Report No. 91–397, 91st Congress, 1st Session entitled "Extension of the Voting Rights Act of 1965" submitted July 28, 1969, by the Committee on the Judiciary:

"In order to preclude such future State or local circumvention of the remedies and policies of the 1965 act, Section 5 of the statute provides no State or political subdivision * * * may enforce any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting * * * unless and until the U.S. District Court for the District of Columbia determines such change does not have the purpose and will not have the effect * * * ." P. 7.

In a separate view, committee member Hon. Richard H. Poff (now Justice Poff of the Virginia Supreme Court) recognized the purpose stating: "Section 5 provides that any State covered by Section 4 cannot implement any new voting law enacted by its legislature until it has either (1) brought suit in the district court for the District of Columbia and proved that the new law does not have the purpose or effect of racial discrimination or (2) submitted the new law to the Attorney General of the United States and pursuaded him for a period of 60 days not to interpose an objection.

"* * * a law which raises a legal presumption of racial voter discrimination against a State * * * is unwise. * * * a Federal law which raises a presumption of illegality against a law newly enacted by a State legislature and suspends its operation until the State comes to the Attorney General or a Federal Court and proves its legality offends State sovereignty." Pp. 13–14.

In a dissenting view by committeeman the Hon. Walter Flowers of Alabama, the concept is again enunciated: "The Voting Rights Act of 1965 requires that States covered by said act must submit EVERY proposed change in their election process to the Attorney General or the Federal District Court in Washington for prior approval." P. 22.

In May and June of 1971 a subcommittee of the Committee on the Judiciary, House of Representatives, called "the Civil Rights Oversight Subcommittee" under the 92nd Congress, 1st Session, held hearings on "the Enforcement and administration of the Voting Rights Act of 1965, as amended".

One witness before the Committee was Harold A. Glickstein, Staff Director, U.S. Commission on Civil Rights.

Mr. Glickstein stated: "Section 5 provides that before States and political subdivisions can enforce changes in voting laws or practices they must submit the proposed changes to the Attorney General or to the District Court for the District of Columbia * * * The major issue in extending the Voting Rights Act of 1965 was preservation of Section 5. * * * I believe it worthwhile to review its purpose and structure. Section 5 contemplates that affected States may not seek to administer any change in voting qualifications, prerequisites to voting, standards, practices, or procedures unless the State or political subdivision has obtained a declaratory judgment for the district court of the District of Columbia that such changes do not have the purpose and effect of denying or abridging 15th Amendment rights. * * * Since its enactment Section 5 has been interpreted by the Supreme Court to cover any State enactment which alters election laws in even a minor way. Based on the statute's legislative history, the Court concluded in *Allen* v. *State Board of Elections* 393 U.S. 544 (1969), that 'Congress intended to reach any State enactment which altered the election law of a covered state in even a minor way.'

"In a decision this year, *Perkins* vs. *Matthews* 400 U.S. 379 (1971), the Court added municipal annexations to the list of changes that must be submitted under Section 5. In commenting on the scope of Section 5 the Court, citing *Allen*, stated, 'all changes, no matter how small [are subject] to Section 5 scrutiny.' " Pp. 86–87.

Mr. Glickstein commented about annexations and the Richmond Annexation in particular: "Various court decisions have asserted that black political strength may not be diluted or weakened to prevent the election of black candidates. To prevent dilution of the black votes, close scrutiny of redistricting and reapportionment plans is required. The principal dangers are gerrymandering of racial populations and switching to at-large elections.

"Annexation is analogous to redistricting and reapportionment in that it reshapes the electorate of a given jurisdiction. The Supreme Court specifically held in the *Perkins* case that annexations fall within the scope of Section 5 submissions." P. 90.

"The Richmond annexation problem is a serious problem. It creates a great deal of confusion in municipal affairs. Elections have already been held under that situation. Our position is that the annexation was void until it was submitted under Section 5. I was curious to read in the testimony the other day in which questions were raised over and over again about whether the enactment of a new

standard, practice, or procedure is void or voidable. It seems to me there is absolutely no question that it has absolutely no effect at all until it is submitted and approved. Even the three-judge court in the *Evers* case described the Mississippi open primary law as being in a state of suspended animation. That certainly suggests that the law has no effect at all.

"The Department of Justice, in its brief in *South Carolina* vs. *Katzenbach*, the Supreme Court case which upheld the constitutionality of Section 5, describes Section 5 as a prohibition against the putting into effect new voting qualifications and procedures until they had been screened administratively and found harmless. That clearly indicates it has no effect until it is screened.

"It is interesting that the Department of Justice brief contains the name of David Norman, who testified here the other day, and I think, took a contrary position. That position has been upheld. Section 5 has been described in that manner by the Supreme Court in *South Carolina* vs. *Katzenbach* and subsequent cases.

"In short, a law that is enacted that involves a change in the standard, practice, or procedure has no effect at all I think, until it is submitted and cleared by the Attorney General or by three-judge district court." P. 99.

After his statement, Mr. Glickstein was questioned further by the committeemen. The following colloquy is relevant to this issue:

"Mr. EDWARDS. The purpose of the Section 5 of the Voting Rights Act was to make it unnecessary to go to court, with all of the expense and problem of going to court, and the Attorney General is supposed to handle situations like this.

"Mr. GLICKSTEIN. The purpose of Section 5 was to obtain preclearance. The hope was that there would be voluntary compliance with Section 5, that jurisdictions that changed their practices would submit. Of course, that could not always be anticipated, and that is why, in Section 12, there are provisions for bringing civil actions as well as criminal actions against the jurisdiction that do not comply with provisions of Section 5, and more of that needs to be done. There have not been enough lawsuits brought to compel submissions." P. 101.

"Mr. WIGGINS. One of the questions that has plagued us here is the matter of the legal effect of an unsubmitted change affecting voting. What is your view? Is the State action void until it is cleared or does it have some validity until it is federally rejected?

"Mr. GLICKSTEIN. I think as a three-judge district court said in the *Evers* case in Mississippi, that law is in a state of suspended animation. The Supreme Court, in *South Carolina* vs. *Katzenbach*, describes Section 5 this way: 'Section 5 prescribes a second remedy, the suspension of all new voting regulations pending review by Federal authorities to determine whether their use would perpetuate voting discrimination.'

"Elsewhere in the opinion, the Court said: 'The act automatically suspends the operation of voting regulations enacted after November 1, 1964, and furnishes mechanisms for enforcing the suspension.'

"It certainly sounds quite clear to me, from those Court opinions, that suspension has no effect until submitted and approved by the District Court for the District of Columbia or the Attorney General." P. 105.

Enough reference to the three major cases of *Katzenbach* vs. *South Carolina*, *Allen* vs. *State Board of Elections* and *Perkins* vs. *Matthews*, supra., to refrain from further quotes therefrom. It is interesting to note however, that even the dissenters in their opinions recognized the meaning of Section 5 to be precisely that for which plaintiff argues herein.

As stated before, the only voice with a different interpretation comes from the Justice Department in reference to the Richmond and Petersburg Annexations. Elsewhere, the department is apparently in full accord as to the "prior approval before enforcement" position. The position of Justice is curious if not wholly inconsistent. Various colloquys at the same subcommittee hearing illustrate the point.

"Mr. WALDIE. I don't quite understand that last response, nor the response you gave to Mr. Conyers. If a plan, altering boundaries, for example, is obviously discriminatory, has not been submitted to you, is the submitting authority permitted to enforce that plan absent your approval?

"Mr. NORMAN. The way the statute reads is that no person can be denied the right to vote.

"Mr. WALDIE. That is not what I asked. Do you stop them from enforcing these new boundaries in the case where the plan has not been submitted to you and an election is pending?

"Mr. NORMAN. Yes. pp. 22–23.

"Mr. WALDIE. Would it be more understandable to the submitting authorities if you told them that none of their plans can be enforced until such time as approval has been received under Section 5?

"Mr. TURNER. I am not sure that is the thrust of the statute. Again, if we look at the words that Congress used in the statute, which is all we have to deal with plus the legislative history, the statute, doesn't say, for example, that if you have an annexation it is void if it is not submitted. It says an annexation, and the courts have said, shall be treated as a change in the voting. Therefore, since it is a change, it has to be submitted. No person shall be denied the right to vote for failure to comply with the requirements set forth in the change. It does not say that the annexation, as in Richmond, is void.

"Mr. WALDIE. It is not your understanding that the Congress intended all of those acts to be held in limbo until approval was granted under Section 5?

"Mr. TURNER. It is my understanding that the Congress intended that no person should be denied the right to vote unfairly through a change, a discriminatory change.

"Mr. WALDIE. And the fact that we require prior approval of plans to guarantee that result does not indicate to you that the plans had to be held up until that approval was granted? Is that your interpretation?

"Mr. TURNER. For example, we have told the authorities in Richmond, where we recently objected to their annexation, that our objection does not void the annexation. It merely means that they can't have an election at which the right to vote could conceivably be denied.

"Mr. WALDIE. For your information, at least, one Member of Congress who voted and considered that act has an entirely different understanding. It is my understanding that the requirement of prior approval for those plans was implicit in its contention that the plans without approval could not go into effect." Pp. 31–32.

"Mr. WIGGINS. I have some questions that will be in the form of statements, though that is not unheard of in many hearings. I think we have encountered a problem of semantics that I would like to comment on. One is the difference between a right and a power. Do you not agree that a State or a county compelled to submit a plan may, nevertheless, have the power to do so but not have the right to do so? Isn't that a distinction which we have drawn up here about counties proceeding to operate under plans which have not been submitted?

"Mr. NORMAN. It is quite right that under State law they have the power to go forward. Under Federal law they do not have the right to.

"Mr. WIGGINS. Then testimony here, in your responses, should not be understood as conferring any right on the part of a State or a subdivision to go forward with plans prior to submission?

"Mr. NORMAN. That is quite right." P. 47.

Following these hearings and further investigation the subcommittee issued a report in January, 1972, entitled "Enforcement of the Voting Rights Act of 1965 in Mississippi", "A Report of the Civil Rights Oversight Subcommittee (Subcommittee No. 4) of the Committee on the Judiciary House of Representatives, Ninety-Second Congress, Second Session". Section D "Analysis and Findings, Paragraph 1, The Intention of Congress in Enacting Section 5, subparagraphs a and b, General Purpose and Prohibition against Enforcement Prior to Preclearance" most clearly spell out the plaintiff's position.

"D. Analysis and Findings—1. The Intention of Congress in Enacting Section 5.

"a. General Purpose.

"Section 5 was a response to a common practice in some jurisdictions of staying one step ahead of the federal courts by passing new discriminatory voting laws as soon as the old ones had been struck down. That practice had been possible because each new law remained in effect until the Justice Department or private plaintiffs were able to sustain the burden of proving that the new law, too, was discriminatory. This type of practice had been described in detail during the consideration of the Voting Rights Act of 1965, See, for example, H. Rept. 439, 89th Cong., first session, 10–11 and hearings on H.R. 6400 before Subcommittee No. 5 House Committee on the Judiciary, 89th Cong., first session, 60–62. Congress therefore decided, as the Supreme Court held it could, 'to shift the advantage of time and inertia from the perpetrators of the evil to its victims,' by 'freezing election procedures in the covered areas unless the changes can be shown to be nondiscriminatory.'

b. Prohibition against Enforcement Prior to Preclearance.

