Voting Rights Enforcement & Reauthorization

The Department of Justice's Record of Enforcing the Temporary Voting Rights Act Provisions

U.S. Commission on Civil Rights
May 2006

U.S. Commission on Civil Rights

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- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices.
- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Appraise federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
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May 4, 2006

Executive Summary

On August 6, 2007, the Voting Rights Act[1] will celebrate its 42nd anniversary. On that date several of the act's core provisions are set to expire: the preclearance requirement of Section 5,[2] the language minority requirements of Sections 4(f)(4)[3] and 203,[4] and the voting examiner and observer authorizations of Sections 6 through 9. Section 5 requires certain states and localities, principally in the South, to obtain federal approval before implementing any change in a voting practice or procedure. Sections 4(f)(4) and 203 require various localities throughout the country to provide election materials and information in one or more languages in addition to English. Sections 6 through 9 enable the federal government to send federal voting registrars (examiners) and polling place monitors (observers) to jurisdictions covered by Section 5. Together, these provisions have had a profound and far-reaching impact on minority citizens' opportunity to participate on equal footing in our nation's democracy and are much of the reason why many characterize the Voting Rights Act as the most important and effective civil rights legislation Congress ever adopted. At the same time, some have questioned the continuing utility of the expiring provisions.

This report analyzes and discusses the Department of Justice's decisions since 1965 in implementing the temporary provisions of the Voting Rights Act, with particular emphasis on the current extension period. The Commission conducted this study to offer the President and Congress a factual record with which to consider the reauthorization of the expiring provisions of the Voting Rights Act.[5] The Justice Department, acting through its Civil Rights Division (Division), stands at the center of enforcement responsibilities with regard to the act's temporary provisions. The Division receives more than 99 percent of all Section 5 preclearance submissions and represents the United States as the statutory defendant when jurisdictions seek preclearance from federal court. Congress authorized the Division to file suit to enforce the language minority requirements, and it has performed a great majority of the work in their enforcement. The Attorney General, acting on the recommendation of the Civil Rights Division, possesses the sole, unreviewable authority to determine which counties are eligible for examiners and observers, and it is the Division's responsibility to then determine if and when to dispatch them.

Since its formation in 1957, the U.S. Commission on Civil Rights (Commission) has played a central role in documenting and explaining the need to enact, and then maintain, a strong federal Voting Rights Act. The Commission reported in the late 1950s and early 1960s on the pervasive discrimination in voting that then existed throughout most of the South and that led to the

[1] Pub. L. No. 89-110, 79 Stat. 445 (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1 (2000)).

[2] 42 U.S.C. § 1973c (2000).

[3] 42 U.S.C. 1973b(f)(4) (2000).

[4] 42 U.S.C. § 1973aa-1a (2000)

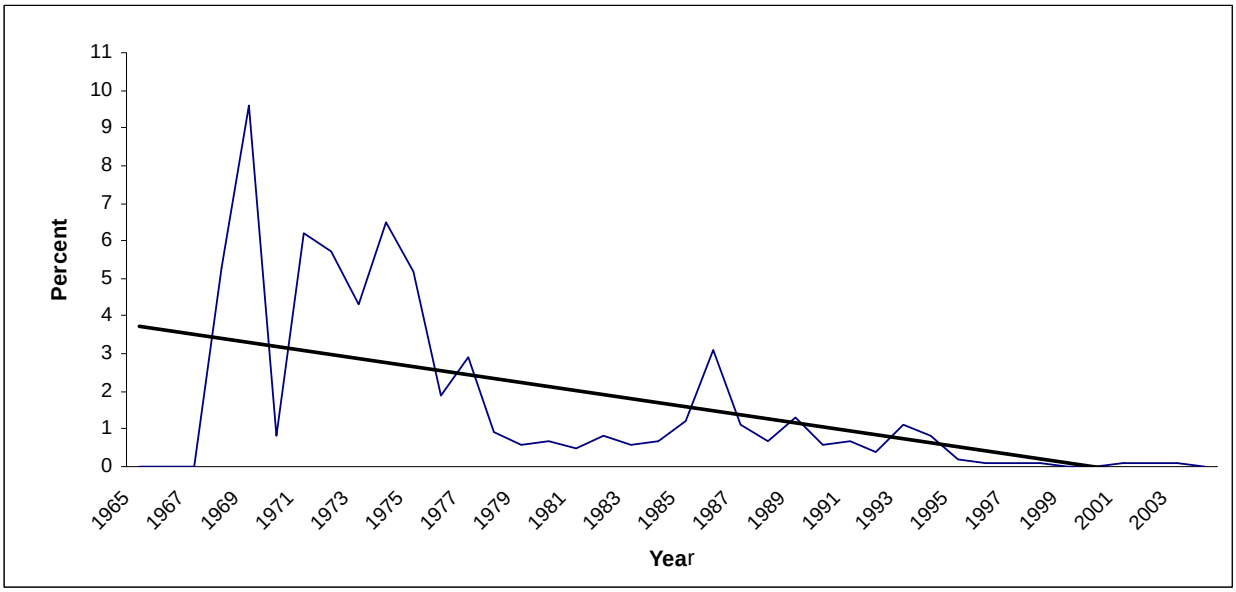
[5] Other aspects of the factual record that Congress likely will consider, but which are outside the scope of this report, include data on minority participation rates (as measured by registration and turnout data, and figures on the number of minority elected officials), and information regarding the present status and recent history of discrimination in voting.

passage of the Voting Rights Act in 1965; reported on the initial efforts to enforce the act immediately after its passage; and provided reviews and analyses that assisted Congress in deciding to extend and expand the act's temporary provisions in 1970, 1975, and 1982.[6] This report continues the Commission's record of service in the field of voting rights.

The Commission's study finds the Justice Department's objections, as a percentage of submitted changes from covered jurisdictions, have declined steadily and markedly over 40 years to the point that during the last decade, objections have virtually disappeared, particularly with respect to change types that represent the bulk of the submitted changes. The Commission's study examined three legislative periods, 1965–1974, 1975–1982, and 1982–2004, and found that the proportion of objections to submitted changes decreased throughout, from 5.5 percent in the first period to 1.2 percent in the second, and to 0.6 percent in the third. Significantly, the ratio of objections to submitted changes was less than 0.1 percent in the period 1995–2004. In the current extension period, the Commission finds that the objection rate is low regardless of change type.

FIGURE ES-1

Objections as a Percent of Submitted Changes, August 1965 through June 30, 2004



Caption: During 1965–2004, the percent of objections to submitted changes steadily declined.
Source: Compiled from U.S. Department of Justice, Civil Rights Division, Voting Section, Submission Tracking and Processing System (STAPS) data, as provided to the U.S. Commission on Civil Rights, Sept. 20, 2004.

[6] U.S. Commission on Civil Rights (USCCR), *Report of the U.S. Commission on Civil Rights*, 1959; USCCR, *U.S. Commission on Civil Rights Report, Book 1: Voting*, 1961; USCCR, *Report of the U.S. Commission on Civil Rights*, 1963; USCCR, *Freedom to the Free*, 1963; USCCR, *Voting in Mississippi*, 1965; USCCR, *The Voting Rights Act… The First Months*, 1965; USCCR, *Political Participation*, 1968; USCCR, *The Voting Rights Act: Ten Years After*, 1975; USCCR, *The Voting Rights Act: Unfulfilled Goals*, 1981.

How might one understand this pattern of findings? In this difficult area, observers will undoubtedly interpret the data in different ways. Some observers, for example, may see the data as demonstrating that Section 5 has accomplished its goals as a deterrent and that further reauthorization is not warranted. Others, however, may interpret the declining trend of objections to warrant extending Section 5's coverage to the rest of the 50 states, to the extent permissible under the Constitution, in order to replicate the success apparently achieved in the covered jurisdictions. Alternatively, some may argue that the decline in the number of objections is due, in part, to recent Supreme Court interpretations of the Section 5 nondiscrimination standard that they would urge Congress to overturn. Yet others may conclude Section 5 should be reauthorized in a different form in order better to reflect recent experience. For example, Congress could change its coverage formula, amend bailout restrictions, or shorten future extension periods. To some extent, the choice of interpretation may depend on each reader's perspective, beliefs, and view of social history, constitutional law and the proper scope of federal authority. The goal of this report is not to select among competing perspectives, but rather to provide objective data that can inform the decision-making of all participants in the reauthorization process.

Overview of the Voting Rights Act of 1965

Faced with mounting unrest and racial strife that characterized the long and painful struggle for African American voting rights 40 years ago, Congress enacted the Voting Rights Act of 1965, making "the promise of the right to vote under the 15th Amendment of the U. S. Constitution a reality, ninety-five years after [its] passage."[7] The Voting Rights Act of 1965 stands as one of the most effective civil rights statutes Congress enacted.[8] Along with its core temporary provisions, in particular Section 5, the Voting Rights Act has increased minority voter registration, voter turnout, and officeholding.[9]

Congress adopted the Voting Rights Act of 1965 to end the "blight of discrimination in voting… [which had] infected the electoral process in parts of our country for nearly a century."[10] The act consists of a comprehensive set of stringent and interlocking remedial mechanisms. As noted, several of its most important provisions are temporary, and these apply only to particular states and localities. Other provisions are permanent and are nationwide in their scope. A brief overview of the act follows.[11]

In 1965, Congress' first and threshold concern was to ensure that black citizens in the South would be able to freely register to vote and then cast their ballots on Election Day. Accordingly, the act banned for five years the use of discriminatory literacy tests and similar devices for determining eligibility to vote, or to register to vote, in those areas of the country (all in the

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[7] The Judiciary's Subcommittee on the Constitution, United States House of Representatives hearing, Oct. 18, 2005, testimony of Joe Rogers, National Commission on the Voting Rights Acts, p. 1.

[8] *See*, for example, U.S. Commission on Civil Rights, briefing on the reauthorization of the temporary provisions of the Voting Rights Act, Washington, DC, Oct. 7, 2005 (hereafter cited as USCCR briefing, Oct. 7, 2005), testimony of Ronald Keith Gaddie, professor of political science, the University of Oklahoma, p. 41; Vernon Francis, LeaAnn Collins, Paul P. Curtis, Erica L. Hovani, Patricia A. McCausland, John M. Richards, and Kara W. Swanson, "Preserving a Fundamental Right: Reauthorization of then Voting Rights Act," Lawyers' Committee for Civil Rights Under the Law, June 2003, p. 1 (hereafter cited as Francis, "Preserving a Fundamental Right").

[9] *See*, for example, Meghann E. Donahue, "'The Report of My Death Are Greatly Exaggerated': Administering Section 5 of the Voting Rights Act After Georgia v. Ashcroft," *Columbia Law Review*, vol. 104 (October 2004), p. 1651 (hereafter cited as Donahue, "The Report of My Death Are Greatly Exaggerated").

[10] South Carolina v. Katzenbach, 383 U.S. 301, 308 (1966).

[11] A good summary of the act and the factors that led to the enactment of its various provisions may be found in the Senate and House Reports for the 1982 extension of the act's temporary provisions. U.S. Congress, Senate, Committee on the Judiciary, VOTING RIGHTS ACT EXTENSION, S. REP. No. 97-417, at 4-9 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 181–186 (hereafter cited as *1982 Senate Report*); U.S. Congress, House of Representatives, Committee on the Judiciary, VOTING RIGHTS ACT EXTENSION, H.R. REP. No. 227 at 3-7 (1981) (hereafter cited as *1981 House Report*). *See also* Abigail M. Thernstrom, *Whose Votes Count? Affirmative Action and Minority Voting Rights* (Cambridge, MA: Harvard University Press, 1987) (hereafter cited as Thernstrom, *Whose Votes Count?*) (discussing the politics of the passage of the 1970, 1975, and 1982 amendments and factors that led to their enactment).

South) identified by a special coverage formula contained in Section 4 of the act.[12] Congress converted this into a nationwide, temporary ban in 1970, and enacted a permanent nationwide ban in 1975.[13]

In addition, Sections 6 through 9 authorize the Attorney General to send federal registrars (referred to in the act as "examiners") and election monitors (referred to as "observers") to protect the right to register to vote and cast a ballot on Election Day.[14] The Justice Department may send examiners and observers to those political subdivisions (counties in most states; parishes in Louisiana; counties and independent cities in Virginia; townships in New Hampshire) the Section 4 formula covers and the Attorney General certifies as needing examiners and observers. Congress first enacted these provisions for five years, and then extended them (through amendments to the Section 4 coverage formula) for five years in 1970, seven years in 1975, and 25 years in 1982. The 1970 and 1975 extensions also expanded the Section 4 coverage formula, which most notably resulted in coverage of the State of Texas in 1975.

Congress' second overriding concern in 1965 was that the jurisdictions prohibited from using tests or devices for registration and voting could, potentially, enact new discriminatory voting practices and procedures that might prove to be ineffectually remedied through case-by-case litigation. Accordingly, Congress enacted Section 5 of the act,[15] which specifies that whenever jurisdictions subject to the Section 4 coverage formula "enact or seek to administer" a change in a voting practice or procedure, the jurisdictions must obtain federal approval, from the Attorney General or the United States District Court for the District of Columbia, before they may implement the changes. Thus, Congress sought to "shift the advantage of time and inertia from the perpetrators of evil to its victims."[16] Congress originally intended Section 5, like the examiner and observer provisions, to be in effect for only five years. However, as with the examiner and observer provisions, Congress extended Section 5 (through amendments to the Section 4 coverage formula) in 1970, 1975, and 1982 (for five years, seven years, and 25 years, respectively), and expanded geographic coverage in 1970 and 1975. As originally enacted, Section 5 prohibited discrimination on the basis of race or color. The 1975 extension expanded the groups protected by Section 5 to language minorities, defined as Hispanics, Asian Americans, American Indians, and Alaskan Natives.