"Section 5 was intended to prohibit enforcement of all changes effecting voting until a determination had been made that the change did not have the purpose and would not have the effect of discriminating on the basis of race or color. As described by the House Judiciary Committee: 'In order to preclude such future State or local circumvention of the remedies and policies of the 1965 Act, Section 5 of the statute provides that no State or political subdivision in which literacy tests are suspended may enforce any 'voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting,' different from that in effect on November 1, 1964, unless and until the U.S. District Court for the District of Columbia determines that such change does not have the purpose and will not have the effect of discriminating on account of race or color. However, section 5 alternatively permits a covered jurisdiction to enforce a new voting enactment if the jurisdiction submits the new provision to the Attorney General of the United States and if, within 60 days of submission, the Attorney General does not object to the new statute or regulations.'

"It was this suspension which most offended the opponents of section 5: 'A Federal law which raises a presumption of illegality against a law newly enacted by a State legislature and suspends its operation until the State comes to the Attorney General or a Federal court and proves its legality offends State sovereignty.'

Section 5 is a stringent remedy. By, in effect, presuming that changes affecting voting which are adopted by covered jurisdictions are a violation of the statutory standard, it treats all changes as unenforceable. Perhaps, it would be more accurate to say that section 5 imposes a new legislative procedure upon a covered jurisdiction desiring to make a change affecting voting: in addition to whatever steps are made necessary by State or local law for a proposed change to become law, section 5 requires federal approval. Without such federal approval, which must be in the form of a decree by the District Court for the District of Columbia or a failure by the Attorney General to object within 60 days after the change is submitted, the change is only a proposed change. Proposed changes are not law and, of course, are not enforceable." PP. 2–3.

CONCLUSION

Section 5 was precisely designed to prevent any of the covered States and/or their localities from implementing, effectuating or enforcing any change covered by the statute prior to receiving approval as outlined in the statute. An interpretation of Section 5 other than that advocated here would transform Section 5 into simply an impotent expression of Congressional will which the covered States may ignore at their pleasure. Such interpretations ignore the fact that the legislation provides the machinery, i.e., this three-judge Court, for its enforcement. It would indeed be bitter irony if Section 5 were construed in a manner allowing covered governmental units to flout its very purpose.

There can be no question that annexations are "changes in practice or procedure" which must be approved before being put into effect.

It has been heretofore admitted that disapproval of the Richmond annexation by the Attorney General is now over 16 months old and that the first attempt at a declaration from the District Court of Columbia was only recently sought (3 years after the Virginia annexation court entered its decree).

Thus, the Richmond annexation remains legally void, and an injunction should therefore issue compelling the City of Richmond to cease and desist from exercising any further dominion and control over the annexed area.

A smooth and orderly transfer of the annexed area back to its former jurisdiction, while not really the issue before this Court, can be accomplished expeditiously.

Respectfully submitted.

W. H. C. VENABLE, *Counsel.*

AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., March 24, 1975.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In connection with the hearings which the Subcommittee on Civil and Constitutional Rights is conducting on extension of the Voting Rights Act, I am transmitting herewith a copy of a statement on this matter adopted by

the AFL–CIO Executive Council on February 20, 1975. I would appreciate it if you would include a copy of this statement in the record of the hearings before your Subcommittee.

The AFL–CIO believes that the Voting Rights Act of 1965, as amended, has been a most important and effective piece of civil rights legislation. It must not be permitted to lapse in August of this year.

As you know, there are a number of different proposals for amendment and extension of the Voting Rights Act before the Subcommittee. It is important, we believe, that all elements of the population that need protection of the right to vote should have effective implementation of this right and that impediments to the right to vote, such as literacy tests, should continue to be prohibited. Above all, however, we feel that the important thing is to make sure that the Act continues in effect. Only if this objective is kept in mind can the important contribution that the Act has made toward insuring that minority voters have equal access to the polls be maintained.

The AFL–CIO strongly urges the Subcommittee to proceed expeditiously in reporting favorably strong and effective legislation to extend the Voting Rights Act.

Sincerely yours,

ANDREW J. BIEMILLER,
Director, Department of Legislation.

Enclosure.

STATEMENT BY THE AFL–CIO EXECUTIVE COUNCIL ON EXTENSION OF THE VOTING RIGHTS ACT

The Voting Rights Act of 1965, which was extended for five years in 1970, is scheduled to expire this year.

That must not be permitted to happen. This Act has made a major contribution toward ensuring that minority voters have equal access to the polls. The further democratization of America's political institutions requires that exercise of the franchise be expanded and safeguarded, not that existing protections be ended.

The AFL–CIO Executive Council therefore urges the Congress to give early priority to the extension of the Voting Rights Act.

PACIFIC/ASIAN COALITION,
PACIFIC NORTHWEST REGION,
Tacoma, Wash., March 15, 1975.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN RODINO, Thank you for your letter of March 10, 1975 regarding the current hearings on the extension of the Voting Rights Act of 1965.

There seems to be some misunderstanding on my letter of March 3, 1975 (copy attached). My intention was not to testify in person, but to offer that letter as a statement for the record in the hearings. I would greatly appreciate it if this could now be done.

Please excuse me for failing to make this clear in our previous correspondence.

Sincerely,

ARTHUR C. WANG, *Chairperson.*

Enclosure.

PACIFIC/ASIAN COALITION,
PACIFIC NORTHWEST REGION,
Tacoma, Wash., 98405 March 3, 1975.

Hon. PETER RODINO,
Chairman, House Judiciary Committee,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN RODINO: As Chairperson of the Pacific Northwest Region (Alaska, Idaho, Oregon and Washington) of the Pacific/Asian Coalition, I wish to offer testimony regarding the proposed extension of the Voting Rights Act of 1965.

A recent study by the U.S. Commission on Civil Rights demonstrated that voting discrimination still exists, ten years after the passage of the original act.

If the United States is committed to the principles of non-discrimination in voting, then the Voting Rights Act deserves an extension of ten years. It will take that long (and longer) to change long existent patterns of discrimination. Five years does not represent an adequate commitment to long-term change.

It is important to note that discrimination affects not only Blacks, but also all other minorities, including Spanish-speaking Americans and Asian Americans. The principle upon which the legislation is based is that it is unlawful to discriminate against the voting rights of any citizen, not just against Blacks. Special provisions are needed to broaden the racial and geographical effects of the legislation, if that principle is to be lived up to.

Institutional voting discrimination is still a fact of life in the Asian American and Spanish-speaking communities. If the Voting Rights Act of 1965 is truly to impact the rights of those peoples of all races suffering discrimination, it should be both modified and extended.

Sincerely,

ARTHUR C. WANG, *Chairperson.*

WASHINGTON, D.C., *March 7, 1975.*

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY.
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I would like to participate in your Subcommittee On Civil Rights and Constitutional Rights Hearings in regards to the proposals to extend the 1965 Voting Rights Act by submitting a brief statement to be included in the printed records of these Hearings.

But what is more, I should like to participate as a private citizen of America, trained as a political and social scientist in American government and politics, who is, at the same time, somewhat of a specialist in civil rights for the American so-called "minority" because I am a black American, in the first place, and because, in the other instant, I have an active history in the social movement for civil rights in this nation and area—particularly in the native civil rights movements and in the so-termed black civil rights "revolution" of the 1960s, through the NAACP, CORE, ACLU, AFL–CIO, the political parties, and through various non-violent action social protest and movement groups.

I have fought for civil rights in all branches of our governments, before its regulatory agencies, and among its commissions for equal opportunities and civil rights, not forgetting the U.S. Civil Service Commission either.

Thanking you very kindly for accepting and including my brief statement in your recorded hearings on the extension of the voting rights legislation, I am

Very truly yours,

LEONARD S. BROWN, Jr

STATEMENT OF LEONARD S. BROWN, JR., IN SUPPORT OF THE EXTENSION AND EXPANSION OF THE VOTING RIGHTS ACT OF 1965

Mr. Chairman I fervently believe that the Voting Rights Act of 1965 should not only be extended, but that it should be expanded also to include all other so-called "minorities" of the United States of America—and especially the expansion ought to include our Hispanic, Spanish-speaking American citizens as well.

I say this as a black American citizen who believes that black Americans ought not to be (and cannot be) selfish when it comes down to the protections of the United States Constitution, of our historic civil rights and equal opportunities laws, and of acts like the Voting Rights Act of 1965. Our civil and voting rights laws ought to and should include protections for all Americans; this is as it should be, this is only American, and the American Way of Life.

If our democracy is to become, evolutionarily, purer, truer, and more democratic as the times move on, a thought so dear to and espoused by the Rooseveltan Era "braintrust" and fellow political scientist-writer, Rexford Tugwell, the Voting Rights Act of 1965 should justificably be not only extended for a longer life span and application, but it should also be expanded as well to cover and protect our Hispanic, Spanish-speaking Americans and all other minorities in America as well.

I certainly hope that the legislative proposal finally approved will be just one, single resolution—not two separate bills—both extending and expanding the Voting Rights Act of 1965.

I urge and suggest such a view and legislative path to this Subcommittee, to the full House Committee on the Judiciary, and to the Congress as a whole.

STATEMENT BY THE HONORABLE THOMAS F. RAILSBACK, THE NEED TO EXTEND THE VOTING RIGHTS ACT

Mr. Chairman, The Voting Rights Act of 1965 has been acclaimed by the United States Commission on Civil Rights as one of the most effective civil rights acts passed in modern times. Therefore, it gives me considerable pride to cosponsor, along with Congressmen Hutchinson, McClory, Cohen, and Fish, the Administration's bill H.R. 2148 which extends that Act, and I appreciate the opportunity to testify today.

Our proposal straightforwardly extends the special provisions of the Act for another five years. While tremendous strides have been made over the past ten years toward ensuring full and equal participation in the political process to black citizens and other disadvantaged minorities, much remains to be done. Allowing these provisions of the Act, especially sections 4 and 5, to lapse might well dilute many of these gains. The United States Commission on Civil Rights in its report, The Voting Rights Act: Ten Years After (1975), emphasizes the importance of the Act: "Minority political participation has increased substantially in the 10 years since enactment of the Voting Rights Act. There are more minority citizens registered, voting, running for office, and holding office than at any time in the Nation's past. Though the potential of minority political participation has yet to be realized, the progress of the last 10 years is striking. A large part of this progress is due directly or indirectly to the impact of the Voting Rights Act. Minority citizens are no longer politically invisible" (p. 39).

The Act was passed to implement the guarantees of the Fifteenth Amendment that: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." For over 100 years many parts of the nation did not honor this Amendment, and even now there is evidence that minority groups still experience racial discrimination within the political process.

The right to vote, and to be able to exercise that right, is in modern times frequently the key to overcoming early disadvantages in the socio-economic realm. In an era of "positive government" in which many of the resources of modern life-whether adequate education, unemployment compensation, or business loans-come from government, it is imperative that disadvantaged groups have representatives who are sensitive to their interests and problems. According to the 1975 report of the Commission on Civil Rights (pp. 50–51), there were only 156 black elected officials in the seven covered states in 1968. By 1974, this number had increased to 963, a dramatic increase, indeed. But it is not enough.

There is only 1 black Congressman from the seven covered southern states. Blacks hold only 7 percent of lower house seats in these states and only 2.5 percent of Senate seats although they constitute over one-quarter of the population. While factors other than racial discrimination account for some of the disparity, the Commission's report describes instances of subtle discrimination. The location of polling places, reapportionment, changing electoral districts, discourteous registrars are only samples of the type of discrimination which is continuing. Further, should these sections not be renewed, we will have had the anomalous situation in which the states which have had the longest tradition of racial discrimination will no longer be subject to coverage of the Act while political jurisdictions in other parts of the country will remain covered until 1980. This situation occurs because the latter jurisdictions were added after the 1970 Act which required coverage for 10 years.