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[12] 42 U.S.C. § 1973b. Section 4 requires that coverage determinations are first made state-by-state and then, in those states where coverage is not statewide, separately for each of the states' political subdivisions. Coverage applies to jurisdictions in which less than 50 percent of voting age citizens were registered on Nov. 1, 1964, or less than 50 percent of such citizens participated in the 1964 presidential elections. Section 14(c)(2) of the act, 42 U.S.C. § 1973*l*(c)(2), defines the term "political subdivision" to 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."

[13] 42 U.S.C. § 1973aa.

[14] 42 U.S.C. §§ 1973d-1973g.

[15] 42 U.S.C. § 1973c.

[16] South Carolina v. Katzenbach, 383 U.S. 301, 325.

Third, Congress wanted to codify and implement the 15th Amendment's guarantee that no person would be denied the right to vote. Thus, it gave the Justice Department and private individuals the ability to challenge discriminatory voting schemes in court. In states and localities not covered by Section 5, court challenges are the only means for enjoining discriminatory voting schemes. Section 2 of the act[17] contains the general prohibition on voting discrimination that is enforced through litigation, which Congress amended in 1982 to prohibit any voting practice or procedure that has a discriminatory result. The 1982 amendment made clear that proof of discriminatory intent is not required, while placing the focus on whether the political processes were equally accessible to minority voters.[18] The 1982 amendment led hundreds of counties, cities, and school districts throughout the country to change from at-large voting schemes to district election systems, either voluntarily, under threat of a lawsuit, or in the context of litigation.[19]

The act also provides special remedies for voting rights litigation. Section 3(a)[20] allows a court to designate the defendant jurisdiction for federal examiners and observers, and Section 3(c)[21] allows a court to require the defendant jurisdiction to obtain federal preclearance for its voting changes (either from that court or the Attorney General), both for a specified period of time.

Congress' fourth concern in enacting, or more accurately, in subsequently amending the Voting Rights Act has been to ensure that citizens who primarily speak a language other than English, and who have limited English proficiency, are not prevented from voting due to English-only registration forms, ballots, and other election materials. Initially, the act included a limited

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[17] 42 U.S.C. § 1973. Section 2 is the federal protection against any voting "standard, practice, or procedure" that results in a denial or abridgement of the right to vote on account of race or color, or membership in a language minority group.

[18] *See* S. REP. No. 97-417, at 15–16 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 179. Specifically, based on the totality of circumstances, a violation occurs when the political process is "not equally open to participation" by members of a particular protected class because they "have less opportunity than other members of the electorate to participate in the electoral process and to elect representatives of their choice."

[19] *See* Chandler Davidson and Bernard Grofman, *Quiet Revolution in the South*, Princeton University Press, 1994; The National Commission on the Voting Rights Act, *Protecting Minority Voters: The Voting Rights Act at Work 1982–2005*, February 2006, pp. 81–88 (hereafter cited as National Commission on the Voting Rights Act, *Protecting Minority Voters*). The National Commission on the Voting Rights Act (NCVRA) is a nonprofit coalition established by the Lawyers' Committee for Civil Rights Under Law to determine whether, and to what extent, voter discrimination has occurred since the last Voting Rights Act reauthorization in 1982. Its members include former elected and appointed officials, academics, lawyers, and others. Co-sponsors include the Asian American Justice Center, Asian American Legal Defense and Education Fund, Association of Communities Organized for Reform Now, Black Leadership Forum, Center for Civic Participation, Congressional Black Caucus Foundation, Demos: A Network of Ideas & Action, Korean American League for Civic Action, Leadership Conference on Civil Rights Education Fund, NAACP National Voter Fund, National Coalition on Black Civic Participation, National Congress of American Indians, National Voting Rights Institute, People for the American Way Foundation, Project Vote, Rainbow/Push Coalition, Rock the Vote, and the Southern Christian Leadership Conference. NCVRA held 10 hearings across the country between March and October 2005.

[20] 42 U.S.C. § 1973a(a).

[21] 42 U.S.C. § 1973a(c).

provision that protected the right to vote of persons educated in American-flag schools in which English was not the predominant classroom language.[22] In 1975, Congress substantially expanded the language minority protections by enacting Sections 4(f)(4) and 203.[23] These sections require that covered jurisdictions provide election materials and information in specified languages in addition to English. Section 4(f)(4) applies to those jurisdictions added to Section 5 and examiner/observer coverage by the 1975 amendment to the Section 4 coverage formula. Congress originally enacted the provision for seven years and extended it in 1982 for 25 years (along with Section 5 and the examiner/observer provisions). Section 203 has its own coverage formula. Congress enacted it for 10 years in 1975, extended it in 1982 for 10 years, and extended it again until 2007 in 1992. Both Sections 4(f)(4) and 203 are enforced through litigation.

A fifth concern Congress identified when it amended the act in 1982 relates to voters who may require assistance in casting their ballot. Section 208 of the act provides that "[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union."[24]

Lastly, since its enactment in 1965, the Voting Rights Act has prohibited persons from engaging in voter intimidation and from intimidating federal examiners and observers. It also has provided for criminal penalties for various violations of the act.[25]

Methodology

This report generally examines the period from August 1965 to June 30, 2004, focusing specifically on the current extension period and Section 5. Except for Section 203, Congress last extended the temporary provisions of the Voting Rights Act in legislation adopted on June 29, 1982 (Congress extended Section 203 in 1982 and then again in 1992).[26] The Commission subpoenaed and the Justice Department provided most of the information needed to prepare this report during the late summer and early fall of 2004.

This report is based on a detailed review of the thousands of pages of documents the Justice Department provided to the Commission, supplemented by reviews of relevant court decisions, books and articles written by commentators on voting rights issues, and previous Commission reports on the Voting Rights Act.

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[22] 42 U.S.C. § 1973b(e).

[23] 42 U.S.C. §§ 1973b(f)(4) and 1973aa-1a.

[24] 42 U.S.C. § 1973aa-6.

[25] Sections 11 and 12, 42 U.S.C. §§ 1973i and 1973j. The 1982 extension also specified that Congress was to reconsider Section 5, the examiner and observer provisions, and the Section 4(f)(4) language minority requirement in 1997. Section 4(a)(7), 42 U.S.C. § 1973b(a)(7). This review did not take place.

[26] Pub. L. No. 97-205, 96 Stat. 131 (1982); Pub. L. No. 102-344, 106 Stat. 921 (1992).

With regard to the Section 5 preclearance requirement, the Commission received essentially every letter the department issued denying Section 5 preclearance from January 1, 1980 through June 2004 (approximately 675 letters)[27]; listings the department compiled of all preclearance denials and all lawsuits Section 5 jurisdictions filed seeking preclearance from 1965 through June 2004; recent briefs the department filed in district court and the Supreme Court in Section 5 preclearance lawsuits; a listing of Section 5 litigation the department filed seeking to enjoin the implementation of unprecleared voting changes; numerous statistical tables regarding Section 5 submissions and denials from 1965 through June 2004; a listing of lawsuits Section 5 jurisdictions filed seeking to bail out (exempt themselves) from coverage and recent consent decrees in these lawsuits; the department's current Procedures for the Administration of Section 5 and all amendments adopted or proposed since 1982; district court orders requiring certain jurisdictions not covered under Section 5 to temporarily obtain federal preclearance for their voting changes; and all briefs the Justice Department filed in the Supreme Court since 1993 in cases in which a redistricting plan a Section 5 jurisdiction adopted was alleged to be an unconstitutional racial or ethnic gerrymander.[28]

With regard to the act's language minority requirements, the Commission reviewed all court decisions and settlements in language minority lawsuits the Justice Department filed from 1978 through November 2004, as well as non-litigation settlements the department entered into during this time period; department correspondence regarding enforcement issues; the department's current Language Minority Guidelines and amendments adopted since 1982; and a department summary describing its enforcement activities.

With regard to the act's examiner and observer authorizations, the Commission obtained a list of all counties the Attorney General certified for examiners and observers from 1965 through June 2004, district court orders certifying additional counties for examiners and observers on a temporary basis, and listings of all jurisdictions to which the department has assigned federal examiners and observers from July 1982 though June 2004.[29]

Recognizing that jurisdictions' motives for proposing voting changes cannot be ascertained without a close examination of each voting change submission and the Justice Department's reasons for objections to submissions, the overall numbers and scope of objections serve as a possible indicator of actual or potential discriminatory voting changes. Other indicators such as the U. S. District Court of the District of Columbia's denial of declaratory judgments and

[27] The division was unable to locate two of the letters.

[28] A "gerrymander" refers to the act of drawing of legislative district boundaries to electorally benefit one group over another group.

[29] The Commission also requested that the Justice Department provide certain internal documents created since January 1997 regarding Section 5 preclearance reviews, its consideration of lawsuits to enforce Section 5 or the language minority requirements, any consideration of potential amendments to the Section 5 Procedures or the Language Minority Guidelines, and any consideration of whether to issue other policy statements relating to Section 5 or the language minority requirements. The Justice Department declined to provide these documents, citing deliberative process privilege and attorney work product protection.

jurisdictions' withdrawal letters[30] are beyond the scope of this study. These other two indicators when viewed in conjunction with objections slightly raise the level of questionable proposed voting changes.[31] Some would argue that Justice Department objections underrepresent such efforts by Section 5 jurisdictions to the extent that any covered jurisdictions illegally implement voting changes without preclearance.[32] Others would argue that the Justice Department objections overstate discriminatory voting changes to the extent that the Justice Department has raised objections of questionable validity. The latter view is bolstered by judicial criticisms of the Justice Department's objections, including criticism that the Voting Rights Section has worked too closely with advocacy groups, as well as the department's poor record defending its positions before the courts.[33]

The Section 5 Preclearance Requirement

The Preclearance Procedure

To obtain Section 5 preclearance, either from the Attorney General or the U.S. District Court for the District of Columbia, covered jurisdictions must demonstrate that a voting change neither has the purpose nor will have the effect of discriminating based on race, color, and/or membership in a language minority group depending on whether the jurisdiction was covered as a result of the original enactment of later amendments. "Membership in a language minority group" includes "persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage."[34] Covered jurisdictions have the burden of proof in demonstrating the absence of discrimination.[35]

Covered jurisdictions may not implement voting changes unless and until they obtain federal preclearance. The Justice Department has 60 days to respond to a request for a voting change. Where the Justice Department or court denies a preclearance request, the jurisdiction can continue to maintain the pre-existing voting practice or procedure (typically the practice or procedure in effect on the jurisdiction's coverage date or a subsequent precleared practice or procedure), or may adopt a substitute and seek preclearance for it. If, as sometimes has occurred, a jurisdiction unlawfully implements a change before the Justice Department denies

[30] A withdrawal letter is a jurisdiction's official letter notifying the Justice Department of its withdrawal of the change/s it previously submitted after the department's follow-up inquiries. *Protecting Minority Voters The Voting Rights Act at Work 1982–2005,* A Report by The National Commission on the Voting Rights Act, February 2006, pp. 50, 57–58.

[31] National Commission on the Voting Rights Act, *Protecting Minority Voters,* no page number, figure 1.

[32] National Commission on the Voting Rights Act, *Protecting Minority Voters,* p.52.

[33] *See, e.g.,* Miller v. Johnson, 864 F. Supp. 1354 (S.D.Ga. 1994) (criticizing the Justice Department's enforcement record as partisan and manipulative in its efforts to implement max-black redistricting schemes). *See* footnote 91 for a more detailed description of the court's findings. *See also* Abigail M. Thernstrom, *Whose Votes Count?,* pp. 169–91 (offering evidence that the Justice Department has exhibited a pattern of flawed reasoning and purposeful circumvention of court precedent, and that it routinely failed to make the distinction between intentional discrimination and discriminatory effect). Ibid., pp. 170–71, 174.

[34] Section 14(c)(3), 42 U.S.C. § 1973(c)(3).

[35] Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. § 51.52(a) (2005) (hereafter cited as "Section 5 Procedures").

preclearance, the jurisdiction must return to the pre-existing practice or procedure or adopt a substitute change. In the case of redistrictings, a preclearance denial typically will result in the jurisdiction adopting a new plan (which then must be submitted for preclearance) since the redistricting plan that previously was in effect typically can no longer be implemented because it violates the constitutional requirement of one-person, one-vote.

The geographic coverage of Section 5 is determined by the formula set forth in Section 4(b) of the act. As originally enacted in 1965, and amended in 1970 and 1975, the formula specifies that a jurisdiction is covered if: 1) less than 50 percent of its voting-age residents were registered to vote on November 1, 1964, 1968, or 1972 or voted in the presidential elections in those years; and 2) at the same time, the jurisdiction utilized a test or device for determining eligibility to vote or to register to vote.[36] Devices include literacy and moral fitness tests and, for purposes of the coverage determinations based on the 1972 registration and voting rates, the use of English-only election materials and information. The latter applies to jurisdictions in which language minority persons constitute more than 5 percent of the citizen voting-age population. Covered jurisdictions may seek to bail out from coverage by filing a lawsuit in the U.S. District Court for the District of Columbia.[37]

[36] Congress determined at that time that registration rates lower than 50 percent were a clear indication of voting discrimination in these jurisdictions. Some scholars have argued that registration and turnout trends in recent elections demonstrate that the coverage formula no longer provides a reasonable indicator of discrimination in the covered jurisdictions. *See*, for example, Charles S. Bullock and Ronald Keith Gaddie, "An Assessment of Voting Rights Progress in Georgia," (hereafter cited as Bullock and Gaddie, "An Assessment of Voting Rights Progress in Georgia") "An Assessment of Voting Rights Progress in Louisiana," (hereafter cited as Bullock and Gaddie, "An Assessment of Voting Rights Progress in Louisiana.") and "An Assessment of Voting Rights Progress in South Carolina," (hereafter cited as Bullock and Gaddie, "An Assessment of Voting Rights Progress in South Carolina") papers prepared for the American Enterprise Institute, February 2006. Dr. Gaddie testified before Congress that, based on evidence of increased voter participation and improved voter opportunity, Congress should explore how to remove federal oversight where it is no longer needed. Ronald Keith Gaddie, professor of political science, University of Oklahoma, testimony before the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution, Oct. 21, 2005 (hereafter cited as Gaddie testimony before Congress). Moreover, none of the covered jurisdictions has a "test or device," and none has had one for many years. Others, however, have taken a different view, arguing that despite progress, discrimination continues in the covered jurisdictions and, therefore, Section 5 remains necessary. *See* U.S. Commission on Civil Rights, *Reauthorization of the Temporary Provisions of the Voting Rights Act: An Examination of the Act's Section 5 Preclearance Provision*, briefing report, February 2006, statements of Commissioners Arlan Melendez and Michael Yaki, pp. 59–63; The National Commission on the Voting Rights Act, Protecting *Minority Voters: The Voting Rights Act at Work 1982–2005*, February 2006; and USCCR briefing, Oct. 7, 2005, statement of Jon M. Greenbaum, director, Voting Rights Project, Lawyers' Committee for Civil Rights Under Law, transcript pp. 60–70; and Anita S. Earls, director of advocacy, University of North Carolina Center for Civil Rights, testimony before the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution, Oct. 25, 2005.