Should the special provisions in the Act be allowed to elapse, we would again be in a situation in which implementation of voting rights would rely primarily on case-by-case litigation initiated by either an aggrieved party or by the Attorney General. Our experience with this approach from the time of the Civil Rights Act of 1957 through 1965 was disappointing, to say the least. Whenever a discriminatory voting procedure was struck down, the political jurisdiction simply enacted a different one though with similar intent. This hydra-headed activity was successfully overcome by the shift, as exemplified in sections 4 and 5, to an automatic coverage formula and an administrative clearance process. Section 4 (a) suspends all tests and devices as conditions for voter registration in states and political subdivisions of states. Section 4 and 5 together constitute a trigger formula consisting of a test or device used in either 1964 or 1968 and having either less than 50 percent of age-eligible persons registered to vote on either November 1, 1964 or



November 1, 1968 or in which less than 50 percent of such persons voted in the presidential election of either of these years. Jurisdictions with these characteristics are said to be "covered" and may not put into effect any new voting qualifications unless the U.S. District Court for the District of Columbia in an action for a declaratory judgment finds that such law will not deny the right to vote on account of race or color, or unless the state or subdivision submits the law to the U.S. Attorney General and he does not interpose an objection to it within 60 days although a later objection is authorized.

In addition, sections 6, 7 and 8 give the Attorney General authority to send federal examiners and observers into covered jurisdictions whenever he receives 20 or more written complaints of denial of the right to vote on account of race or color or whenever he thinks it necessary to protect the right to vote.

To abandon the concept of an administrative approach when so much has been achieved, and with much yet left undone, would be to retrogress—not progress.

I also favor a continuation of the nationwide moratorium in the Act on literacy tests for another 5 years. A permanent ban on such tests immediately raises questions of constitutionality which might better be avoided by simply continuing the suspension for a definite number of years. Experience over the last ten year indicates that a number of states have repealed their literacy tests and one may expect that many of the remaining 14 will follow suit. If we can avoid raising political issues to constitutional proportions the country will be the better for it and the best vehicle is before us.

Questions have been raised by some as to why my colleagues and I do favor a five rather than ten year extension of the special provisions.

As the legislative history of the Act indicates, a number of crucial issues of Constitutional import are present. The principle of federalism, sometimes referred to disparagingly as "states rights," still reflects for many a significant political tradition to be treasured. Section 5 of the Act, in particular, has been especially effective in protecting the right to vote of the black minority, but it is also a significant incursion into what is the most important part of local self-government: the right to control the political process. The requirement that covered states must submit all legislation relating to the electoral process, especially given the broad, all-inclusive definition in *Allen* v. *Board of Elections*, 393 U. S. 544 (1969), to the Attorney General for review strikes at the heart of federalism. Without control over the political process, local self-government and the principle of federalism become mere facades.

Consequently, where two such crucial rights come into conflict, as they do here, it is the better part of discretion to reduce the period of conflict to the minimum time span necessary to accomplish the goals of the Act. In this case, 5 years seem sufficient. Should it prove inadequate then there will be time to again consider renewal of the Act in 1980.

Mr. Chairman, members of the Subcommittee, I urge immediate adoption of the bill H.R. 2148, which would extend the special provisions of the Voting Rights Act of 1965, and continue to protect the right to vote of all our citizens.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 6, 1975.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil & Constitutional Rights, House Judiciary Committee, Washington, D.C.

DEAR MR. CHAIRMAN: Since I will not have an opportunity to personally testify before your committee on the several bills concerning the extension of the Voting Rights Act, I would appreciate your including the enclosed testimony in your hearing record.

Thank you for your cooperation.

Sincerely,

GILLESPIE V. MONTGOMERY,
Member of Congress.

Enclosure.

TESTIMONY OF REP. G. V. MONTGOMERY

Mr. Chairman, realizing the great number of persons wishing to testify on the various bills that have been introduced to extend the Voting Rights Act of 1965 for another five years, I appreciate you and the members of the committee providing me this opportunity to present my views.

At the very outset, I would express my very strong opposition to any further extension of the 1965 Voting Rights Act unless the full force of all the provisions of the current law are made applicable in every county and parish of the fifty states. My position is based on my very strong belief that the current law is discriminatory in that it applies to only one small segment of our nation. The current application of the law is certainly not in keeping with the viewpoint expressed by a majority of the members of the Judiciary Committee who have professed their belief in the equal and fair application of all public laws in a like manner throughout the United States.

Mr. Chairman, based on the record of vastly improved voter registration in my State of Mississippi and other states of the south currently under the onerous shadow of the Voting Rights Act, I think it is time for the Congress to realize that this law has outlived its usefulness and is no longer needed. The southern states should be given credit for the vast strides they have taken in the last ten years to completely open their voting rolls to all citizens. We should no longer be singled out for continued harassment for alleged misdeeds of a bygone era.

Although I cannot cite any specific studies on the subject, I would point out that based upon my general reading on voter registration on a nationwide basis, the states currently under the Voting Rights Act are doing a much better job in this area than many large metropolitan areas of the nation. Yet these metropolitan areas are not being forced to follow the spirit, much less the letter, of the law when it comes to voter registration or changes in election statutes. This is wrong and should be corrected by either allowing the Voting Rights Act to die a well deserved natural death or extending all of its provisions to all sections of the nation.

Mr. Chairman, I would point out that in calling for the equal enforcement of the Voting Rights Act throughout America, I mean in all situations relating to our citizens' right to vote. We are constantly reading about election irregularities in some of our large metropolitan areas. The Voting Rights Act, if it is extended, should be expanded to cover voting fraud, as well as voter registration. There is absolutely no reason why evidence of wrongdoing in New York, Chicago or Detroit should be treated differently than that alleged in the cities and states currently covered by the 1965 Voting Rights Act.

In summation, I would call for your very serious consideration of my proposal to not extend the Voting Rights Act beyond its legal expiration this year. However, if in your judgment, the Act should be extended, I ask you in fairness to rewrite the law so it will apply equally throughout America in all instances involving the voting process.

NATIONAL URBAN LEAGUE, INC.,
Washington, D.C., April 2, 1975.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, House Committee on the Judiciary, 2137 Rayburn House Office Building, Washington, D.C.

DEAR CHAIRMAN EDWARDS: As a 65-year old nonprofit civil rights organization, the National Urban League supports an extension and expansion of the Voting Rights Act of 1965. We believe that the procedures and safeguards provided by the Voting Rights Act have been one of the brighter successes of the civil right's legislation enacted during the last decade.

The success of the Voting Rights Act is demonstrated by the sharp increase in the number of new black voters—over one million—in the Southern States covered by the Act. The increased involvement of blacks in the political process is also evidenced by the increase in black elected officials in the South from only a hundred to more than a thousand. There can be no doubt that the Voting Rights Act and the quality of federal enforcement was directly responsible for this startling enfranchisement of the black body politic.

Although black Americans have made much progress on the political front in the 10 years that the Voting Rights Act has been on the books, I fear that expiration of it will result in a return to the old way of political life in the regions affected. My fears are thoroughly confirmed by the Civil Rights Commission's comprehensive report, "The Voting Rights Act: Ten Years After," which was submitted to the Speaker last January. For the many reasons stated in that report, I am firmly convinced that the Voting Rights Act must not be allowed to expire. Indeed, I strongly urge the Subcommittee to recommend a ten-year extension of it to carry us through the reapportionment resulting from the 1980 census and to permit effective enforcement of the Section 5 pre-clearance procedures which are not fully implemented in all jurisdictions.

The ban on literacy tests or devices must be made permanent. The historic discriminatory use of these tests has always led to unwarranted barriers to participation in the political process. If the ban were to expire, I feel sure that the tests would be reimposed with a vengeance. This must not be permitted to happen, and Congress should make this emphatically clear.

In the quest for equal voting rights, non-English speaking citizens have had many experiences which are similar to those of blacks. Just as the Voting Rights Act has brought about progress among blacks in the South, it can be an instrument of progress for all people in those areas where there are large numbers of non-English speaking citizens in this country. I feel this can be accomplished under a separate title without jeopardizing the entire Voting Rights Act. There are presently several methods under consideration to provide for protection for non-English speaking citizens. The U.S. Civil Rights Commission in its testimony before this Committee on February 25, 1975, did not take a position on how such coverage could be worked out nor suggest any specific amendment of the coverage formula. However, the statement did recommend that the "voting difficulties of non-English speaking citizens should receive immediate attention." The Commission indicated that it is undertaking a national study of minority voting rights. I believe that such a study could serve as the foundation for the formulation of such expansive coverage. Although the Commission further recommended that Congress proceed with its own investigation, it did not recommend that consideration of the amendment of the coverage formula be postponed. I concur in these recommendations. It is time for the nation to end discrimination based on English fluency. The right to vote is a first step in that direction.

The process of full enfranchisement of minority citizens is well underway at last because of the Voting Rights Act. Ten years, however, has not been enough time to overcome centuries of exclusion. Resistance to minority political participation has abated, but it has not been eradicated. Statistical measures of participation and the experience of minority citizens as they have begun to participate in the political process demonstrate the need for extension of the Voting Rights Act. We believe that the Act has been and can continue to be an effective means of remedying discrimination in the electoral process. The National Urban League is confident that Congress and the nation will meet this challenge.

I would appreciate it if this statement of support for the extension and expansion of the Voting Rights Act of 1965 is made a matter of record in the Subcommittee's proceedings.

Yours very truly,

RONALD H. BROWN,
Director.

APPENDIX 5

FEBRUARY 27, 1975.

HON. FREDERICK B. DENT,
Secretary, U.S. Department of Commerce,
Washington, D.C.

DEAR MR. SECRETARY: The Subcommittee on Civil and Constitutional Rights has just commenced hearings on legislation proposing to extend the Voting Rights Act of 1965. On February 25, 1975, the first day of those hearings, Chairman Arthur S. Fleming testified relative to the findings and recommendations of the U.S. Commission on Civil Rights in its recently released study on the Voting Rights Act.

Throughout that report and during their testimony, the Commission referred to the failure of the Department of Commerce to conduct a survey for the purpose of gathering voting and registration data by race, as it is required to do under the provisions of Title VIII of the Civil Rights Act of 1964. Such a survey is to be forthcoming once it has been recommended by the U.S. Commission on Civil Rights. During our hearings, we were informed that the Commission had recommended such studies on at least two separate occasions. Yet, no studies have been conducted by your Department.

I would appreciate your providing me with a complete outline or chronology which lists the events taking place regarding such recommendations and your response to them. I would also appreciate a complete explanation as to why such studies have not been conducted if in fact they have been recommended in accordance with the provisions of Title VIII.

Since we expect to make your response to this inquiry a part of the hearing record, I would appreciate receiving that response by no later than March 10.

Thank you.

Sincerely,

DON EDWARDS,
Chairman,
Subcommittee on Civil and Constitutional Rights.

U.S. DEPARTMENT OF COMMERCE,
OFFICE OF THE SECRETARY,
Washington, D.C., March 3, 1975.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Secretary Dent has asked me to acknowledge your letter dated February 27 regarding a study to have been conducted in connection with the Voting Rights Act.

You may be assured that we will look into this matter and that Secretary Dent will be writing you further in this regard as soon as possible.