[37] 42 U.S.C. §1973b(a). *See infra* at pp. 47–49 for a further discussion of the legal standard for obtaining bailout.

Section 5 applies to nine states in their entirety: Alaska, Alabama, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia.[38] The provision also covers substantial portions of two other states—North Carolina (40 of the state's 100 counties) and New York (the Bronx, Brooklyn, and Manhattan)—and relatively small portions of California, Florida, Michigan, New Hampshire, and South Dakota.[39] (See table 1.)

TABLE 1
Section 5 Jurisdictions (since July 1, 1982)

Statewide coverage	Coverage of a substantial portion of a state	Minimal coverage of a state	Bailed out after July 1, 1982 (year)
Alabama	New York (Bronx, Kings, and New York Counties)	California (4 counties)	Colorado (1 county) (1984)
Alaska	North Carolina (40 counties)	Florida (5 counties)	Connecticut (3 towns) (1984)
Arizona	Virginia (statewide except for 9 counties and independent cities that bailed out beginning in 1997)	Michigan (2 townships)	Hawaii (1 county) (1984)
Georgia		New Hampshire (10 towns)	Idaho (1 county) (1984)
Louisiana		South Dakota (2 counties)	Massachusetts (9 towns) (1983)
Mississippi			Virginia (9 counties and independent cities since 1997)
South Carolina			Wyoming (1 county) (1982)
Texas			
Virginia (until 1997)			

Caption: Section 5 statewide coverage includes Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia. Section 5 also covers parts of California, Florida, Michigan, New Hampshire, New York, North Carolina, and South Dakota.
Source: U.S. Department of Justice, Civil Rights Division, Voting Section, "Section 5 Covered Jurisdictions," <http://www.usdoj.gov/crt/voting/sec_5/covered.htm> (last accessed Dec. 21, 2005); U.S. Department of Justice, Civil Rights Division, Voting Section, "Voting Section Cases in Which the United States Participation Began Since Oct. 1, 1976," response to U.S. Commission on Civil Rights document request, Aug. 20, 2004.

Pursuant to Section 3(c) of the Voting Rights Act, a court may designate other jurisdictions as subject to the same preclearance requirements in Section 5 for a limited period for specified

[38] Section 5 applies statewide in Virginia under the Voting Rights Act coverage formula. The 1982 extension allows individual counties in a state covered in its entirety to bail out. Since 1997 nine counties and independent cities in Virginia have done so.

[39] U.S. Department of Justice, Civil Rights Division, Voting Section "Section 5 Covered Jurisdictions," *n. d.*, <http://www.usdoj.gov/crt/voting/sec_5/covered.htm> (last accessed Jan. 25, 2006).

changes.[40] Table 2 lists the jurisdictions covered under Section 3(c) from July 1982 through June 2004.

TABLE 2
Section 3(c) Jurisdictions

State	Geographic coverage	Covered voting changes	Time period
Arkansas	Statewide	Changes relating to a majority vote requirement in general elections	1990 until further order of the court
California	Alameda County	All voting changes	1996-1998
	Los Angeles County	Changes affecting the method of electing the LA County Board of Supervisors	1991-2002
Florida	Escambia County	All voting changes	1979-1984
Illinois	Alexander County	All voting changes	1983-1988
Nebraska	Thurston County	All voting changes	1983-1988
New Mexico	Statewide	State legislative redistrictings	1984-1994
	Bernalillo County	All voting changes	1998-2003
	Cibola County	All voting changes	1994-2004
	McKinley County	All voting changes	1986-1996
	Sandoval County	All voting changes	1994-2004
	Socorro County	All voting changes	1994-2004
South Dakota	Buffalo County	All voting changes	2004-2013

Caption: Section 3(c) jurisdictions have included the entire state of Arkansas and specific counties in California, Florida, Illinois, Nebraska, New Mexico, and South Dakota.
Source: U.S. Department of Justice, Civil Rights Division, Voting Section, "Section 3(c) Cases," response to U.S. Commission on Civil Rights document request, Aug. 20, 2004.

Section 5 broadly applies to all voting changes that a covered jurisdiction enacts or seeks to administer. Coverage applies to voting changes that are both major or minor in scope, regardless of the manner in which they were adopted. [41] Among others, Section 5 covers changes to:

[40] The only difference between the Section 3(c) and Section 5 procedure is that Section 3(c) jurisdictions seek judicial preclearance from the federal district court that ordered coverage, instead of the District Court for the District of Columbia.

[41] *See* 42 U.S.C.S. 1973c (2005); Young v. Fordice, 520 U.S. 273 (1997); Presley v. Etowah County, 502 U.S. 491 (1992); NAACP v. Hampton County Election Commission, 470 U.S. 166 (1985); McDaniel v. Sanchez, 452 U.S. 130 (1981); Allen v. State Board of Elections, 393 U.S. 544 (1969); and Section 5 Procedures, 28 C.F.R. §§ 51.7, 51.12, 51.17, and 51.18.

(1) redistricting plans, annexations, and de-annexations;
(2) methods of elections (e.g., from at-large to single-member districts, the use of a majority vote requirement, or from elective to appointive and vice versa) or the number of elected officials;
(3) precinct lines, polling place locations, and absentee or early voting locations;
(4) ballot format, balloting rules, polling place procedures, early voting and absentee voting procedures, ballot initiatives, referenda, and recall procedures;
(5) special election dates;
(6) voter registration;
(7) the procedures and standards for becoming a candidate for elective office and campaign finance requirements;
(8) the public electoral functions adopted by political parties; and
(9) the languages in which jurisdictions provide voting materials and information to the public.[42]

A jurisdiction may seek judicial preclearance either directly from the U.S. District Court for the District of Columbia or after first seeking and being denied preclearance from the Attorney General (the Attorney General's preclearance denial is referred to as an "objection"). In court, the jurisdiction files for a declaratory judgment, and the case is heard *de novo*.[43] Section 5 specifies that a special three-judge panel (composed of two district court judges and a court of appeals judge) must hear declaratory judgment actions, and appeals go directly to the Supreme Court.

Congress enacted the administrative preclearance process to provide an expeditious and generally inexpensive means for covered jurisdictions to obtain preclearance.[44] The Attorney General must make the preclearance determination within 60 days of receiving the preclearance request, or the change automatically is precleared (in certain circumstances the Attorney General may re-start the 60-day review period).[45] It is Justice Department practice to affirmatively respond to all submitted changes (rather than acting to preclear submitted changes by simply not responding within the 60-day review period).[46]

The Attorney General's Procedures for the Administration of Section 5 govern the administrative preclearance process.[47] The process is relatively informal compared to federal court litigation (i.e., not adversarial, neither includes parties nor testimony, and the Justice Department does not

[42] Section 5 Procedures, 28 C.F.R. § 51.13.

[43] *De novo* means that if the Attorney General previously objected, the court undertakes to review the proposed change anew and does not simply review the Attorney General's decision. Decisions by the Attorney General to preclear voting changes are not subject to any review in the courts. Morris v. Gressette, 432 U.S. 491 (1977). Harris v. Bell, 562 F.2d 772 (D.C. Cir. 1977). *See also* Section 5 Procedures, 28 C.F.R. § 51.13(e).

[44] Morris v. Gressette, 432 U.S. 491 (1977). *See also* McCain v. Lybrand, 465 U.S. 236 (1984).

[45] Section 5 Procedures, 28 C.F.R. §§ 51.37, 51.39.

[46] Section 5 Procedures, 28 C.F.R. § 51.41.

[47] Section 5 Procedures, 28 C.F.R. pt. 51.

have subpoena power). The Justice Department obtains information from covered jurisdictions and interested individuals and organizations through written submissions, telephone conversations, and meetings in Washington, DC. The Attorney General has delegated decisionmaking authority under Section 5 to the Assistant Attorney General for Civil Rights,[48] and in practice the Division's Voting Section is responsible for the receipt, investigation, and analysis of all voting changes submitted for administrative preclearance.

Section 5 specifies that preclearance by either the Justice Department or the district court does not preclude the department or private individuals from challenging the precleared provision in court, claiming it violates other provisions of the Voting Rights Act, other federal voting rights statutes, or the Constitution.

Framing the Extension Question

From its inception, Section 5 has been recognized as an extraordinary measure justified as a temporary remedy needed to undo nearly a century of pervasive, unremitting, and extraordinary discrimination that followed ratification of the 15th Amendment in 1870. Section 5 is unique among federal laws because of the change it imposes on the traditional relationship between the federal government and state and local governments. Federal law historically presumes state and local laws are valid unless and until challenged in court and found to violate a federal provision. Under Section 5, however, the presumption is reversed, and state and local laws are presumed invalid unless and until the Attorney General or the District Court for the District of Columbia determines them lawful. As the Supreme Court stated in 1966 in upholding the constitutionality of Section 5:

> [Section 5] may have been an uncommon exercise of congressional power . . . but the Court has recognized that exceptional conditions can justify legislative measures not otherwise appropriate. Congress knew that some of the States covered by [the Section 4 coverage formula] had resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetrating voting discrimination in the face of adverse federal court decrees. Congress had reason to suppose that these States might try similar maneuvers in the future in order to evade the remedies for voting discrimination contained in the Act itself. Under the compulsion of these unique circumstances, Congress responded in a permissibly decisive manner.[49]

The Supreme Court again upheld the constitutionality of Section 5 in 1980, reaffirming its 1966 decision and sustaining Congress' 1975 determination to extend Section 5 for an additional

[48] Section 5 Procedures, 28 C.F.R. § 51.3.

[49] South Carolina v. Katzenbach, 383 U.S. 301, 334-35 (1966). Justice Black dissented as to the constitutionality of Section 5, arguing that "if all the provisions of our Constitution which limit the power of the Federal Government and reserve other power to the States are to mean anything, they mean at least that the States have power to pass laws and amend their constitutions without first sending their officials hundreds of miles away to beg federal authorities to approve them." *Id.* at 359.

seven years as "both unsurprising and unassailable."[50] In upholding the extension, the Court highlighted Congress' finding that progress under the act still was limited and fragile, and that the Justice Department's Section 5 objections record indicated a continuing need for the provision's remedy. The Court further noted that the extension would result in Section 5 being in force for only 17 years compared to the near century of pervasive discrimination which followed ratification of the 15th Amendment and which engendered Section 5's enactment in 1965.[51] The Supreme Court did not reconsider Section 5's constitutionality following the 1982 extension.

Extension presents both policy and constitutional dilemmas. In 2007, Section 5 will have been in effect for more than four decades, during which Congress extended it periodically and for shorter time periods than the current extension period. By 2007, the pervasive discrimination that preceded the act's passage will be significantly more distant in time. In the four decades since, the nation has experienced dramatic social, economic, and political changes that have improved opportunities for all Americans. In particular, social changes have significantly expanded the opportunities available to minorities, not only in electoral politics, but also in a host of other areas.[52] Together with these broader social changes, Section 5 enforcement and other Voting Rights Act remedies, have enabled minority citizens to make substantial strides toward achieving equal electoral opportunity in covered jurisdictions.[53] These changes have been reflected, for instance, in voter registration and turnout rates, as well as in the electoral success of minority candidates. For example, recent research in three covered states in the South (Georgia, South Carolina, and Louisiana) demonstrates that voter registration and turnout rates have grown markedly since the Voting Rights Act's passage, as has the number of minorities elected to office.[54]

In Georgia, the gap between white and black registration rates narrowed steadily since the Voting Rights Act's last reauthorization in 1982, with the self-reported black rate surpassing that of whites in 2004 (64.2 percent and 63.5 percent, respectively).[55] These are remarkable figures given the educational and economic disparities between the two racial groups and the high

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[50] Rome v. United States, 446 U.S. 156, 182 (1980).

[51] *Id*. at 180–82. Justices Powell, Rehnquist, and Stewart dissented, arguing that Section 5 violates constitutional principles of federalism.

[52] *See*, for example, Abigail and Stephen Thernstrom, *America in Black and White* (New York: Simon & Schuster, 1997).

[53] *See*, for example, Donahue, "The Report of My Death Are Greatly Exaggerated," p. 1651; USCCR briefing, Oct. 7, 2005, testimony of Ronald Keith Gaddie, professor of political science, the University of Oklahoma, pp. 41, 45–49; Grant M. Hayden, "Resolving the Dilemma of Minority Representation," *California Law Review*, vol. 92, (December 2004), p. 1,589 (hereafter cited as Hayden, "Resolving the Dilemma of Minority Representation"); and USCCR briefing, Oct. 7, 2005, testimony of Edward Blum, visiting fellow, American Enterprise Institute, transcript, p. 31.

[54] *See*, for example, Bullock and Gaddie, "An Assessment of Voting Rights Progress in Georgia;" Bullock and Gaddie, "An Assessment of Voting Rights Progress in South Carolina;" and Bullock and Gaddie, "An Assessment of Voting Rights Progress in Louisiana."

[55] Bullock and Gaddie, "An Assessment of Voting Rights Progress in Georgia," p. 33, table 2.

correlation between socioeconomic status and voter participation. At the same time, the gap in registration rates in non-southern states remained present, with blacks lagging behind whites by 6 percentage points in 2002, the most recent year for which such data are available. Black voter turnout rates in Georgia increased from 53.5 percent in 1996 to 72.2 percent in 2004.[56]

In South Carolina, although black registration rates were 3.3 percentage points behind whites in 2004, at 71.1 percent they were higher than they have ever been.[57] Black voter turnout rates (65.8 percent) also lagged behind white turnout rates (72.3 percent) in 2004, but they were similar to those among African Americans nationwide.[58]

Finally, between 1980 and 2004, self-reported registration rates between blacks and whites were similar in Louisiana, each above 70 percent for most years. Black voter registration rates in Louisiana are higher than blacks outside the South; in 2002, blacks in Louisiana were 16.5 percentage points more likely to report being registered than non-southern blacks. Similarly, black turnout rates in Louisiana are higher than in states outside the South; in the 2000 election, the difference was 10 percentage points.[59] And black and white turnout rates in Louisiana are consistently similar.

The result in each of the three states examined has been a dramatic increase in the number of black elected officials between 1969 and 2001: in Georgia from 30 to 611; in South Carolina from 28 to 534; and in Louisiana from 65 to 705.[60] Nationwide, between 1970 and 2001, the number of black elected officials increased from 1,469 to 9,101.[61]

With this progress and with the passage of time, the concern about Section 5's encroachment on state authority will loom larger.[62] This context gives rise to the following legislative questions:

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[56] Bullock and Gaddie, "An Assessment of Voting Rights Progress in Georgia," p. 35, table 4.

[57] Bullock and Gaddie, "An Assessment of Voting Rights Progress in South Carolina," p. 30, table 1.

[58] Bullock and Gaddie, "An Assessment of Voting Rights Progress in South Carolina," pp. 12, 32, table 3.

[59] Bullock and Gaddie, "An Assessment of Voting Rights Progress in Louisiana," p. 10, table 3.

[60] Bullock and Gaddie, "An Assessment of Voting Rights Progress in Georgia," p. 36, table 5; Bullock and Gaddie, "An Assessment of Voting Rights Progress in South Carolina," p. 33, table 4; and Bullock and Gaddie, "An Assessment of Voting Rights Progress in Louisiana," p. 12, table 4.

[61] David A. Bositis, "Black Elected Officials," a statistical summary prepared for the Joint Center for Political and Economic Studies, 2001, p. 13, table 1. In the three states examined here, the proportion of elected officials who are black are as follows: Georgia, 9.3 percent (blacks comprised 26.6 percent of the state's voting age population in 2000); South Carolina, 13.5 percent (blacks comprise 27.2 percent of the state's voting age population); and Louisiana, 13.9 percent (blacks comprise 29.7 percent of the state's voting age population). Ibid., p. 16, table 3.

[62] *See, e.g.,* .for example, Richard L. Hasen, "Congressional Power to Renew the Preclearance Provision of the Voting Rights Act After Tennessee v. Lane," *Ohio State University Law Journal*, vol. 66 (2005), p. 177; and Samuel Issacharoff, "Is Section 5 of the Voting Rights Act A Victim of Its Own Success?", *Columbia Law Review*, vol. 104 (October 2004), p.1710 (hereafter cited as Issacharoff, "Is Section 5 a Victim of Its Own Success?"); USCCR briefing, Oct. 7, 2005, testimony of Edward Blum, visiting fellow, American Enterprise Institute, transcript, p. 38; and USCCR briefing, Oct. 7, 2005, testimony of Roger Clegg, president and general counsel, Center for Equal Opportunity, transcript, p. 56.

- Should Section 5 be extended? A decision to extend would represent a determination that the progress to date remains insufficient and/or a real and substantial possibility of backsliding exists should covered jurisdictions be free to adopt new voting practices and procedures without federal approval. A decision not to extend would represent a determination that any new discriminatory practices or procedures may be appropriately addressed through the ordinary processes of litigation, in the same manner that individuals challenge such practices or procedures elsewhere in the country.

- If Section 5 is extended, how long should that extension be?

- If Section 5 is extended, should Congress reverse recent Supreme Court decisions interpreting Section 5 that have limited the scope of the preclearance standard?[63]

- If Section 5 is extended, should it continue to cover all voting changes, or should Section 5 be amended to focus only on changes that the Justice Department has most frequently found discriminatory and any others that present significant concerns?

- If Section 5 is extended, should Congress alter the procedure by which covered jurisdictions may seek to bail out from coverage and/or amend the formula for determining geographic coverage, such as, updating the trigger to reflect registration and turnout figures in the 2004 election?

Drawing conclusions about these legislative policy questions based on the Justice Department's record of Section 5 enforcement requires a detailed analysis of that record.[64]

The Supreme Court's Construction of Section 5 Since 1982

The Supreme Court's interpretation and application of Section 5 since 1982 tells two very different stories. On the one hand, where the issue is Section 5 coverage or procedure, the Court

[63] *See* Reno v. Bossier Parish School Board, 520 U.S. 471 (1997); Reno v. Bossier Parish School Board, 528 U.S. 320 (2000); and Georgia v. Ashcroft 539 U.S. 461 (2003).

[64] Several commentators have analyzed the constitutional issues that would be presented by a congressional extension of Section 5 in 2007. *See* USCCR briefing, Oct. 7, 2005, testimony of Edward Blum, visiting fellow, American Enterprise Institute, transcript, p. 38; Roger Clegg, president and general counsel, Center for Equal Opportunity, transcript, p. 56; and Jon M. Greenbaum, director, Voting Rights Project, Lawyers' Committee for Civil Rights Under Law, transcript, pp. 69–70. *See also* Issacharoff, "Is Section 5 a Victim of Its Own Success?"; Richard L. Hasen, "Congressional Power to Renew the Preclearance Provision of the Voting Rights Act After Tennessee v. Lane," *Ohio State University Law Journal*, vol. 66 (2005); Grant M. Hayden, "The Supreme Court and Voting Rights: A More Complete Exit Strategy," 83 *N.C.L. Rev.* 949 (2005); Michael J. Pitts, "Section 5 of the Voting Rights Act: A Once and Future Remedy?," 81 *Denver U. L. Rev.* 225 (2003) (hereafter cited as Pitts, "Section 5: A Once and Future Remedy?"); Paul Winke, "Why the Preclearance and Bailout Provisions of the Voting Rights Act Are Still a Constitutionally Proportionate Remedy," 28 *N.Y.U. Rev. Law & Social Change* 69 (2003); Victor Andres Rodriguez, "Section 5 of the Voting Rights Act of 1965 After Boerne: The Beginning of the End of Preclearance?," 91 *Cal. L. Rev.* 776 (2003); Pamela Karlan, "Two Section Twos and Two Section Fives: Voting Rights and Remedies After Flores," 39 *Wm. & Mary L. Rev.* 725 (1998).

has continued to apply the broad interpretations set forth in its pre-1982 decisions. On the other hand, where the Section 5 discrimination standard is the issue, the Court, beginning in 1995, has been extremely critical of the Justice Department's application of the preclearance standard.

Section 5 Enforcement Actions

Lawsuits dealing with Section 5 coverage or procedure are known as Section 5 enforcement lawsuits. The issues presented in these cases include the types of changes Section 5 covers, Section 5's prohibition on the implementation of unprecleared changes, and Justice Department procedures for Section 5 administrative preclearance reviews.[65] (See table 3 for a listing of Supreme Court decisions and selected affirmances in Section 5 enforcement cases from July 1, 1982 through June 30, 2004.)

TABLE 3
Supreme Court Decisions and Selected Supreme Court Affirmances in Section 5 Enforcement Cases (July 1, 1982 through June 30, 2004)

Subject	Case	Holding
Section 5 coverage	NAACP v. Hampton County Election Commission, 470 U.S. 166 (1985)	Preclearance required for administrative voting changes adopted to implement a previously precleared change.
	United States v. State of Texas, No. SA-85-CA-2199 (W.D. Tex. Aug. 1, 1985), aff'd mem., 474 U.S. 1078 (1986)	Preclearance required for discretionary setting of special election dates.
	Haith v. Martin, 618 F. Supp. 410 (E.D.N.C. 1985), aff'm mem., 477 U.S. 901 (1986)	Preclearance required for changes to the method of electing state judges.
	Presley v. Etowah County Commission, 502 U.S. 491 (1992)	Section 5 does not cover changes in the powers and duties of elected officials unrelated to the authority to adopt or implement voting practices or changes.
	Morse v. Republican Party of Virginia, 517 U.S. 273 (1996)	Preclearance required for changes to eligibility rules for participation in a political party convention held to nominate a candidate for public office.
	Young v. Fordice, 520 U.S. 273 (1997)	Preclearance required for discretionary changes implemented to enforce the requirements of federal law (in this case, the National Voter Registration Act of 1993).
	Foreman v. Dallas County, Texas, 521 U.S. 979 (1997)	Preclearance required for administrative voting changes.
	Lopez v. Monterey County, 525 U.S. 266 (1999)	Preclearance required when a covered county in a noncovered state implements voting changes

[65] Allen v. State Board of Elections, 393 U.S. 544 (1969). Section 5 enforcement suits are brought in local district courts (not the U.S. District Court for the District of Columbia), and do not consider whether or not the changes at issue are discriminatory. Section 5 enforcement suits, like their preclearance cousins, are tried before a three-judge district court with a direct appeal to the Supreme Court. *Id*.

		mandated by state law.
Prohibition on implementation of unprecleared changes	Lucas v. Townsend, 486 U.S. 1301 (1988) (Kennedy, J., Circuit Justice)	Sitting as the Circuit Justice, Justice Kennedy issued an order enjoining a special election that had not received Section 5 preclearance.
	Clark v. Roemer, 498 U.S. 954 (1991)	Injunction issued to prohibit holding of elections that would implement unprecleared voting changes.
	Clark v. Roemer, 500 U.S. 9 (1996)	In Section 5 enforcement actions, district courts are obligated to enjoin holding of any election implementing an unprecleared change, except perhaps where an extreme circumstance is present.
	Lopez v. Monterey County, 519 U.S. 9 (1996)	Reaffirmed 1991 holding in *Clark*.
Procedures governing submission of changes to the Attorney General	McCain v. Lybrand, 465 U.S. 236 (1984)	Jurisdictions submitting voting changes to the Attorney General for preclearance must identify with specificity the particular voting changes for which preclearance is requested. Related voting changes not properly identified in the submission are not included in the preclearance request, and thus are not precleared by operation of law if the Attorney General preclears the identified changes. In addition, preclearance of a change does not automatically include preclearance of prior, related, unprecleared changes.
	Clark v. Roemer, 500 U.S. 646 (1991)	Reaffirmed preclearance submission rules set forth in *McCain*.

Caption: Between July 1, 1982 and June 30, 2004, the U.S. Supreme Court decided numerous cases involving Section 5 coverage, implementation of unprecleared changes, and procedures governing submission of changes to the Attorney General.

The Supreme Court's first decision in a Section 5 enforcement lawsuit, *Allen* v. *State Board of Elections* (1969), set in place the Court's broad approach to construing Section 5's reach with regard to the types of changes covered.[66] With perhaps one exception since then, the Court has remained on the course established in *Allen*.[67] In the post-1982 period, the Court has held (or affirmed lower court rulings) that Section 5 covers voting changes implemented through a state or locality's administrative election machinery (i.e., those not enacted legislatively);[68] changes to the method of electing state court judges (i.e., Section 5 does not apply only to voting for executive and legislative officials);[69] changes a political party adopted relating to a public

[66] *Id.*

[67] The one divergent decision since 1982 was the Supreme Court's determination that Section 5 generally does not cover changes to the powers and duties of elected officials. *See* Presley v. Etowah County, 502 U.S. 491 (1992). However, also note that changes do not need to be precleared that have been ordered by a federal court and thus do not reflect the policy preferences of elected officials. *See* Connor v. Johnson, 402 U. S. 690 (1971)

[68] NAACP v. Hampton County Election Commission, 470 U.S. 166 (1985).

[69] Haith v. Martin, 618 F. Supp. 410 (E.D.N.C. 1985), *aff'd*, 477 U.S. 901 (1986).

electoral function that state law granted the party;[70] discretionary changes enacted to implement mandatory provisions of the National Voter Registration Act of 1993;[71] and state-law-mandated changes where a county is covered by Section 5, but the state is not.[72]

The Court also, in its post-1982 decisions, has continued to interpret Section 5 stringently with regard to the statute's prohibition on the implementation of unprecleared changes. In particular, the Court has held that district courts are obligated to enjoin any future implementation of an unprecleared change, except perhaps in extraordinary circumstances.[73]

Lastly, the Court has continued to protect the Justice Department's preclearance process. Section 5 specifies that a submitted voting change is automatically precleared if the Attorney General does not interpose an objection within 60 days. Subsequently, jurisdictions have claimed, in certain instances, that particular changes were precleared by default when their submission to the Justice Department was ambiguous, the department was unaware that the submission included the change, and the department did not interpose an objection to the submission within the 60-day review period. Following the approach established in *Allen*, the Court has held in its post-1982 decisions that it is the covered jurisdiction's obligation to clearly identify to the Justice Department the changes for which it is requesting preclearance. Accordingly, changes that are not clearly identified (and that are not otherwise located in the submission by the Justice Department) cannot escape review and be automatically precleared by operation of the 60-day requirement.[74]

Section 5 Preclearance Standard

The Section 5 preclearance standard seemingly presents a discrimination test that is uncompromising and all-encompassing—a voting change may not be implemented if it has either a discriminatory purpose or a discriminatory effect.[75] Discriminatory "effect" had a specialized meaning, pursuant to a 1976 Supreme Court decision in *Beer* v. *United States*.[76] In *Beer*, the Court held that a change has a discriminatory effect under Section 5 only when it "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."[77] Thus, under *Beer*, a voting change that makes minority voters worse off violates the Section 5 effect test.[78] A change that leaves minority voters in the same position as

[70] Morse v. Republican Party of Virginia, 517 U.S. 186 (1996).