Sincerely,

JAMES M. SPARLING, Jr.,
Assistant to the Secretary
for Congressional Affairs.

THE SECRETARY OF COMMERCE,
Washington, D.C., March 13, 1975.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your letter of February 27, 1975, concerning the study which was to have been conducted in connection with Title VIII of the Civil Rights Act of 1964.

The decision not to conduct a voter registration survey in 1966 as requested by the U.S. Commission on Civil Rights was made in consultation with the then Bureau of the Budget and the Commission, on the basis of cost considerations and the intent of the Act. The anticipated survey costs would have been close to eight million dollars, and it appeared that the purpose of the survey could be served by other means. Specifically, enactment of the Civil Rights Act of 1964 was followed shortly by enactment of the Voting Rights Act of 1965, and the work undertaken in connection with the latter enactment appeared to serve the objectives of both Acts.

I am enclosing copies of correspondence which document the considerations leading to the decision not to undertake the survey. These items are summarized briefly as follows:

1. Letter of January 27, 1966, to the Staff Director of the U.S. Commission on Civil Rights from the Assistant Secretary of Commerce, providing background on the Commission's request for a survey and the recommendation not to conduct the survey;

2. Letter of February 4, 1966, from the Chairman of the Commission to the Assistant Secretary of Commerce, withdrawing the request for the survey; and,

3. Letter of March 7, 1966, from the Secretary of Commerce to the Speaker of the House of Representatives (an identical letter was sent to the President of the Senate) explaining the decision regarding the survey proposal. The letter was acknowledged by the Speaker and no further action was taken by the Congress at that time.

In summary, it appears to us that the decisions on this matter were arrived at jointly by the parties concerned, and the Congress was appropriately informed of the outcome.

If we can be of further assistance, please let us know.

Sincerely,

FREDERICK B. DENT, *Secretary of Commerce.*

Enclosures.

THE ASSISTANT SECRETARY OF COMMERCE,
Washington D.C., January 27, 1966.

Hon. WILLIAM L. TAYLOR,
Staff Director, U.S. Commission on Civil Rights,
Washington, D.C.

DEAR MR. TAYLOR: In accord with the President's directive to examine carefully the budgets for all existing and proposed programs, we have given careful consideration to the Survey of Registration and Voting Statistics. As you know, this survey was provided for in Title VIII of the Civil Rights Act of 1964, which directs that: The Secretary of Commerce shall promptly conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights.

On December 10, 1964, pursuant to Title VIII, the Commission recommended that a survey be undertaken to compile registration and voting statistics throughout the States of Alabama, Louisiana, and Mississippi. In the same letter, the Commission indicated that further recommendations under Title VIII would be forthcoming. The Department of Commerce requested an appropriation of $7.5 million to cover the cost of this census. During hearings on this appropriation in April 1965, the Chairman of the Senate Appropriations Committee requested that the Commission's original recommendation be reviewed for any changes suggested by the Voting Rights Act of 1965, then pending before the Congress.

On August 24, 1965, the Commission submitted a new request for a survey consisting of a compilation of registration and voting statistics of persons of voting age in Alabama, Georgia, Mississippi, South Carolina, and certain enumerated counties in North Carolina.

Subsequently, the Department of Commerce submitted a new request for funds to Congress. Funds were appropriated in November 1965 when active work was first initiated for this survey. The amount appropriated for 1966 is $2,750,000, and the amount needed for fiscal year 1967 is $3,095,000.

In view of the President's request for re-examination of budgets and of the cost of the proposed survey, we believe that your Commission may want to reconsider its request. We believe also that there are certain practical factors which support our recommendation. Our experience indicates that a survey in 1966 to ascertain registration and voting in 1964 would be of doubtful value because of the difficulty persons have in recalling events over such a long period of time. The recent experience of the Census Bureau, and that of other agencies, shows that people tend to overstate their voting participation, even when the inquiry is made immediately after an election. It also seems relevant to us that, as a result of the passage of the Voting Rights Act of 1965, there have been increases in registration in many areas since 1964.

We recognize, of course, that Title VIII is still the law. However, we understand that legislation will be proposed which would repeal that portion of Title VIII which directs that a Census survey be undertaken at this time. Such legislation would not affect the survey of voting and registration to be undertaken in connection with the 19th Decennial Census, as now provided for in Title VIII.

Sincerely yours,

ANDREW F. BRIMMER,
Assistant Secretary for
Economic Affairs.

UNITED STATES COMMISSION ON CIVIL RIGHTS,
Washington, D.C., February 4, 1966.

Hon. ANDREW F. BRIMMER,
Assistant Secretary for Economic Affairs, Department of Commerce,
Washington, D.C.

DEAR MR. BRIMMER: I have received your letter of January 27, 1966, recommending that the Commission reconsider its request for a survey of registration and voting statistics to be conducted pursuant to Title VIII of the Civil Rights Act of 1964.

In view of the considerations set forth in your letter and of the prospect that legislation will be proposed to repeal that portion of Title VIII which directs that a census survey be undertaken at this time, the Commission hereby withdraws its request of August 24, 1965, for such a survey.

Sincerely yours,

JOHN A. HANNAH,
Chairman.

MARCH 17, 1975.

Mr. JOHN A. BUGGS
Staff Director, United States Commission on Civil Rights,
Washington, D.C.

DEAR MR. BUGGS: Please find enclosed a copy of a letter which I directed to Secretary Dent on February 27, 1975. You will note that that letter requests an explanation as to why Title VIII studies have not been conducted by the Department of Commerce.

I have also enclosed the responses which I received from Mr. James M. Sparling, Jr. and Secretary Dent. Secretary Dent's correspondence includes attachments dated 1966 which indicate that while the Commission on Civil Rights did in fact request a Title VIII study on August 24, 1965, the Commission subsequently withdrew that request on February 4, 1966.

During Chairman Flemming's most helpful appearance before the Subcommittee on February 25, it was my understanding that the Commission had also submitted a more recent request for a Title VIII study. However, Secretary Dent's letter fails to make reference to any such recent request.

I would appreciate your informing me as to whether or not a request was made subsequent to 1966 and if so, exactly what the response of the Secretary of Commerce was to that request. Also, please attach copies of all correspondence documenting such.

I would be most grateful if you could respond to this inquiry by no later than March 24.

Thank you.

Sincerely,

DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights.

Enclosures.

THE SECRETARY OF COMMERCE,
Washington, D.C., March 13, 1975.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your letter of February 27, 1975, concerning the study which was to have been conducted in connection with Title VIII of the Civil Rights Act of 1964.

The decision not to conduct a voter registration survey in 1966 as requested by the U.S. Commission on Civil Rights was made in consultation with the then Bureau of the Budget and the Commission, on the basis of cost considerations and the intent of the Act. The anticipated survey costs would have been close to eight million dollars, and it appeared that the purpose of the survey could be served by other means. Specifically, enactment of the Civil Rights Act of 1964 was followed shortly by enactment of the Voting Rights Act of 1965, and the work undertaken in connection with the latter enactment appeared to serve the objectives of both Acts.

I am enclosing copies of correspondence which document the considerations leading to the decision not to undertake the survey. These items are summarized briefly as follows:

1. Letter of January 27, 1966, to the Staff Director of the U.S. Commission on Civil Rights from the Assistant Secretary of Commerce, providing background on the Commission's request for a survey and the recommendation not to conduct the survey;

2. Letter of February 4, 1966, from the Chairman of the Commission to the Assistant Secretary of Commerce, withdrawing the request for the survey; and,

3. Letter of March 7, 1966, from the Secretary of Commerce to the Speaker of House of Representatives (an identical letter was sent to the President of the Senate) explaining the decision regarding the survey proposal. The letter was acknowledged by the Speaker and no further action was taken by the Congress at that time.

In summary, it appears to us that the decisions on this matter were arrived at jointly by the parties concerned, and the Congress was appropriately informed of the outcome.

If we can be of further assistance, please let us know.

Sincerely,

FREDERICK B. DENT,
Secretary of Commerce.

Enclosures.

THE ASSISTANT SECRETARY OF COMMERCE,
Washington D.C., January 27, 1966.

Hon. WILLIAM L. TAYLOR,
Staff Director, U.S. Commission on Civil Rights,
Washington, D.C.

DEAR MR. TAYLOR: In accord with the President's directive to examine carefully the budgets for all existing and proposed programs, we have given careful consideration to the Survey of Registration and Voting Statistics. As you know, this survey was provided for in Title VIII of the Civil Rights Act of 1964, which directs that: The Secretary of Commerce shall promptly conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights.

On December 10, 1964, pursuant to Title VIII, the Commission recommended that a survey be undertaken to compile registration and voting statistics throughout of the States of Alabama, Louisiana, and Mississippi. In the same letter, the Commission indicated that further recommendations under Title VIII would be forthcoming.

The Department of Commerce requested an appropriation of $7.5 million to cover the cost of this census. During hearings on this appropriation in April 1965, the Chairman of the Senate Appropriations Committee requested that the Commission's original recommendation be reviewed for any changes suggested by the Voting Rights Act of 1965, then pending before the Congress.

On August 24, 1965, the Commission submitted a new request for a survey consisting of a compilation of registration and voting statistics of persons of voting age in Alabama. Georgia, Mississippi, South Carolina, and certain enumerated counties in North Carolina.

Subsequently, the Department of Commerce submitted a new request for funds to Congress. Funds were appropriated in November 1965 when active work was first initiated for this survey. The amount appropriated for 1966 is $2,750,000, and the amount needed for fiscal year 1967 is $3,095,000.

In view of the President's request for re-examination of budgets and of the cost of the proposed survey, we believe that your Commission may want to recondiser its request. We believe also that there are certain practical factors which support our recommendation. Our experience indicates that a survey in 1966 to ascertain registration and voting in 1964 would be of doubtful value because of the difficulty persons have in recalling events over such a long period of time.

The recent experience of the Census Bureau, and that of other agencies, shows that people tend to overstate their voting participation, even when the inquiry is made immediately after an election. It also seems relevant to us that, as a result of the passage of the Voting Rights Act of 1965, there have been increases in registration in many areas since 1964.

We recognize, of course, that Title VIII is still the law. However, we understand that legislation will be proposed which would repeal that portion of Title VIII which directs that a Census survey be undertaken at this time. Such legislation would not affect the survey of voting and registration to be undertaken in connection with the 19th Decennial Census, as now provided for in Title VIII.

Sincerely yours,

ANDREW F. BRIMMER,
Assistant Secretary for
Economic Affairs.

UNITED STATES COMMISSION ON CIVIL RIGHTS,
Washington, D.C., February 4, 1966.

Hon. ANDREW F. BRIMMER,
Assistant Secretary for Economic Affairs,
Department of Commerce, Washington, D.C.

DEAR MR. BRIMMER: I have received your letter of January 27, 1966, recommending that the Commission reconsider its request for a survey of registration and voting statistics to be conducted pursuant to Title VIII of the Civil Rights Act of 1964.

In view of the considerations set forth in your letter and of the prospect that legislation will be proposed to repeal that portion of Title VIII which directs that a census survey be undertaken at this time, the Commission hereby withdraws its request of August 24, 1965, for such a survey.

Sincerely yours,

JOHN A. HANNAH,
Chairman.

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THE SECRETARY OF COMMERCE,
Washington, D.C., March 7, 1966.