[71] Young v. Fordice, 520 U.S. 273 (1997).

[72] Lopez v. Monterey County, 525 U.S. 266 (1999).

[73] Lopez v. Monterey County, 519 U.S. 9 (1996); Clark v. Roemer, 500 U.S. 646 (1991).

[74] Clark v. Roemer, 500 U.S. 646 (1991); McCain v. Lybrand, 465 U.S. 236 (1984).

[75] 42 U.S.C.S. 1973c (2006). *See also* Reno v. Bossier Parish School Board, 528 U.S. 320, 363 (2000) (Souter, J., concurring in part and dissenting in part).

[76] 425 U.S. 130 (1976).

[77] *Id*. at 141.

[78] Section 5 Procedures, 28 C.F.R. § 51.54(a) (2005) .

before, or improves their position, does not violate the effect standard, regardless of whether the change still minimizes or dilutes minority electoral opportunity.[79]

The Supreme Court examined the prevailing construction of the Section 5 standard in 1995, in its racial gerrymandering decision in *Miller* v. *Johnson*.[80] The Court held that Georgia's post-1990 congressional redistricting plan was an unconstitutional racial gerrymander. However, the Court also found that the Justice Department's objections to a Georgia plan presented for preclearance were not based on an appropriate application of the Section 5 test but, instead, rested on a department policy of interposing objections to maximize the number of majority-minority districts in plans subject to Section 5 review.[81] The basis for the Court's decision rested in equal protection. Because race was the predominant, overriding factor in setting district boundaries, the redistricting efforts were subject to strict scrutiny.[82] The Court did not accept as a compelling interest the need to satisfy an executive branch policy or practice of maximizing majority-minority districts in the face of the statutory purpose of ensuring that "no voting and procedural changes would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."[83]

The Court directly addressed the Section 5 preclearance standard in 1997, in *Reno* v. *Bossier Parish School Board* ("*Bossier Parish I*"), a declaratory judgment action in which the parish school board sought preclearance for its post-1990 redistricting plan.[84] It held that Section 5 preclearance may not be denied based on a Section 2 results violation,[85] and thus invalidated the Justice Department regulation that specified that a "clear" results violation should trigger an

[79] Lockhart v. United States, 460 U.S. 125 (1983) (clarifying that changes that are neither ameliorative nor retrogressive do not violate the Section 5 effect standard).

[80] 515 U.S. 900 (1995).

[81] *Id*. at 924. The district court's opinion is also highly illuminating in its discussion of the Justice Department's enforcement record. The court harshly criticized the "close cooperation" between the Justice Department and the ACLU—a strong advocate of minority district maximization—in the preclearance process, calling the frequent communication between the two "disturbing" and an "embarrassment." The court noted that the department was more amenable to the opinions of the ACLU than to those of the Attorney General of the State of Georgia, and that it had cultivated a number of partisan "informants" in the state legislature. 864 F. Supp. 1354 (S.D.Ga. 1994), 1362, 1367. Moreover, the court found that throughout the preclearance process, "demographic manipulation became DOJ's guiding light," although the agency denied a max-black plan served as the benchmark against which it compared Georgia's redistricting efforts. *Id.* at 1364. But the court found that the Justice Department's districting requirements had nothing to do with any criterion *but* race, setting a dangerous precedent of requiring proportional representation and inhibiting future redistricting efforts. *Id.* at 1384–86. The Supreme Court similarly noted that "Instead of grounding its objections on evidence of a discriminatory purpose, it would appear the [department] was driven by its policy of maximizing majority-black districts," thereby expanding its Section 5 authority beyond what Congress intended and the Court previously upheld. 515 U.S. 900, 924, 925.

[82] *Id*. at 920.

[83] *Id*. at 926.

[84] 520 U.S. 471 (1997).

[85] A "results violation" refers to a voting plan or proposal intentionally drawn to minimize minority voting strength , and which has a discriminatory result in violation of Section 2 of the Voting Rights Act.

objection. This holding also meant that violations of other provisions of the Voting Rights Act, including Sections 4(f)(4), 203, and 208, may not provide the basis for an objection. The Court reasoned that allowing objections based on Section 2 was inconsistent with its holding in *Beer* that Section 5 was designed to prevent only those effects that are retrogressive, and that the legislative history of the 1982 extension did not support the allowance of these objections.

After remand, the *Bossier Parish* litigation again came before the Court in January 2000 ("*Bossier Parish II*").[86] The Court now faced the question of whether the discriminatory intent prong of the preclearance standard applied to any electoral changes with discriminatory intent or only those with an intent to retrogress. The Court held that the Section 5 purpose standard is limited to a determination of whether an intent to cause *retrogression*, not simply maintain the status quo— however discriminatory the status quo might be—motivated the voting change. The Court again based its holding on its prior decision in *Beer*. Other discriminatory barriers, the Court reasoned, could always be attacked in an action under Section 2.[87]

Most recently, in 2003, the Supreme Court refined the retrogression standard. In *Georgia* v. *Ashcroft*, a declaratory judgment action concerning the state's post-2000 state senate redistricting plan, the Court held that the retrogression analysis must examine all relevant circumstances in considering how redistricting plans affect the opportunity of minority voters to elect candidates of their choice.[88] This may include the opportunity to exert substantial influence over districts in which minorities are unable to elect candidates of their choice, as well as the opportunity for candidates elected by minority voters to exert legislative leadership, influence, and power.[89] In short, no single statistic provides a shortcut to evaluating retrogression in redistricting plans.[90] (See appendix table A1 for a list of merit decisions in declaratory judgment actions).

Compliance with the Preclearance Requirement

The issue of noncompliance with the Section 5 requirement—jurisdictions failing to submit voting changes or enforcing changes to which an objection was interposed—appears to have receded in importance during the current extension period. As noted, the Supreme Court has been steadfast in enforcing the procedural aspects of the preclearance requirement, and the routine of submitting voting changes for Section 5 review generally is well embedded in the business rules of covered jurisdictions. In addition, it appears the carryover from 1960s and 1970s noncompliance is almost entirely gone, as the Justice Department now has had more than two decades to identify and review changes from that time period that continued to be implemented.

[86] 528 U.S. 320 (2000).

[87] *Id.* at 341.

[88] 539 U.S. 461, 479 (2003).

[89] *Id*. at 481–83.

[90] *Id*. at 480.

Nonetheless, since July 1982, the Justice Department has filed 32 enforcement actions, or lawsuits, under Section 5 to demand compliance with the preclearance requirement (it filed 14 in the 1980s, 18 in the 1990s, and none in the current decade). The department also has participated as amicus curiae in the district court in another 32 enforcement actions since July 1982 (seven in the 1980s, 19 in the 1990s, and six in the current decade), and has participated as amicus curiae in all Section 5 enforcement actions the Supreme Court decided since July 1982. With respect to Section 5 declaratory judgment actions, the Supreme Court rejected the Justice Department's position as a defendant three out of four times during the current reauthorization period. During that period, the Supreme Court has upheld the Justice Department's amicus approach six times (or in 75 percent of cases) and rejected the department's approach twice (or 25 percent), once as a plaintiff and once as amicus curiae.[91]

Justice Department Preclearance Determinations

The preclearance statistics used in this report require some initial explanation and qualification. The statistics count Justice Department preclearance reviews in two ways: voting changes and submissions. A voting change is any "standard, practice or procedure with respect to voting different from that [which previously was] in force or effect."[92] A "submission" is a group of changes submitted together by a particular jurisdiction (a state or local entity) to the Justice Department for preclearance.[93]

The change and submission numbers used in this report are, to a large extent, those the Justice Department provided. The department uses computer databases to maintain an historical record of all voting changes submitted for preclearance review since 1965. The data for preclearance activity beginning in 1990 are recorded in a modern relational database that allows for fairly precise counting of all changes and submissions. Two systems preceded it, which, for several reasons, were less accurate in their historical reporting, and which make the department's pre-1990 data approximate. Overall, however, the statistics the department reported are relatively accurate and provide a reliable picture of levels and trends of preclearance activity.

The report also includes additional data which are based on an analysis of the Justice Department's objection letters and its listing of objections. The additional data provide insights into the substantive bases for the objections (purpose, retrogression, or other Voting Rights Act requirements) and the types of changes that have generated the most objections.

Nearly all the preclearance figures relate to changes submitted pursuant to Section 5, although the data include both Section 5 and Section 3(c) submissions. Section 5 accounts for more than

[91] U.S. Department of Justice, Civil Rights Division, Voting Section, "Significant Cases Under the Voting Rights Act," email submission to the U.S. Commission on Civil Rights, Mar. 2, 2006.

[92] 42 U.S.C. § 1973(c) (2000); 42 U.S.C. §1973a(c).

[93] Examples include the submission of a state statute that makes several voting changes, the submission of one or more annexations adopted on the same or different dates, and the submission of a redistricting plan with related precinct and polling place changes.

99 percent of the submissions made since 1965, and the Justice Department has interposed only one objection to a Section 3(c) submission.[94] No district court has denied preclearance to a voting change submitted pursuant to Section 3(c).

The report examines the overall trend in Justice Department's objections to submissions and submitted changes between 1965 and 2004. The stature of a Justice Department objection as a possible indicator of a Section 5 violation is well established despite criticisms of the Justice Department's record. This is preferable to other indicators, such as declaratory judgments or withdrawal letters because these categories are so small as compared to Justice Department objections.

Notably, a vast majority of jurisdictions use the administrative process to preclear proposed voting changes.[95] Thus, relatively few jurisdictions seek declaratory judgments from the U. S. District Court of the District of Columbia. It is likely, too, that in relation to the number of proposed changes submitted to the Justice Department for preclearance, the numbers of withdrawal letters are small.[96] Thus Justice Department objections are a useful indicator of potential discriminatory actions, and analysis of its trends is instructive. The other two indicators when viewed in conjunction with objections slightly raise the level of questionable proposed voting changes.[97] The Justice Department does not have the capacity to monitor all the covered jurisdictions to ensure that all voting changes are precleared prior to implementation. Therefore, it is possible that some discriminatory voting changes could be enacted into law without benefit of the preclearance process. In this sense, the numbers of objections interposed could undercount such voting changes.[98] On the other hand, Justice Department objections could overrepresent discriminatory voting changes to the extent that it could raise questionable objections. This prospect is hardly academic in light of the Justice Department's record before the courts.[99]

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[94] That objection, in 1991, was to New Mexico's state senate redistricting plan.

[95] Bradley J. Schlozman, acting assistant attorney general, Civil Rights Division, U.S. Department of Justice, testimony before the Subcommittee on the Constitution, Committee on the Judiciary, U.S. House of Representatives, Oct. 25, 2005, p. 2.

[96] This is clearly seen in figure 1 of the report of the National Commission on the Voting Rights Act. Figure 1 presents, among others, objections interposed and a composite variable made up of objections, unsuccessful declaratory judgments, and withdrawal letters in five-year intervals. Data are available for both objections and the composite variable for five periods, beginning in 1981–1985. In all but one period (2001–2004), the contribution of objections to the composite variable dwarfs the combined contributions of the other two indicators. Figure 2 shows the annual trends of the three indicators, affirming that Justice Department objections are the critical indicator for the period under review. This is not to deny the relevance and value of the other two indicators in understanding Section 5 discriminatory activities but to show their importance in relation to objections in the time span under review. National Commission on the Voting Rights Act, *Protecting Minority Voters*, no page number, figures 1 and 2.

[97] *See* National Commission on the Voting Rights Act, *Protecting Minority Voters*, no page number, Figure 1.

[98] National Commission on the Voting Rights Act, *Protecting Minority Voters*, p.52.

[99] *See* footnote 81. Note too that in regard to Section 5 declaratory judgment actions, during the current extension period, the Supreme Court rejected the Justice Department's position as defendant three out of four times.

Section 5 Determinations Since 1965

Since 1965, the percentage of objectionable proposed voting changes have declined steadily to the point of relative insignificance. This basic finding applies to nationwide submissions as well as to submissions in nearly every state; it applies to every single category of submissions, particularly to those categories that are most numerous; and it applies whether one considers objections either as a percentage of the number of individual submitted changes or as a percentage of the number of separate submissions.. During this period, the number of proposed voting change submissions to the Justice Department has increased explosively while the percentage of objections has fallen sharply. Between August 1965 and June 30, 2004, jurisdictions filed 117,057 voting change submissions for Justice Department review. The department interposed objections to 1,400 or a mere 1.2 percent. (See table 4.)

The Commission grouped submissions and objections into three periods corresponding to relevant Voting Rights Act legislative episodes: 1965–1974; 1975–1982; and 1982–2004.[100] Submissions to the Justice Department in the first, second, and third periods comprised 1.3 percent, 11.9 percent, and a substantial 86.8 percent, respectively, of all submissions (117,057). Between the periods 1965–1974 and 1975–1982, the number of submissions grew sharply, from 1,542 to 13,874, or increased 799.7 percent, and then to 101,641, a smaller increase of 632.6 percent, in 1982–2004.[101]

The objections the Justice Department interposed in the first, second, and third periods comprised 15.6 percent, 30.6 percent, and 53.7 percent, respectively, of all objections (1,400). Between 1965–1974 and 1975–1982, objections interposed grew from 219 to 429, or increased 95.9 percent, and rose to 752,[102] or increased 75.3 percent, in 1982–2004.[103] The number of objections the Justice Department interposed in the first period was 14.2 percent. Between the first and second periods, the percentage decreased substantially to 3.1 percent, and fell further to

[100] Data in the first period covered August 1965–1974 or 9.2 years; in the second period, 1975–1981 or 6.5 years; and in the third period, 1982–June 2004 or 23 years. Note that Congress also reauthorized the act in 1970, so the first period actually covers two legislative episodes.

[101] The yearly average number of submissions (submissions divided by number of years in the period) for each of the three periods is 168, 2,134 and 4,419 respectively, reflecting an increase of 1,173.5 percent between the first and second periods, and 107.0 percent between the second and third periods.

[102] The Justice Department interposed 53.7 percent of the objections in the current extension period. This is consistent with a finding of the National Commission on the Voting Rights Act, that a majority of objections were interposed in the current extensions period. Specifically, by the National Commission's definition of objection, 56 percent of the objections occurred after August 5, 1982. This is largely a factor of the large numbers of submissions during the current lengthy extension period. The National Commission on the Voting Rights Act fails to note that, relative to submissions, objections have been exceptionally low during this period. *Protecting Minority Voters The Voting Rights Act at Work 1982–2005,* A Report by The National Commission on the Voting Rights Act, February 2006, p. 3.

[103] The yearly average number of objections (objections divided by number of years in the period) for each of the three periods is 24, 66, and 33, respectively, reflecting an increase of 177.3 percent between the first and second periods, and a decrease of 50.5 percent between the second and third periods.

0.7 percent[104] in the third period,[105] with the current extension period having the lowest level of objections. (See table 4.) Most of the years with higher objection rates are in the first period. The second period included years with much lower objection rates and the third period, years with even lower rates. (See figure 3.) In addition, as discussed below, the third period may be divided into two smaller periods, 1982 to 1994, when the objection rate to submissions was 1.2 percent, and 1995 to 2004, when the objection rate was 0.2 percent. The most striking finding from this analysis is that the percentage of objections to submissions decreased dramatically between the first period and the second and dropped further in the third even as the number of submissions increased sharply.

TABLE 4
Preclearance Statistics by Submissions and Objections, August 1965– December 2004

	1965-1974 (8/65-9/30)	1975-1981 (10/1-12/31)	1982-2004 1/1-12/31	Total
Submissions	1,542	13,874	101,641	117,057
Objections	219	429	752	1400
Objections as percent of submissions	14.2%	3.1%	0.7%	1.2%

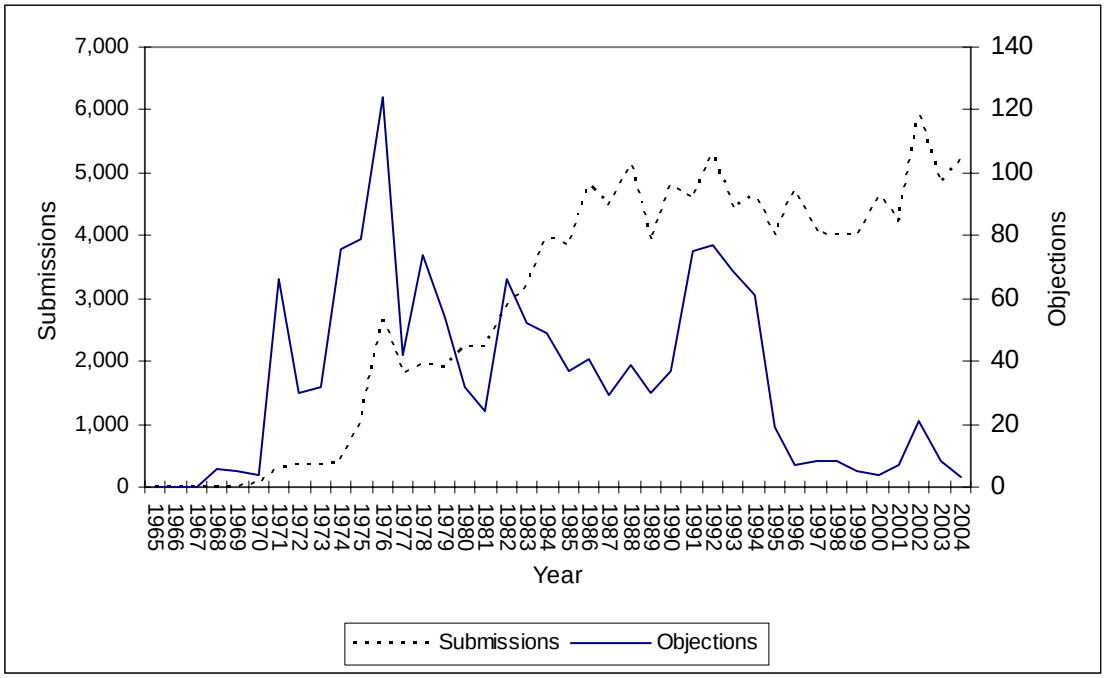
Caption: During the three legislative periods, the number of submissions rose significantly while the percentage of objections fell steeply.
Note: Data in 1965–1974 covered about 9.2 years, in 1975–1981, about 6.5 years, and in 1982–2004, 23 years. Data for 1974 through 1979 are for fiscal years.
Source: Derived from Bradley J. Schlozman, acting assistant attorney general, Civil Rights Division, U.S. Department of Justice, testimony before the Subcommittee on the Constitution, Committee on the Judiciary, U.S. House of Representatives, "Administrative Review of Voting Changes," Oct. 25, 2005, no page number.

The following analysis presents objections in relation to submissions and submitted changes annually for the entire Voting Rights Act period. This permits a comparison of two distinct methods of counting objections: (1) objections to total submissions which may include one or more voting changes, and (2) actual numbers of submitted changes to which the Justice Department interposed objections. Regardless of counting methods, the number of objections is low (see right axis on figures 1 and 2) compared to the number of submissions and submitted changes (see left axes). Submissions exhibit a predominantly upward trend with modest fluctuations, peaking in 2002 (5,910). Objections to submissions peaked in 1976 (124). Thereafter, the trend fluctuated downward, attaining a second smaller peak in 1992 (77). Subsequently, the number of objections decreased substantially to 3 in 2004. The number of submitted changes grew, though showing fluctuations between 1965 and its two peaks—first in

[104] Objection rates based on yearly average number of submissions parallel this pattern.

1986 (20,314) and again in 1992 (22,349)—and then decreased in subsequent years to 10,388 in 2004. Objections to submitted changes also peaked in 1986 at 639 and then fluctuated downward, leveling off to 5 in 2004.

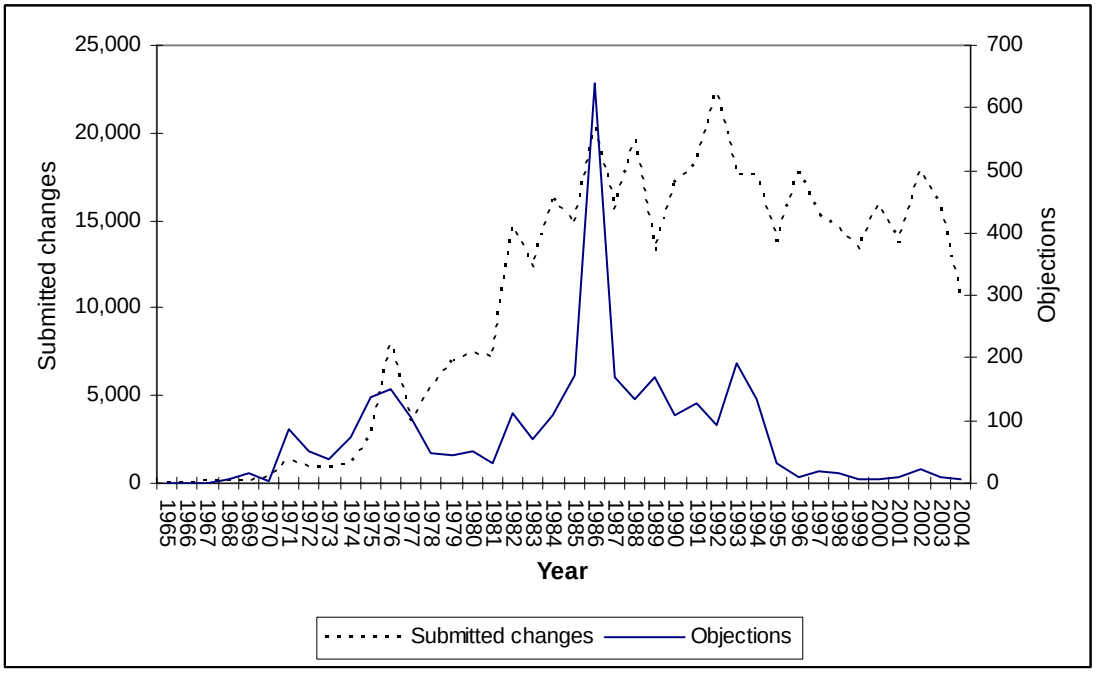
FIGURE 1
Objection to Submissions, August 1965–June 2004



Caption: Submissions exhibited a predominantly upward trend peaking in 2002. Objections to submissions peaked in 1976 then fluctuated downward.

Source: Derived from Bradley J. Schlozman, acting assistant attorney general, Civil Rights Division, U.S. Department of Justice, testimony before the Subcommittee on the Constitution, Committee on the Judiciary, U.S. House of Representatives, "Administrative Review of Voting Changes," Oct. 25, 2005, no page number.

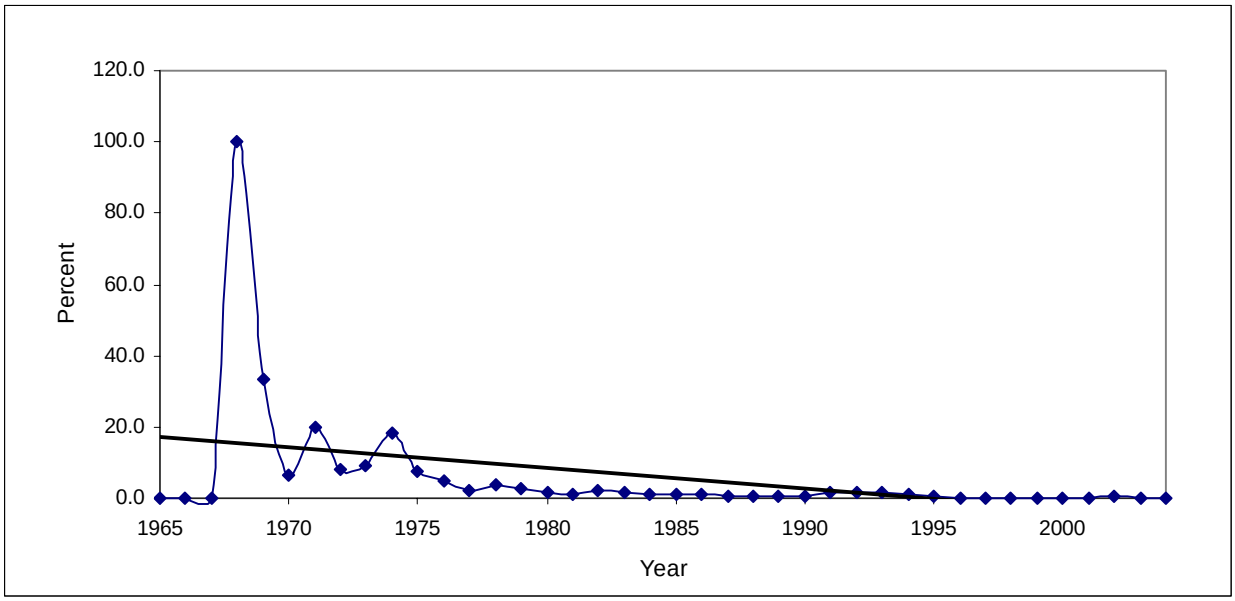
FIGURE 2
Objections to Submitted Changes, August 1965–December 2004



Caption: The number of submitted changes grew peaking 1986 and again in 1992 and then decreased in subsequent years. Objections to submitted changes also peaked in 1986 and then decreased substantially.
Source: Compiled from U.S. Department of Justice, Civil Rights Division, Voting Section, Submission Tracking and Processing System (STAPS) data, as provided to the U.S. Commission on Civil Rights, Sept. 20, 2004.

The Commission also examined objections as a percentage of submissions from 1965 through 2004 and identified a clear declining objection trend. (See figure 3.) For a vast majority of the years, objections constituted a small proportion of yearly submissions. For example, objections constituted less than 1 percent of submissions for 18 of the 40 years, or 45 percent of years, and less than 5 percent for 14 years, or 35 percent of years. Furthermore, the percentage of objections interposed is highest between 1968 and 1974, declines between 1975 and 1981, and reaches a sustained low period between 1982 and 2004. During the Voting Rights Act reauthorizations in 1970 and 1975, objections constituted only 6.7 and 7.6 percent of submissions, respectively. During the 1982 reauthorization, the comparable figure was 2.3 percent.