Hon. JOHN W. MCCORMACK,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Title VIII of the Civil Rights Act of 1964 provides that the Secretary of Commerce shall compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights. It provides that statistical information so gathered should include a count of persons of voting age by race, color, and national origin and of those who were registered to vote and who voted in elections held since January 1, 1960. Title VIII of that Act also provides that similar information would be collected and compiled in connection with the next decennial census in 1970.

Just a year following the Civil Rights Act of 1964, the Voting Rights Act of 1965 was enacted. The objectives of the latter Act are similar to those of the voting provisions of the Civil Rights Act. Both acts are aimed at prevention of discrimination in determining voter qualifications. The Voting Rights Act also provides for Federal registration of voters under certain conditions, one of which is a finding by the Director of the Census that less than 50 percentum of the persons of voting age in an area were registered on November 1, 1964, or voted in the Presidential election of November 1964.

The Census Bureau received funds in the 1966 Supplemental for necessary surveys in connection with the Voting Rights Act. These surveys will be completed shortly. With regard to the surveys referred to in Title VIII of the Civil Rights Act, the Commission on Civil Rights requested that they be made and designated the geographic areas for such surveys. Funds were appropriated in the 1966 Supplemental to begin these surveys. Subsequently, however, agreeing with the reasons set forth below, the Commission has withdrawn its request.

Under the Voting Rights Act, surveys are necessary to determine population of voting age only in those areas close to the 50 percentum line. The total numbers of persons registered and voting are obtained from public records. The Civil Rights Act surveys, on the other hand, involve the technical problem of obtaining information directly from respondents as to their age, race, color, and national origin and as to whether they were registered to vote and had voted in the general election of 1964.

In view of the similarity of objectives and because of technical difficulties in developing the surveys under the Civil Rights Act, it is our conclusion, after reviewing the need for and validity of the proposed surveys, that under current circumstances the use of public funds for this purpose is sufficiently questionable that they should not be expended at this time.

I have, therefore, directed the Bureau of the Census to take no further action at this time to compile the voting and registration statistics contemplated in the Civil Rights Act of 1964. The Department of Justice and the Bureau of the Budget, as well as the Commission on Civil Rights, express their agreement with this action, recognizing that in view of the circumstances the expenditures are not justified.

This decision has no effect on those provisions of Title VIII of the Civil Rights Act pertaining to the decennial census of 1970, but if any changes are necessary the Congress will have ample opportunity to consider them.

An identical letter has been sent to the President of the Senate.

Sincerely,

JOHN T. CONNOR,
Secretary of Commerce.

U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C., March 8, 1966.

Hon. JOHN T. CONNOR,
Secretary of Commerce,
Washington, D.C.

DEAR MR. SECRETARY: I have for acknowledgement your letter of March 7, 1966 transmitting to the Congress a notification that you have directed the Bureau of Census to take no further action at this time to compile the voting and registration statistics contemplated in the Civil Rights Act of 1964.

Sincerely,

JOHN W. MCCORMACK.

UNITED STATES COMMISSION ON CIVIL RIGHTS,
Washington, D.C., March 19, 1975.

Hon. DON EDWARDS,
Chairman, Subcommittee on Constitutional Rights,
Washington, D.C.

DEAR MR. CHAIRMAN: I am happy to respond to your letter of March 17, 1975 requesting additional documentation with respect to the Commission's repeated requests for the Secretary of Commerce to implement Title VIII of the Civil Rights Act of 1964 (as amended). You will note that despite the insistence of this Commission since December 1967, the Secretaries of Commerce and various Attorneys Generals have delayed the collection of data required under Title VIII.

The correspondence you received from Secretary Dent does not reflect an accurate picture of the Commission's attempt to obtain compliance with Title VIII, nor the joint refusal of both the Departments of Justice and Commerce to fully cooperate in convincing the several administrations involved to support a request for the requisite funds or to initiate the voter registration surveys the Commission requested on January 5, 1968, February 17, 1969, and December 16, 1969.

Although I believe the enclosed correspondence will provide a clear and convincing record as to the Commission's attempts to fulfill its responsibilities in implementing Title VIII of the Voting Rights Act of 1965, our staff would be more than willing to assist you in any way we can. Please have Mr. Parker or Ms. McNair call Bud Blakey (254–6626).

Sincerely,

JOHN A. BUGGS,
Staff Director.

Enclosure.

DECEMBER 22, 1967.

Hon. ALEXANDER B. TROWBRIDGE,
Secretary, Department of Commerce, Washington, D.C.

DEAR MR. SECRETARY: Title VIII of the Civil Rights Act of 1964, P.L. 88–352, 78 Stat. 241 requires the Secretary of Commerce, in connection with the Nineteenth Decennial Census, to conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights. The Commission has discussed the necessity of conducting a survey in connection with the Nineteenth Decennial Census and will take official action on this question at its regular meeting on January 4. However, I would like to inform you for the purpose of preparing your Fiscal 1969 budget that I intend to suggest that the Commissioners recommend that in connection with the Nineteenth Decennial Census a survey be undertaken to compile registration and voting statistics of persons of voting age in:

1. Counties in Alabama, Arkansas, Georgia, South Carolina, Tennessee, Texas, and Virginia, with a total Negro population of at least 10,000 or a Negro population of at least 25 percent of the total population, according to the 1960 Decennial Census. Independent cities in Virginia which meet the same minimum qualifications should be included. The geographic areas which fall into these categories are set forth in Appendix A.

2. Counties in Mississippi with a total Negro population of at least 10,000 or with a total Negro population of at least 20 percent of the total population, according to the 1960 Decennial Census, should also be surveyed. The counties in this category are set forth in Appendix A.

3. All of the above named states in the form of a state-wide survey which would provide information for counties not surveyed individually, and in Louisiana and North Carolina in the form of a smaller state-wide survey.

4. Counties in California and Texas which had a total number of whites with Spanish surname of at least 2,500 at the time of the 1960 Decennial Census. The counties in this category are set forth in Appendix C.

In preparing such a survey, it is understood that the Bureau of the Census may make use of such sampling techniques as heretofore have been used in establishing the social and economic characteristics of the population in any previous decennial census. The following information should be determined for the persons covered by the compilation: (a) citizenship, (b) length of residence, (c) years of school completed, (d) race and color, (e) whether such person has voted in the most recent (i) state-wide primary election (including primary and runoff primary) and (ii) general election, in which members of the United States House of Representatives were nominated or elected, (f) if such person has not voted in the

most recent state-wide primary election or general election, whether (i) such person is, at the time of the census, registered to vote in Federal elections and (ii) whether such person was registered to vote in Federal elections at the time of the November 1963 general election. In addition, English language literacy should be ascertained for persons of Spanish surname surveyed in California and Texas.

Among other purposes, this survey should (1) provide information which will assist the Congress in determining whether the Voting Rights Act of 1965 should be amended or the suspension of voter registration tests provision should be extended beyond August 1970, (2) help reveal whether discrimination is being practiced against Mexican Americans in the area of voting and voter registration, and (3) show the extent to which residence requirements constitute an impediment to voting in the areas surveyed.

Sincerely yours,

WILLIAM L. TAYLOR,
Staff Director.

APPENDIX A

According to our analysis of the last Decennial Census, the following counties in the selected states had a total Negro population of at least 10,000 and/or a percent Negro of at least 25 percent:

1. Alabama (of the state's 67 counties the following 41 qualified:) Autauga, Baldwin, Barbour, Bibb, Bullock, Butler, Calhoun, Chambers, Choctaw, Clarke, Conecuh, Coosa, Crenshaw, Dulles, Elmore, Escambia, Etowah, Greene, Hale, Henry, Houston, Jefferson, Lee, Lowndes, Macon, Madison, Marengo, Mobil, Monroe, Montgomery, Perry, Pickens, Pike, Randolph, Russell, Sumter, Talladega, Tallapoose, Tuscaloose, Washington, and Wilcox.

2. Arkansas (of the state's 75 counties the following 27 qualified:) Ashley, Bradley, Calhoun, Chicot, Clark, Columbia, Crittenden, Cross, Dallas, Desha, Drew, Hempstead, Jefferson, Lafayette, Lee, Lincoln, Little River, Miller, Mississippi, Monroe, Nevada, Ouachita, Phillips, Pulaski, St. Francis, Union, and Woodruff.

3. Georgia (of the state's 159 counties the following 109 qualified:) Atkinson, Baker, Baldwin, Ben Hill, Bibb, Bleckley, Brooks, Bryan, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Charlton, Chatham, Clarke, Clay, Clinch, Coffee, Columbia, Cook, Coweta, Crawford, Crisp, Decatur, De Kalb, Dodge, Dooly, Dougherty, Early, Echols, Effingham, Elbert, Emanuel, Evans, Fayette, Fulton, Glascock, Glynn, Grady, Greene, Hancock, Harris, Henry, Irwin, Jasper, Jefferson, Jenkins, Johnson, Jones, Lemar, Lanier, Laurens, Lee, Liberty, Lincoln, Long, Lowndes, McDuffie, McIntosh, Macon, Marion, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Muscogee, Newton, Oglethorpe, Peach, Pike, Pulaski, Putnam, Quitman, Randolph, Richmond, Rockdale, Schley, Screven, Seminole, Spalding, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Treutlen, Troup, Turner, Twiggs, Upson, Walton, Warren, Washington, Webster, Wheeler, Wilcox, Wilkes, Wilkinson, and Worth.

4. South Carolina (of the state's 46 counties the following 43 qualified:) Abbeville, Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Edgefield, Fairfield, Florence, Georgetown, Greenville, Greenwood, Hampton, Horry, Jasper, Kershaw, Lancaster, Laurens, Lee, Lexington, McCormick, Marion, Marlboro, Newberry, Orangeburg, Richland, Saluda, Spartanburg, Sumter, Union, Williamsburg, and York.

5. Tennessee (of the state's 95 counties the following 11 qualified:) Davidson, Fayette, Hamilton, Hardeman, Haywood, Knox, Lauderdale, Madison, Montgomery, Shelby, and Tipton.

6. Texas (of the state's 254 counties the following 47 qualified:) Anderson, Bastrop, Bell, Bexar, Bowie, Burleson, Camp. Cass, Cherokee, Dallas, Ellis, Falls, Freestone, Galveston, Gregg, Grimes, Harris, Harrison, Houston, Jefferson, Kaufman, Leon, Limestone, Lubbock, McLennan, Madison, Marion, Morris, Nacogdoches, Newton, Nueces, Panola, Polk, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Tarrant, Travis, Trinity, Upshur, Walker, Waller, and Washington.

7. Virginia (a) Of the state's 98 counties in 1960 the following 46 qualified:) Accomack, Amelia, Appomattox, Drunswick, Buckingham, Caroline, Charles City, Charlotte, Culpeper, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Gloucester, Goochland, Greensville, Halifax, Hanover, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Louisa,

Lunenburg, Mecklenburg, Middlesex, Nansemond, Nelson, New Kent, Norfolk, Northampton, Northumberland, Nottoway, Pittslyvania, Powhatan, Prince Edward, Princess Anne, Richmond, Southampton, Surry, Sussex, and Westmoreland.

(b) Of the state's 32 independent cities in 1960 the following 14 qualified:) Alexandria, Danville, Hampton, Lynchburg, Martinsville, Newport News, Norfolk, Petersburg, Portsmouth, Richmond, Roanoke, South Boston, South Norfolk, and Suffolk.

APPENDIX B

According to our analysis of the last Decennial Census, the following counties in Mississippi had a total Negro population of at least 10,000 and/or a percent Negro population of at least 20 percent:

Mississippi (of the state's 82 counties the following 73 qualified:) Adams, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, DeSoto, Forrest, Franklin, Greene, Grenada, Harrison, Hinds, Holmes, Humphreys, Issaquena, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Madison, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Quitman, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tunica, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, and Yazoo.

APPENDIX C

According to our analysis of the last Decennial Census, the following counties in the following selected states had a total white with Spanish surname population of at least 2,500:

1. California (of the state's 58 counties the following 32 qualified:) Alameda, Contra Costa, Fresno, Imperial, Kern, Kings, Los Angeles, Madera, Marin, Merced, Monterey, Napa, Orange, Placer, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Tulare, Ventura, and Yolo.

2. Texas (of the state's 254 counties the following 67 qualified:) Atascosa, Bee Bell, Bexar, Brazoria, Brazos, Brewster, Brooks, Caldwell, Calhoun, Cameron, Comal, Dallas, Dawson, De Witt, Dimmit, Duval, Ector, El Paso, Fort Bend, Frio, Galveston, Gonzales, Guadalupe, Hale, Harris, Hays, Hidalgo, Hockley, Howard, Jefferson, Jim Hogg, Jim Wells, Karnes, Kleberg, Lamb, La Salle, Live Oak, Lubbock, McLennan, Matagorda, Maverick, Medina, Midland, Nueces, Pecos, Potter, Presidio, Reeves, Refugio, San Patricio, Starr, Tarrant, Taylor, Tom Green, Travis, Uvalde, Val Verde, Victoria, Webb, Wharton, Wichita, Willacy, Williamson, Wilson, Zapata, and Zavala.

JANUARY 5, 1968.

Hon. ALEXANDER B. TROWBRIDGE,
Secretary, Department of Commerce, Washington, D.C.

DEAR MR. SECRETARY: At its January 4, 1968 meeting the Commission considered the December 22, 1967 letter of the Staff Director to you in which he outlined a survey to be taken under the provisions of Title VIII of the Civil Rights Act of 1964. The Commission voted unanimously to affirm the Staff Director's request.

Sincerely yours,

JOHN A. HANNAH,
Chairman.

UNITED STATES COMMISSION ON CIVIL RIGHTS,
Washington, D.C., February 17, 1969.

Hon. MAURICE STANS,
Secretary, U.S. Department of Commerce,
Washington, D.C.

DEAR MR. SECRETARY: I am writing to you with regard to Title VIII of the Civil Rights Act of 1964, P.L. 88-352, 78 Stat. 266, which requires the Secretary of Commerce, in connection with the Nineteenth Decennial (1970) Census, to conduct a survey to compile registration and voting statistics in geographic areas recommended by the Commission on Civil Rights.

The Commission has fulfilled its statutory duty of designating areas for the survey, and we have revised our designation periodically in response to changed conditions and needs. Although the Bureau of the Census has cooperated with us in the planning of the Title VIII survey, no money has ever been appropriated for the implementation of the plans made.

On January 4, 1968, the Commission formally designated the areas to be included in the Title VIII survey. The Secretary of Commerce was notified of this action in a letter from the Chairman of the Commission, John A. Hannah, sent the next day. On June 24, 1968, a meeting of representatives of the Bureau of the Census, the Department of Commerce and the Commission was held. As a result of this meeting, preparatory funds were requested by the Bureau of the Census for Fiscal Year 1970 for a survey of voting and registration to be conducted in connection with the 1970 elections. These funds were disallowed by the Bureau of the Budget. (By letter dated August 15, 1968, Mr. Robert F. Drury, formerly Acting Director, Bureau of the Census, advised William L. Taylor, formerly Staff Director of the Commission, that the estimated costs of the survey by fiscal year would be as follows: $350,000 (1970), $5,075,000 (1971), $225,000 (1972)).

The action of the Bureau of the Budget does not negate the obligation of the Federal government to conduct the survey required by Title VIII. The Commission has not withdrawn its designation of the areas to be covered in the survey. These areas are described and listed in a letter dated December 22, 1967, from Mr. Taylor to Alexander B. Trowbridge, then Secretary of Commerce. A copy of this letter is enclosed.

Because of the President's desire to review the Fiscal Year 1978 budget proposals of the past administration (See letter dated January 24, 1969 from Budget Director Robert P. Mayo to the heads of the Executive Agencies) we consider this an appropriate time for you to review the request of the Department of Commerce to the Budget Bureau for preparatory funds to conduct the survey.

Title VIII of the Civil Rights Act of 1964 plainly requires a survey of registration and voting statistics to be conducted "in connection with the Nineteenth Decennial Census." If this survey is to be done in connection with the November 1970 elections, money must be available during Fiscal Year 1970 for planning and preparation. Therefore, we consider the Department of Commerce to be obligated to request funds at this time.

We continue to feel that the Title VIII survey will produce much important information which will be useful to the Department of Justice in enforcing the Voting Rights Act of 1965 and to the Congress in assessing the need for further legislation dealing with voting rights. The information, moreover, will be of value to the Commission in fulfilling its statutory duty of reporting and making recommendations to the President and Congress, and to private persons and groups interested in equal rights and in the political process.

There are still areas of the country where adequate statistics on voter registration and participation by black citizens are not available. Further, the extent of voting discrimination against Mexican American citizens has never accurately been measured. We receive many requests for the information which would be adduced by this survey, but currently we are unable to fulfill these requests. We continue to receive reports that barriers remain to black and Mexican American voters freely casting their ballots and otherwise participating in the political process.

In May 1968, the Commission issued a new report entitled *Political Participation*, which was a study of Negro participation in the electoral and political processes in 10 Southern States since the passage of the Voting Rights Act of 1965. In this report, the Commission concluded that while many gains had been made by Negroes in the area of voter registration, obstacles still existed to Negroes freely registering, voting, running for office, and otherwise participating fully in the electroal process in many parts of the South.

In a letter dated June 6, 1968 to the then Secretary of Commerce, the Staff Director of the Commission explained how the passage by Congress of the Jury Selection and Service Act of 1968, P.L. 90–274, 82 Stat. 53, increased the importance of the Title VIII survey. That act requires each United States district court to adopt a plan for the selection of jurors and provides that the plan shall prescribe some source of names other than voter registration lists or lists of actual voters when those sources do not guarantee that persons will be selected for jury service in a nondiscriminatory manner and that those selected will represent a fair cross section of a community in the district or division where the court convenes. As a result of this provision, the fair administration of Federal justice in the South

and Southwest depends, to some extent, upon the availability of accurate statistics on the extent to which Negroes, whites, and Mexican Americans are registered to vote and are actually voting and the extent to which voter registration lists and lists of actual voters reflect continued discrimination and do not accurately represent a cross section of the community.

We therefore urge you, in response to Mr. Mayo's letter, to request the funds necessary in Fiscal Year 1970 for the Title VIII survey.

Sincerely yours,

HOWARD A. GLICKSTEIN,
Acting Staff Director.

Enclosure.

THE SECRETARY OF COMMERCE,
Washington, D.C., March 6, 1969.

Mr. HOWARD A. GLICKSTEIN,
Acting Staff Director, U.S. Commission on Civil Rights,
Washington, D.C.

DEAR MR. GLICKSTEIN: This is in reply to your letter of February 17, 1969, regarding fiscal year 1970 preparatory funds for a survey to be taken under the provisions of Title VIII of the Civil Rights Act of 1964.

I have now completed my review of the fiscal year 1970 budget proposals in accordance with the Bureau of the Budget Director's letter of January 24, 1969. As a result, I am resubmitting the request for $350,000 to allow the Bureau of the Census to prepare for such a survey to be taken in connection with the November 1970 elections.

We will keep you informed regarding the status of the request.

Sincerely yours,

MAURICE H. STANS,
Secretary of Commerce,

FEBRUARY 18, 1969.

Hon. JOHN N. MITCHELL,
Attorney General,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: The enclosed letter to the Secretary of Commerce reflects our current position regarding Title VIII of the Civil Rights Act of 1964.

Although Title VIII called for a survey of voter registration and participation to be taken after its enactment and for another survey in connection with the 1970 Census, the first survey was not conducted and no funds have yet been appropriated or requested by the President for the second. If no funds are appropriated for Fiscal Year 1970 it will be impossible for the survey to be made in connection with the 1970 Census.

As our letter to Secretary Stans indicates, we continue to believe that the survey required by Title VIII will be useful. If funds are not provided, however, we recommend that legislation be introduced into Congress to repeal Title VIII. If the survey is not to be undertaken, we see no useful purpose in having Title VIII remain on the books.

If you would like to discuss this matter, I should be happy to arrange a meeting with you.

Sincerely yours,

HOWARD A. GLICKSTEIN,
Acting Staff Director.

Enclosure.

APRIL 3, 1969.

Mr. HOWARD A. GLICKSTEIN,
Acting Staff Director, United States Commission on Civil Rights,
Washington, D.C.

DEAR MR. GLICKSTEIN: Attorney General Mitchell has asked me to reply to your letter of February 18, 1969, concerning Title VIII of the Civil Rights Act of 1964. Please excuse our delay in responding.

Your letter to Secretary Stans recommended that he request, for fiscal 1970, the funds which would be required for preparation for the survey of voting and voter registration described in Title VIII. Your letter states that, in 1968, the Acting Director of the Bureau of the Census estimated that the cost of a survey

with respect to the areas designated by the Commission on Civil Rights would be $350,000 in (fiscal) 1970, $5,075,000 in 1971 and $225,000 in 1976.

We recognize that it would be useful to have the results of a survey of the scope recommended by the Commission. However, because of the expense involved, we are unable to share your view that such a project should be undertaken. Assuming that the cost of the survey would amount to several million dollars, we do not feel that an expenditure of this magnitude can be justified.

A possible alternative could be to limit the extent of the survey and, in this way, to reduce the cost. It might, for example, be possible to select a representative sample of counties, i.e., a much smaller number than was designated by the Commission in January 1968, and still obtain meaningful results. If you wish to consider this or other alternatives and feel that the Civil Rights Division could be of assistance, please feel free to call on us.

Sincerely,

JERRIS LEONARD,
Assistant Attorney General,
Civil Rights Division.

AUGUST 26, 1969.

Hon. JOHN N. MITCHELL,
Attorney General,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: I am writing with respect to the survey of voter registration and voter participation required by Title VIII of the Civil Rights Act of 1964. I believe the similarities between the survey required by Title VIII and that provided for by Section 17(c) of the proposed Voting Rights Act Amendments of 1969 (S. 2507) are such that planning for a survey could begin now regardless of under which authority the survey may ultimately be made.

I believe it important that planning begin in the very new future since it would appear that if the survey is delayed until Congress makes a decision on the Voting Rights Act Amendments, it probably would then be too late for a survey to be based on the congressional elections of 1970. The accuracy of voting surveys, we have been informed by the Census Bureau, decreases rapidly as the delay between the election and the survey increases. If the November 1970 elections are not used, neither the requirements of Title VIII nor the timetable of the proposed National Advisory Commission on Voting Rights could be met. Since the Advisory Commission must submit its report by January 15, 1973, use of the 1972 presidential election would not allow sufficient time for analysis of the survey results and the formulation of recommendations.

In view of the foregoing, it would be useful, in my opinion, to have a meeting at this time of representatives of the Department of Commerce, the Bureau of the Census, the Civil Rights Division of the Department of Justice, the Bureau of the Budget, and the Commission on Civil Rights, to discuss planning for the survey. If you agree that this meeting is advisable, please let me know and I shall make arrangements for it.