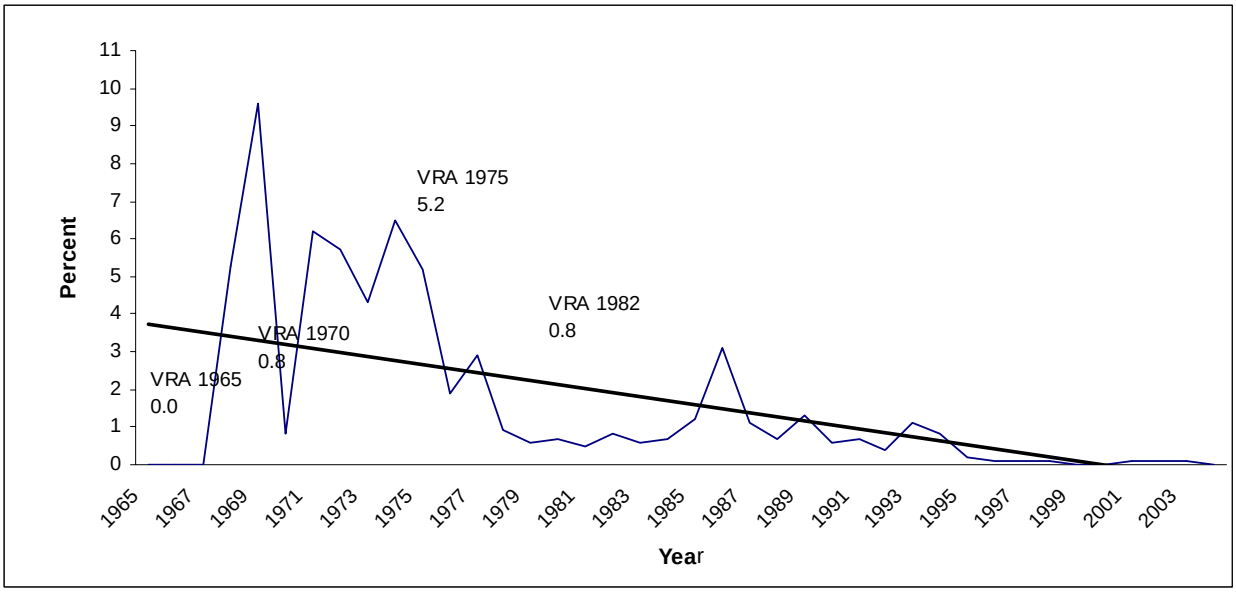
FIGURE 3
Objections as a Percent of Submissions, August 1965 through June 30, 2004



Caption: In the period 1965–2004, the percent of objections to submissions evidenced a declining trend.
Source: Bradley J. Schlozman, acting assistant attorney general, Civil Rights Division, U.S. Department of Justice, testimony before the Subcommittee on the Constitution, Committee on the Judiciary, U.S. House of Representatives, "Administrative Review of Voting Changes," Oct. 25, 2005, no page number.

The Commission performed a parallel analysis of objections to submitted changes(See figure 3). The pattern of findings is essentially similar: submitted changes increased robustly between each of the three legislative periods while objections decreased dramatically between the first and second periods, then fell and remained low in the third period. An overview of objections between 1965–2004 showed a pronounced declining trend in objections rates between 1965 and 1974, and the lowest objection rates between 1982 and 2004. (See figure 4.) Thus, whether compared with submissions or with submitted changes, objections decline steeply and dramatically over time.

Figure 4
Objections as a Percent of Submitted Changes, August 1965 through June 30, 2004



Caption: In the period 1965–2004, the percent of objections to submitted changes evidenced a declining trend.
Note: Data for 1982 were derived by adding data for the first six months to data for the second six months. (See appendix tables A4 and A5)
Source: Compiled from U.S. Department of Justice, Civil Rights Division, Voting Section, Submission Tracking and Processing System (STAPS) data, as provided to the U.S. Commission on Civil Rights, Sept. 20, 2004.

The National Commission on the Voting Rights Act (NCVRA) recently performed a similar analysis and found that objections "reached historic highs in the early 1990s."[106] However, its analysis is misleading in two respects.

First, the text portion of the NCVRA report failed to note the steadily declining trend in objections relative to submissions over the last 40 years, although data in the report appendix confirm this trend. Furthermore, the percentage of submissions resulting in objections declined substantially. During some periods, the absolute number of objections increased, but merely as a function of increases in the number of submissions. Over the entire period, the trend in absolute objections declined. Objection numbers should be understood in this context.

Second, the Commission's analysis showed that objections peaked in either 1976 or 1986, depending on the methodology chosen for counting objections. The peak did not occur in the early 1990s as NCVRA concluded.

[106] National Commission on the Voting Rights Act, *Protecting Minority Voters*, p. 101. As noted, NCVRA is a bipartisan coalition established by the Lawyers' Committee for Civil Rights Under Law to determine whether, and to what extent, voter discrimination has occurred since the last Voting Rights Act reauthorization in 1982. For a complete list of sponsors, see footnote 19.

Section 5 Determinations in the Current Extension Period

The current extension period accounts for a very high proportion—almost 90 percent—of all changes submitted since 1965, although it represents just a little more than half of the overall time period that Section 5 has been in effect. It appears that this in part was a product of covered jurisdictions adopting a larger number of voting changes in the past two decades. In addition, several post-1982 court decisions clarified the scope of the Section 5 requirement, resulting in jurisdictions filing more submissions.[107] Jurisdictions also are submitting changes in a more timely fashion, i.e., immediately after ratifying proposed changes. In the 1960s, and to a lesser extent in the 1970s, jurisdictions often did not make timely submissions, or never submitted their changes (typically because they were mooted by subsequent changes that were submitted and precleared).[108]

It should be noted that covered jurisdictions rarely utilize the alternative procedure of seeking preclearance from the District Court for the District of Columbia. Since July 1982, covered jurisdictions have filed 41 declaratory judgment actions. The almost exclusive reliance on the Justice Department's administrative preclearance mechanism continued the pattern of prior years, during which only 27 preclearance suits were filed. (See appendix table A2.) Nearly half of the Section 5 preclearance suits filed since July 1982 involved redistrictings, and almost all the others concerned election method changes, the creation of additional judgeships, annexations, and the consolidation of city and county (or parish) governments.

The district court issued very few declaratory judgment decisions and dismissed most filings (35 out of 41, or 85.4 percent) without a decision on the merits.[109] (See appendix table A2.) The court precleared five cases over the Justice Department's opposition (four judgeship cases and

[107] In 1986, the Supreme Court affirmed district court rulings that the discretionary setting of a special election date is covered and that changes in the method of electing state court judges are covered. (See table 3.) Special election submissions in particular became common after the Supreme Court's affirmance, and accounted for 7 percent of all submissions from July 1982 through June 2004.

[108] This occurred in particular with regard to voting changes adopted during Section 5's initial years. The most extreme systemic failure to submit occurred during the first five years, from August 1965 through 1970. During this period, covered jurisdictions submitted a mere 729 changes. The failure to submit occurred in part because the Section 5 requirement was new and unique, in part because the Justice Department did not institute a clearly defined and well-advertised preclearance procedure until September 1971 (when it promulgated the first iteration of its Procedures for the Administration of Section 5), in part because the scope of changes covered by Section 5 did not become clear until 1969 (when the Supreme Court issued its decision in *Allen* v. *State Board of Elections*), and in part because the newly covered jurisdictions vehemently opposed the new requirement. During the next five years (1971 to 1975), compliance increased (about 6,900 changes were submitted during that period), but non-submission problems continued. *See* appendix table A4. *See also* U.S. Commission on Civil Rights, *The Voting Rights Act: Ten Years After*, pp. 337–338; U.S. Commission on Civil Rights, *The Voting Rights Act: Unfulfilled Goals*, pp. 70–73; *1982 Senate Report*, pp. 7–9; *1981 House Report*, pp. 11–13.

[109] For example, a number of jurisdictions that sought judicial preclearance of their redistricting plans decided after filing suit to abandon the disputed plan, and adopt a new plan and submit it for Justice Department administrative approval, which was granted. *See* appendix table A2, Summary Declaratory Judgment Statistics for All Years (through June 30, 2004).

Bossier Parish); granted preclearance with the department's concurrence in three cases; and denied preclearance in three cases. Although these decisions are few in number, they had a significant impact on subsequent Justice Department determinations. (See appendix table A1.)

Numbers of Objections

As previously noted, the Justice Department interposed the smallest percentage of objections during the current extension period, as compared to the two other extension periods examined in this report, despite a significantly greater number of submitted changes. The current extension period arguably could be further divided into two distinct periods of objections. Between July 1982 and 1994, the Justice Department objected to a larger number of changes (although still a small proportion relative to previous years, 1.0 percent of the submitted changes, compared with 1.2 percent and 5.5 percent in the previous periods); in subsequent years, beginning in 1995, the number of objections was much smaller. (See table 5 and appendix table A3.)[110] The average number of objections per year also decreased substantially between the first and second halves of the period, from 161 to 13.

TABLE 5
Submitted Changes and Objections in Two Distinct Periods, 1982–1994 and 1995–2004

Subject	1982-1994	1995-2004	Total
Submitted changes	210,900	148,552	359,452
Objections	2,089	134	2,223
Objections as a percent of submitted changes	1.0%	*	0.6%
Average change objections per year	161	13	97

* percent too small to represent.

Caption: The Justice Department interposed a larger number of objections between 1982 and 1994 than it did between 1995 and 2004.

Source: Compiled from U.S. Department of Justice, Civil Rights Division, Voting Section, Submission Tracking and Processing System (STAPS) data, as provided to the U.S. Commission on Civil Rights, Sept. 20, 2004.

[110] Several factors may explain the decrease in the number of objections beginning in 1995 to the extent that this decrease is not merely the continuation of a 40-year trend. First, Section 5 jurisdictions may have adopted fewer discriminatory changes. Second, the Justice Department may have eased its enforcement efforts beginning in the mid-1990s. Third, the department may have inflated the number of objections in the early 1990s by improperly interposing objections to redistricting plans. Finally, court decisions throughout the 1990s, such as *Miller v. Johnson* and *Bossier Parish I*, may have caused at least a portion of the decrease. Stated in another way, covered jurisdictions may be anticipating possible Justice Department objections more effectively, and the standards governing those objections may have been clarified or changed by recent Supreme Court opinions.

Objections by Types of Changes

The Commission analyzed the types of changes to which the Justice Department interposed objections during the current extension period (1982–2004). The six change types in order of number of submitted changes are (1) precinct/polling place/absentee vote changes, 43.7 percent of all submitted changes, (2) annexations/boundary changes, 20.7 percent,[111] (3) voter registration, 11.4 percent, (4) special elections, 6.6 percent, (5) methods of election, 4.2 percent, and (6) redistrictings, 2.4 percent. (See table 6 and figure 3.)

Regardless of the type of change, the rate of objections to submitted changes during this period was low, ranging from 0.1 percent to 4.2 percent. Three of six (or half of all) change types showed rates of objections well below 1 percent. Notably, the top four in number of submitted changes evidenced distinctly low objection rates, between 0.1 and 1.3 percent. The category including precincts, polling places, and absentee voting represented the largest share of submitted changes (43.7 percent), yet the Justice Department interposed almost no objections to these types of changes (at a rate of 0.1 percent). This category and voter registration changes combined made up more than half of the substituted changes, yet accounted for a negligible percent of objections (0.2 percent combined). On the other hand, although methods of elections and redistrictings made up the smallest percentages of submitted changes (4.2 and 2.4 percents, respectively), they were marked by the highest rates of objections, 3.6 and 4.2 percent. (See table 6.)

[111] It should be noted that not all annexations are racially suspicious. Some argue that annexations are nearly always motivated by economic and other nondiscriminatory considerations. *See*, for example, Thernstrom, *Whose Votes Count?*, p. 5; Janelle D. Allen, "Carolina Power & Light v. City of Asheville, Municipal Annexation in North Carolina: the Pros, the Cons, and the Judiciary," *North Carolina Central Law Journal*, vol. 27 (2005), p. 224 (hereafter cited as Allen, "Municipal Annexation in North Carolina"); Karen E. Ubell, "Consent Not Required: Municipal Annexation in North Carolina," *North Carolina Law Review*, vol. 83 (2005), p. 1634 (hereafter cited as Ubell, "Consent Not Required"); Alison Yurko, "A Practical Perspective About Annexation in Florida," *Stetson Law Rev*iew, vol. 25 (1996), p. 699 (hereafter cited as Yurko, "Annexation in Florida"). *See also* discussion on p. 37.

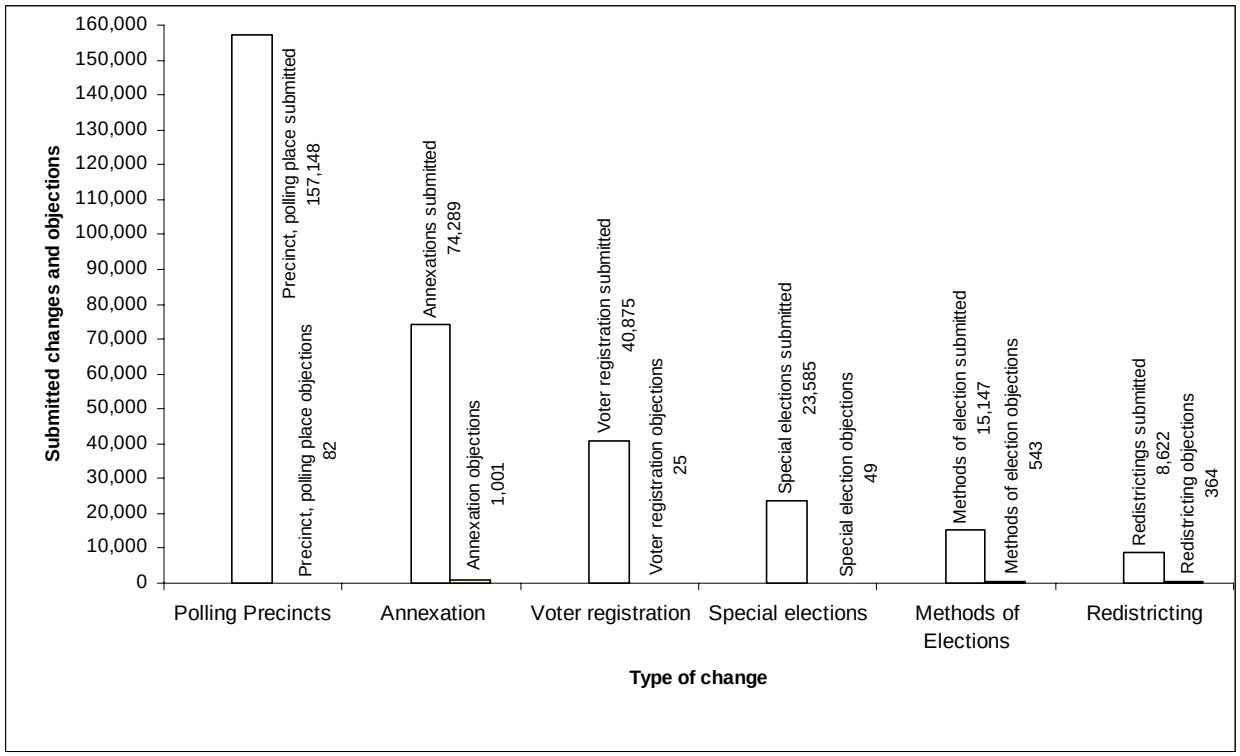
TABLE 6
Submitted Changes and Objections by Type, July 1, 1982 through June 30, 2004

	Submitted change type as percent of total submitted changes	Objections as percent of the submitted change type
Precincts, polling place, absentee vote	43.7%	0.1%
Annexations, boundary changes	20.7%	1.3%
Voter registration	11.4%	0.1%
Special elections	6.6%	0.2%
Methods of elections	4.2%	3.6%
Redistrictings	2.4%	4.2%
Total	88.9%	0.6%

Caption: Regardless of the change type, the Justice Department interposed few objections from 1982–2004.