Sincerely yours,

HOWARD A. GLICKSTEIN,
Staff Director-Designate.

DEPARTMENT OF JUSTICE,
Washington, D.C., September 8, 1969.

Mr. HOWARD A. GLICKSTEIN,
Staff Director-Designate, United States Commission on Civil Rights,
Washington, D.C.

DEAR MR. GLICKSTEIN: Your letter of August 26th to the Attorney General has been referred to me for comment and response.

I agree wholeheartedly with your suggestion that the meeting referred to in your letter be held, and I am asking David Rose, director of this Division's Office of Coordination and Federal Programs, to be in touch with your office for that purpose.

Sincerely,

JERRIS LEONARD,
Assistant Attorney General,
Civil Rights Division.

NOVEMBER 26, 1969.

Hon. MAURICE STANS,
Secretary of Commerce,
Washington, D.C.

DEAR MR. SECRETARY: I am writing you with regards to the implementation of Title VIII of the Civil Rights Act of 1964 which requires the Bureau of the Census to "conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights . . ." in connection with the 1970 Census. On January 4, 1968, the Commission formally designated the areas to be included in the Title VIII survey. The Secretary of Commerce was notified of this action in a letter from the Chairman of the Commission, John A. Hannah, sent the next day.

The January 4, 1968, request of the Commission called for the use of sampling techniques to determine the extent of Negro voter registration and voting in 411 counties in 8 States in the South, to determine by State the extent of Negro voter registration and voting for the remainder of those States and two other Southern States, and to determine the extent of Mexican American voter registration and voting in 58 counties in California and 67 counties in Texas. The cost of this survey was estimated to be approximately six million dollars.

The previous Administration did not include money requested by the Bureau of the Census to prepare for the survey in their proposed fiscal 1970 budget. On February 17, 1969, we wrote to you urging a new request for the necessary funds, and you requested $350,000 for this purpose. On April 3, 1969, however, the Assistant Attorney General in charge of the Civil Rights Division wrote to us that the Department of Justice did not feel that an expenditure of the magnitude planned could be justified and suggested that the cost might be reduced by designating a smaller sample of counties. In May we learned that the Bureau of the Budget had denied your request.

On October 7, 1969, a meeting was held among representatives of your Department, the Bureau of the Census, the Civil Rights Division of the Department of Justice, the Bureau of the Budget and the Commission on Civil Rights, to consider appropriate steps to implement Title VIII. The representative of the Department of Justice agreed to consult with his superiors and advise the Commission as to what type of survey, if any, the Department would support. We have not yet heard from the Department of Justice.

Because of the urgency of action if the command of the statute is to be carried out, I am informing you in advance of the action I will suggest to the Commissioners at their regular meeting on December 12, I will recommend that we alter our request in order to reduce the cost of the survey, in the hope that agreement may be reached for a survey giving results valid for States rather than individual counties. Accordingly, I will urge that the Commissioners recommend that in connection with the Nineteenth Decennial Census a survey be undertaken to compile registration and voting statistics of persons of voting age in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee and Virginia, and in the States of California and Texas, covering those counties which have a total number of persons with Spanish surname of at least 2500 at the time of the 1970 Decennial Census.

In preparing such a survey, it is understood that the Bureau of the Census may make use of sampling techniques which will produce data from which conclusions valid for the individual States surveyed may be drawn. The following information should be determined for the persons covered by the compilation: (a) citizenship, (b) length of residence, (c) years of school completed, (d) race, color, or national origin, (e) whether the person voted in the November 1970 general election, and (f) whether the person, if he did not vote in the November 1970 general election, was registered to vote at the time of the election. In addition, English language literacy should be ascertained for persons of Spanish surname surveyed in California and Texas.

Among other purposes, this survey should (1) inform the Department of Justice of States in which increased efforts to enforce the Voting Rights Act of 1965 are needed, (2) help reveal whether discrimination is being practiced against Mexican Americans in the area of voting and voter registration, and (3) show the extent to which residence requirements constitute an impediment to voting in the areas surveyed.

I am enclosing a copy of a letter concerning the implementation of Title VIII which I am sending to the Attorney General today.

Sincerely yours,

HOWARD A. GLICKSTEIN,
Staff Director-Designate.

Enclosure.

DECEMBER 16, 1969.

Hon. MAURICE STANS,
Secretary of Commerce,
Washington, D.C.

DEAR MR. SECRETARY: At its December 12 meeting the Commission considered the November 26 letter of the Staff Director to you in which he outlined a survey to be taken under the provisions of Title VIII of the Civil Rights Act of 1964. The Commission voted unanimously to affirm the Staff Director's request.

As you know, no funds have been included in the budget of the Bureau of the Census in either Fiscal Year 1970 or in Fiscal Year 1971 for the planning and conduct of the survey. Because of the substantial need for such a survey, the reduced cost of the survey we now propose, and the clear command of the statute that a survey be undertaken in 1970, we hope that you will make every effort to assure the funding of the Title VIII survey.

Sincerely yours,

THEODORE M. HESBURGH,
Chairman.

NOVEMBER 26, 1966.

Hon. JOHN N. MITCHELL,
Attorney General,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: I am writing you with regards to the implementation of Title VIII of the Civil Rights Act of 1964, a question which, because of the passage of time and the clear command of the statute, has become an urgent one. Title VIII requires the Bureau of the Census to "conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights . . . in connection with the Nineteenth Decennial Census" of 1970.

The previous Administration did not include money requested by the Bureau of the Census to prepare for the survey in their proposed fiscal 1970 budget. On February 17, 1969 we sent a letter to the Secretary of Commerce urging a new request for the necessary funds. In our covering letter to you enclosing a copy of our letter to the Secretary of Commerce we expressed our view that "[i]f funds are not provided . . . legislation [should] be introduced into Congress to repeal Title VIII. If the survey is not to be undertaken, we see no useful purpose in having Title VIII remain on the books."

On March 6, 1969 Mr. Stans replied, stating that he was resubmitting the request for $350,000 to the Bureau of the Budget. On April 8, 1969, however, the Assistant Attorney General in charge of the Civil Rights Division wrote to us that the Department of Justice did not feel that an expenditure of the magnitude planned could be justified and suggested that the cost might be reduced by designating a smaller sample of counties. In May we learned that the Bureau of the Budget had denied the request of the Department of Commerce. Further action was delayed in anticipation of the proposals for a voting survey to be contained in the amendments to the Voting Rights Act of 1965 proposed by the President.

On August 26, 1969 we wrote to you suggesting that "the similarities between the survey required by Title VIII and that provided for by Section 17(c) of the proposed Voting Rights Act Amendments of 1969 (S. 2507) are such that planning for a survey could begin now regardless of under which authority the survey may ultimately be made," and proposing that a meeting be convened of representatives of the Department of Commerce, the Bureau of the Census, the Civil Rights Division of the Department of Justice, the Bureau of the Budget, and the Commission on Civil Rights to discuss planning for the survey. On September 8 Mr. Leonard responded affirmatively to this suggestion, and, on October 7, the meeting was held. It was our understanding that the Department of Justice would inform the other participants of the kind of and how large a survey, if any, the Department would support as soon as possible.

As you will note from the enclosed letter of even date to the Secretary of the Commerce, we plan to amend our designation to reduce the cost of the survey. The Commission on Civil Rights would also be willing to change its area designation to accommodate the purposes of the survey proposed in Section 17(c) of the proposed Voting Rights Act amendments by adding areas in the North to the list of those to be surveyed, if this would in your view lead to agreement so that

the command of the statute may be fulfilled. In view of the late date, please let me have an expression of your views at the earliest possible time. If no action can be taken, then it would appear that Congress would have to be asked to repeal Title VIII.

Sincerely yours,

HOWARD A. GLICKSTEIN,
Staff Director-Designate.

Enclosure.

DECEMBER 2, 1969.

Hon. LEONARD GARMENT,
Special Consultant to the President,
Executive Office Building, Washington, D.C.

DEAR MR. GARMENT: Title VIII of the Civil Rights Act of 1964 provides for surveys of voter registration in areas designated by the Commission on Civil Rights. The statute specifically states that a survey is to be conducted in connection with the 1970 Census and the Commission has requested that such a survey be conducted.

The previous Administration requested no funds for the survey and no action has been taken as yet to rectify this. The Administration's bill to extend the Voting Rights Act of 1965 contains a provision calling for a voting survey—a provision essentially similar to Title VIII. Apparently, the Administration would prefer that any voting surveys include all sections of the country, a purpose that could be achieved under Title VIII.

As you will note from the enclosed letters to the Attorney General and the Secretary of Commerce, I am prepared to recommend to the Commission that our request for a survey be modified to reduce its cost. I am further prepared to recommend designation of some areas in the North as well as the South if this will result in agreement so that the statute may be implemented.

The letters to the Cabinet officers concerned have indicated that copies were sent to you for your information. In my opinion implementation of Title VIII would provide a good opportunity for action by the Administration in the field of civil rights on a nationwide basis.

Sincerely yours,

HOWARD A. GLICKSTEIN,
Designate.

Enclosures.

DEPARTMENT OF JUSTICE,
Washington, D.C., January 2, 1970.

Mr. HOWARD A. GLICKSTEIN,
Staff Director, United States Commission on Civil Rights,
Washington, D.C.

DEAR MR. GLICKSTEIN: Attorney General Mitchell has asked me to reply to your letter of November 26, 1969, concerning implementation of Title VIII of the Civil Rights Act of 1964. You requested the views of this Department regarding the amended area designation described in your letter of November 26 to Secretary Stans and regarding the possibility of further amendment to accomodate the purposes of the study called for by the proposed "Voting Rights Act Amendments of 1969."

We understand the desire of the Commission on Civil Rights to meet its responsibilities under Title VIII, and we appreciate your willingness to consider modifying the scope of the proposed survey so that it might constitute, in part, the type of survey contemplated by the voting rights legislation sponsored by the Administration. Nonetheless, we do not believe that a decision as to conducting a survey should be made at this time. We feel that it would be preferable to wait until Congress has taken final action on the pending voting rights legislation.

As you know, the House of Representatives recently passed H.R. 12695, the bill proposed by the Administration to amend the Voting Rights Act of 1965. Section 7 of this bill would create a commission which would be required to make a study of the effect on voting and registration of various types of laws, including those making the passage of literacy tests a prerequisite to voting. In addition, the Secretary of Commerce would be directed, after consultation with the Attorney General and the Commission on Civil Rights, to make special voting surveys in the states.

We think it likely that Congress will take final action on the proposed amendments to the 1965 Act in the near future. Although we do not know what the

nature of all the amendments will be, it is clear that the type of survey contemplated by the Administration bill would be similar to those which would be conducted under Title VIII.

In view of these circumstances, we feel that it would be inappropriate to attempt to anticipate the action Congress will take by proceeding with a survey under Title VIII at the present time. In our view, the most practical course would be to postpone any decision on a voting survey until final action by the Congress on the proposed amendments to the 1965 Act. In that way, the survey could be tailored to the specific requirements of the new legislation.

In reaching this conclusion, we have been mindful of the fact that any meaningful survey of voting and voter registration, even the more limited survey which you now propose, would involve a substantial expenditure of funds. It is important, therefore, that the survey be made as useful as possible. We believe that it is more likely that this would be achieved if the decision on the survey was postponed until next year.

After Congress has acted on the pending legislation, we would, of course, be happy to cooperate with you in deciding the type of voting survey that should be conducted and in implementing that decision.

Please feel free to call on us if we can be of any further assistance to you in this matter.

Sincerely,

JERRIS LEONARD,
Assistant Attorney General,
Civil Rights Division.

UNITED STATES COMMISSION ON CIVIL RIGHTS,
Washington, D.C., January 6, 1970.

Hon. JERRIS LEONARD,
Assistant Attorney General,
Civil Rights Division, Washington, D.C.

DEAR MR. LEONARD: I have your letter of January 2 responding to my letter to the Attorney General of November 26 concerning implementation of Title VIII of the Civil Rights Act of 1964. In my letter to the Attorney General I advised him that the Commission planned to amend its January 4, 1968, request for a survey under Title VIII in order to reduce the cost. I suggested that the Commission would be willing to change its area designation in order to accommodate the purpose of the survey proposed in pending legislation to amend the Voting Rights Act of 1965. Because we did not hear from you before our last Commission meeting, the Commission, at its December 12, 1969, meeting made the proposed new designation. A copy of the letter to the Secretary of Commerce communicating this action was sent to you.

In your January 2 letter you suggested that no survey under Title VIII be planned for or undertaken until Congress acts on the proposed amendments to the Voting Rights Act of 1965 and that the decision on the survey be postponed until next year. I do not think your suggestion is satisfactory.

In the first place, Title VIII of the Civil Rights Act of 1964 specifically mandates that registration and voting statistics "shall . . . be collected and compiled in connection with the Nineteenth Decennial Census . . ." The Commission by agreeing to the suggestion of the Bureau of Census that the Title VIII survey be conducted in the fall of 1970, rather than in the spring when the Nineteenth Decennial Census is conducted, departed from the language of the statute as far as I think we can. I do not see how a survey conducted in 1971 could fairly be said to be conducted "in connection with the Nineteenth Decennial Census."

There is a more basic flaw in your suggestion, however. We have been advised by the Bureau of Census that a meaningful survey only can be conducted immediately after a national election, i.e. in the fall or early winter of 1970 or the fall or early winter of 1972. The more time that elapses from the date of election until the time of survey the more likely it is that persons will have recall problems, and this will lessen the validity of the survey. Accordingly, a survey sometime in 1971 is unlikely to reflect accurately voting patterns in the fall of 1970. Of course, the survey could be postponed until after the 1972 election. This, however, is impractical since H.R. 12695 requires the Commission created by Section 7 to submit its final report by January 15, 1973. I do not see how that deadline could be met if the survey were conducted in the fall of 1972.

Even if your suggestion that the decision on the survey be "postponed until next year" was intended to refer to this year, I think that postponing a decision until after action on the Voting Rights Act amendments would make it impossible to conduct a survey this year. Considerable lead time is needed to plan and prepare the survey; necessary funds must be sought. Perhaps it is even now too late to take the action necessary for a survey this year. It seems to me that this issue must be resolved in the next couple of weeks if nullifying Title VIII is to be avoided.

I am sure you appreciate the position we are in. The Civil Rights Commission has the duty under Title VIII to make the designation of areas to be surveyed; this duty we have fulfilled. We believe that the survey proposed would be a valuable one, yielding important information, and the law requiring that survey be made should be carried out. I hope that you will reconsider your position in light of the facts set forth in this letter and support our position. If past experience is a guide, without Department of Justice support the necessary funds will not be forthcoming.

Sincerely yours,

HOWARD A. GLICKSTEIN,
Staff Director.

Enclosure.

UNITED STATES COMMISSION ON CIVIL RIGHTS,
Washington, D.C., February 24, 1970.

Hon. JERRIS LEONARD,
Assistant Attorney General, Civil Rights Division,
Washington, D.C.

DEAR MR. LEONARD: Unfortunately, our discouraging correspondence with respect to Title VIII of the Civil Rights Act of 1964 must continue.

In your most recent letter (February 11, 1970) you advise me that you have obtained from the Department of Commerce information regarding the planning of a voting survey. On the basis of that information, you reaffirm your position that "meaningful planning cannot begin until the basic decisions regarding the purpose of the survey and the areas to be covered have been made." My understanding is that this is not the position of the Bureau of the Census, and my analysis of the January 23, 1970, memorandum of Robert Drury, Deputy Director of the Bureau of Census—the memorandum to which you refer—indicates that planning could begin before a final determination is made concerning the nature of the survey. The only planning item which could not be begun at this time is "geographic work" which represents only $5,000.

Your letter of February 11, 1970, neglected to refer to two essential points in Mr. Drury's memorandum. Mr. Drury stated: "Ideally, the survey should be conducted in November and early December 1970; January 1971 would seem to be an outside date for enumeration. Postponing the survey to a later date will, in our opinion, increase the problem of collection valid data from the respondent. Some of these problems are reviewed in the enclosed memorandum.

If the Bureau is to begin interviews on this survey in November 1970, it will be necessary that planning funds as specified above be available no later than mid-February."

It seems clear to me that if we await the passage of the Voting Rights Amendments a survey in connection with the 1970 election will be impossible. I do not expect any amendments to pass before March, and it appears probable that no passage will occur before April. Only if the Bureau of the Census receives money immediately, either for the planning of the survey provided for by Section 7 of H.R. 4249 or that required by Title VIII, will it be possible to conduct a survey in connection with the 1970 election.

It seems to me that the results of your position is that no survey—either under H.R. 4249 or under Title VIII—will be conducted. I am very anxious that responsibility be clearly placed in the event that this occurs. Accordingly, I would appreciate it if you would answer the following questions for me:

1. On the basis of the information currently available to the Department of Justice, it is not true that a meaningful voting survey in connection with the 1970 census must be conducted no later than January 1971?

2. On the basis of the information currently available to the Department of Justice, is it not true that a voting survey in connection with the 1970 election cannot be undertaken unless planning funds were made available "no later than mid-February?"

I dislike being so abrasive but I think it is important to face up to the issues so that we know where we are.

Sincerely,

HOWARD A. GLICKSTEIN,
Staff Director.

MAY 27, 1970.

Hon. JOHN N. MITCHELL,
Attorney General, Department of Justice,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: On February 24 of this year the Staff Director of the Commission, Mr. Howard A. Glickstein, sent a letter to Mr. Jerris Leonard concerning Title VIII of the Civil Rights Act of 1964. This letter, a copy of which is enclosed, stated once again the concern of the Commission with respect to the refusal of the Department to support the survey of voting and voter registration required by law. This letter required immediate attention and reply. I regret that I found it necessary to inform you that we have received no reply to our letter.

It is now too late for the Bureau of the Census to plan the survey that is required by Title VIII. Since this provision of an Act of Congress will not be implemented, we feel it is our duty to explain this fact to the Judiciary Committees of the Senate and the House of Representatives, describing to them the history of this failure to implement the mandatory requirement of an Act of Congress.

Sincerely,

THEODORE M. HESBURGH,
Chairman.

Enclosure.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., June 22, 1970.

Reverend THEODORE M. HESBURGH,
Chairman, United States Commission on Civil Rights,
Washington, D.C.

DEAR REVEREND HESBURGH: Please refer to your letter of May 27, 1970, concerning the failure to implement Title VIII of the Civil Rights Act of 1964.

As you know, the position of this Department has been set forth in Mr. Leonard's correspondence with Mr. Glickstein. Briefly stated, our position has been that any survey should be tailored as closely as possible to the new voting rights legislation and that this objective could best be achieved by deferring the decision regarding conduct of a survey until after enactment of the amendments to the Voting Rights Act.

I regret that the Commission on Civil Rights and this Department have been unable to agree regarding the voting surveys, and I can understand your desire to bring this matter to the attention of the congressional committees.

Sincerely,

JOHN N. MITCHELL,
Attorney General.

NOVEMBER 6, 1970.

Hon. EMANUEL CELLER,
Chairman, Committee on Judiciary,
Washington, D.C.

DEAR MR. CHAIRMAN: Title VIII of the Civil Rights Act of 1964, 78 Stat. 266 (1964), provides:

TITLE VIII—REGISTRATION AND VOTING STATISTICS

SEC. 801. The Secretary of Commerce shall promptly conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights. Such a survey and compilation shall, to the extent recommended by the Commission on Civil Rights, only include a count of persons of voting age by race, color, and national origin, and determination of the extent to which such persons are registered to vote, and have voted in any statewide primary or general election in which the Members of the United States House of Representatives are nominated or elected, since January 1, 1960. Such information shall also be collected and compiled in connection with the

Nineteenth Decennial Census, and at such other times as the Congress may prescribe. The provisions of section 9 and chapter 7 of title 13, United States Code, shall apply to any survey, collection, or compilation of registration and voting statistics carried out under this title: Provided, however, That no person shall be compelled to disclose his race, color, national origin, or questioned about his political party affiliation, how he voted, or the reasons therefore, nor shall any penalty be imposed for his failure or refusal to make such disclosure. Every person interrogated orally, by written survey or questionnaire or by any other means with respect to such information shall be fully advised with respect to his right to fail or refuse to furnish such information.

I am writing to explain to you why this Title has never been implemented.

Title VIII called for two surveys of voting and voter registration to be conducted, one after the Title's enactment and a second as a part of the 1970 Census. In addition, it requires additional surveys "at such other times as the Congress may prescribe." The two required surveys were to be undertaken by the Bureau of the Census in areas specified by the Commission on Civil Rights.

Planning was begun for the initial survey soon after the enactment of the 1964 Civil Rights Act. In early 1966, it was decided, however, that conducting the special survey was not consistent with the President's request for a general re-examination of all budgets. The Secretary of Commerce, in his request to the Commission to reconsider the need for a special census in 1966, noted the high cost of the proposed special census and observed that both the delay occasioned by the need to conform the survey to the final form of the 1965 Act, and the 1965 Act itself, had made the proposed special census less meaningful. At that time it was the intent of the agencies involved to carry out the 1970 Title VIII survey.

Nevertheless, funds for the 1970 survey were never requested by the President nor appropriated by Congress. Since 1966, several meetings have taken place between staff of the Commission, the Bureau of the Census, the Department of Commerce, the Bureau of the Budget, and the Department of Justice. There has been much correspondence between the Commission and these other agencies, and the Commission has made and revised its designation of areas to be covered in the survey. The Bureau of the Budget has been unwilling to request an appropriation for the survey without the agreement of the Department of Justice, which it has not obtained.

The Department of Justice has had two main objections to the 1970 Title VIII survey. First, the Department considered the cost of the survey, which was estimated to be about six million dollars, to be higher than could be justified for such a survey. Because of this objection the Commission revised its designation to reduce the cost of the survey to about one million dollars.

Secondly, the Department of Justice considered it premature to seek funds for a Title VIII survey before Congress had acted on the Administration's proposed Voting Rights Act Amendments, which themselves called for a survey of voting and votor registration. On the basis of information provided by the Bureau of the Census and the Bureau of the Budget, the Commission disagreed with this approach. We felt that to delay while Congress considered in what form to extend and amend the Voting Rights Act would make it impossible to carry out any kind of voting survey in 1970. By the time Congress acted, in June 1970, it was too late for the Bureau of the Census to obtain funds to make plans for a survey of voting and voter registration fulfilling the requirements of Title VIII.

We regret that this provision of an Act of Congress, which in our opinion would have yielded valuable information on the extent to which the voting rights legislation of Congress has been effective, has not yet been implemented.

I am sending an identical letter to the Chairman of the Judiciary Committee of the Senate.

Sincerely,

HOWARD A. GLICKSTEIN,
Staff Director.

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