Note: Excludes submitted changes classified as "other," hence percents in the first column do not sum to 100.
Sources: U.S. Department of Justice, Civil Rights Division, Voting Section, "Number of Changes to Which Objections Have Been Interposed by Type for All Calendar Years" and "Number of Changes by Type of Change for All Calendar Years," Submission Tracking and Processing System (STAPS) Statistics Reports, Sept. 20, 2004.

FIGURE 3
Submitted Changes and Objections by Type, July 1, 1982 through June 30, 2004



Caption: The number of objections interposed for each type of submitted change is small in the period 1982–2004.

Sources: U.S. Department of Justice, Civil Rights Division, Voting Section, "Number of Changes to Which Objections Have Been Interposed by Type for All Calendar Years" and "Number of Changes by Type of Change for All Calendar Years," Submission Tracking and Processing System (STAPS) Statistics Reports, Sept. 20, 2004.

Dividing the extension period into two distinct subsets (1982–1994 and 1995–2004) reveals a significant decrease in all types of changes to which the Justice Department objected. For example, from July 1982 through 1994, the Justice Department objected to 978 annexations, but only 23 between 1996 and 2004. In other words, 97.7 percent of all annexation objections occurred during the first period. During the first period, the department objected to 512 election method changes (94.3 percent); thereafter, it objected to 31. It objected to 318 redistricting plans in the first period (87.4 percent), but only 46 in the second. (See table 7).

TABLE 7
Objections by Type of Change, 1982–1994 and 1995–2004

Type of change	1982-1994	1995-2004	Totals
Annexations, boundary changes	97.7% (978)	2.3% (23)	100% (1,001)
Methods of elections	94.3% (512)	5.7% (31)	100% (543)
Redistrictings	87.4% (318)	12.6% (46)	100% (364)
Precincts, polling place, absentee ballots	90.2% (74)	9.8% (8)	100% (82)
Special elections	98.0% (48)	2.0% (1)	100% (49)
Voter registration	56.0% (14)	44.0% (11)	100% (25)
Other	91.2% (145)	8.8% (14)	100% (159)
All changes	95.4% (2,089)	4.6% (134)	100% (2,223)

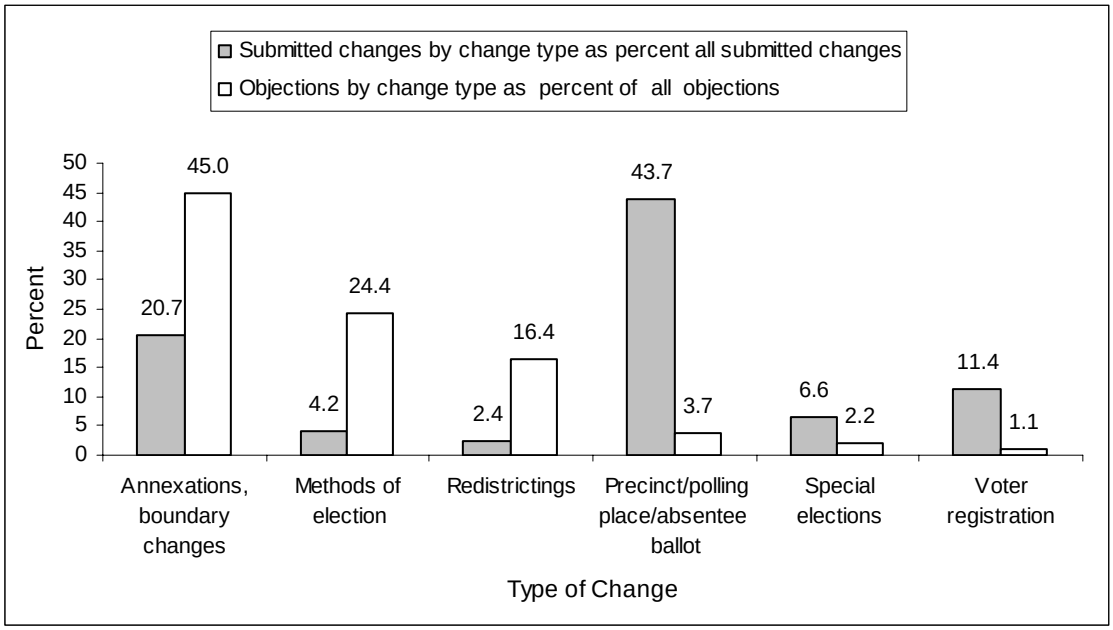
Caption: Between 1982 and 1994 the Justice Department objected to a substantially higher number of annexation proposals, redistrictings, and method of election changes than in the period between 1995 and 2004.

Source: U.S. Department of Justice, Civil Rights Division, Voting Section, "Number of Changes to Which Objections Have Been Interposed by Type for All Calendar Years," Submission Tracking and Processing System (STAPS) Statistics Report, Sept. 20, 2004.

A Detailed Examination of Changes Most Frequently Denied

Forty-five percent of the objections the Justice Department interposed in the 1982–2004 period concerned annexations and boundary changes (though the total number of annexations that were the subject of an objection is somewhat misleading since one objection may concern the cumulative impact of scores or hundreds of small, individual annexations).[112] Methods of election and redistrictings are distant second and third, 24.4 and 16.4 percent, respectively. (See figure 4.) Together, these three change types comprised an overwhelming 85.8 percent of all objections interposed. Notably, they accounted for only a little more than a quarter of all proposed changes, 27.3 percent. It is also remarkable that precinct/polling places/absentee ballot changes made up only 3.7 percent of all objections, despite accounting for the highest percentage of submitted changes, at 43.7 percent. (See figure 4 and appendix table A5.) Thus, the great majority of objections involved alleged vote dilution issues (regarding the constituencies used to elect officials and the rules for determining election outcomes), and relatively few objections concerned the mechanics of running elections.

FIGURE 4
Percent of Submitted Changes and Objections by Change Type, July 1982 through June 2004



Caption: The Justice Department interposed the highest percentage of objections to changes involving annexations, boundary changes; methods of election; and redistrictings
Sources: U.S. Department of Justice, Civil Rights Division, Voting Section, "Number of Changes to Which Objections Have Been Interposed by Type for All Calendar Years" and "Number of Changes by Type of Change for All Calendar Years," Submission Tracking and Processing System (STAPS) Statistics Reports, Sept. 20, 2004.

[112] *See* footnote 93 infra.

The annexation, method of election, and redistricting objections (i.e., those changes tied to vote dilution concerns) merit further analysis.

Annexations. Annexation objections are of two types. By far the most common is the dilution objection, in which a city (or other jurisdiction) annexes population that significantly reduces its minority population percentage. The Supreme Court held in 1975 that dilutive annexations violate the Section 5 effect test, unless the election system in the post-annexation city fairly reflects minority voting strength (typically, a system that uses districts or a mixture of district and at-large seats).[113] If the election system does not meet this test, the Justice Department denies preclearance. The department will withdraw the objection if the jurisdiction adopts, and obtains preclearance for, an election system that satisfies the "fairly reflects" test. The Justice Department's diminution standard, as formulated by the Supreme Court, presents many complexities and raises concerns among those who do not support its underlying assumptions. The department has denied preclearance to annexations that result in even slight reductions in black voter populations and demanded the creation of single-member districts, but some argue that this may not be the best strategy to ensure equal voting rights.

The second type of annexation objection occurs when a city makes an annexation decision based on racially selective factors. The Justice Department will withdraw a selectivity objection if the city subsequently annexes the area that was rejected for discriminatory reasons. From July 1982 through June 2004 the Justice Department interposed objections to seven cities' selective annexations.[114]

Although annexations and boundary changes account for the largest proportion of objections, some scholars offer evidence that annexations nearly always occur for economic, political, urban development and other nondiscriminatory reasons.[115] For example, municipalities often seek to annex neighboring rural or suburban geographical areas as means to increasing their revenue flow from states when local allocations depend on population estimates. Such annexations, if successful, may increase labor forces and commensurately the number of property owners, individuals, and businesses in surrounding communities eligible to pay taxes to the municipality. Jurisdictions benefit from larger bases from which they collect taxes to support police, fire, water, sewer, and other essential services. Individuals in annexed communities, including

[113] Richmond v. United States, 422 U.S. 358 (1975). *See also* of Petersburg v. United States, 354 F. Supp. 1021 (D.D.C. 1972), *aff'd*, 410 U.S. 962 (1973) (same holding); Section 5 Procedures, 28 C.F.R. § 51.61(c) (2005).

[114] It is important to note that in several of the covered states it often is the case that each annexation is small (perhaps just a single house or a few houses) and an objection may encompass a large group of annexations adopted over a period of time (the most extreme example being a single 1986 objection to 525 annexations by a South Carolina town). The Justice Department's annexation objections since July 1982 dealt with a total of 35 cities and two city courts, and the department also interposed objections to deannexations by four other cities and to a boundary change between two counties.

[115] Thernstrom, Whose Votes Count?, pp. 140–43.

African American residents, may favor border changes when obtaining such services under alternative private agreements is expensive.[116]

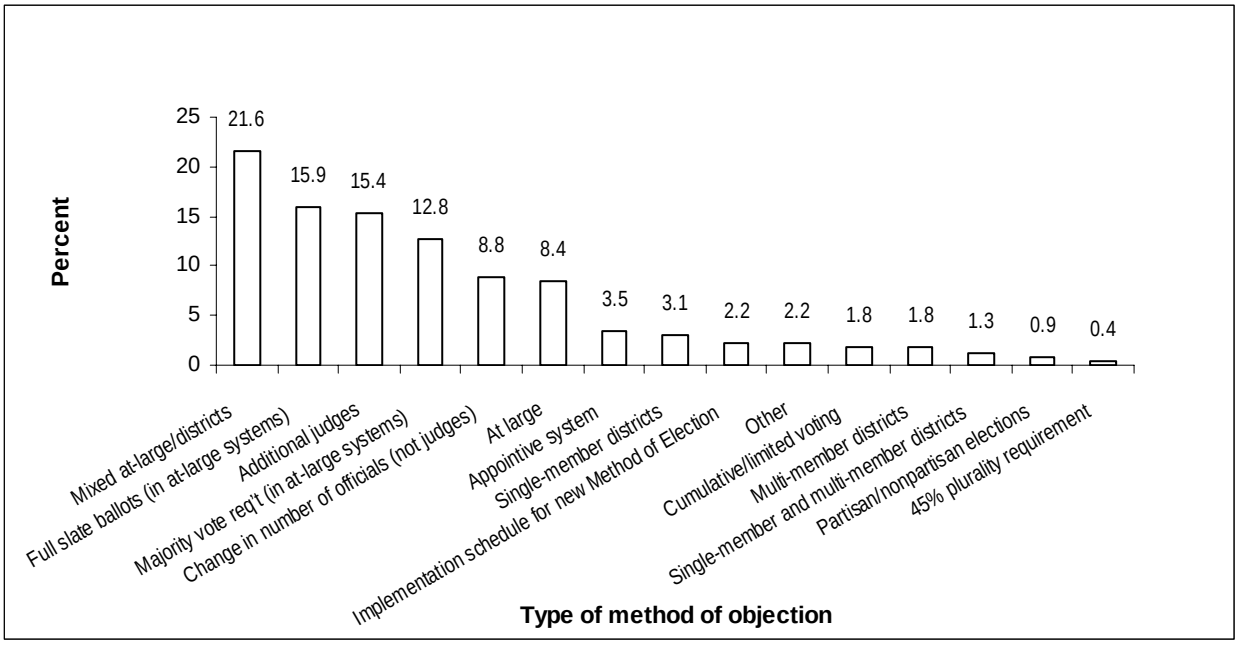
Method of election objections. These objections involve different types of changes.[117] Using this counting method, a large proportion (28.7 percent) concerns the adoption of provisions that limit the opportunity of minority voters to elect candidates of their choice in the context of at-large elections. These include the adoption of a majority vote requirement (12.8 percent), and the adoption of provisions that preclude voters from engaging in single-shot voting (i.e., voting for less than a full slate of candidates in an at-large system to aid a single favored candidate, 15.9 percent), such as limiting candidacy to a specific seat or residency requirements for candidates, or that may limit the opportunity to do so effectively, such as staggered terms.[118] (See figure 5.) The Justice Department typically bases these objections on retrogression, and they have been a staple of Section 5 enforcement since its enactment.

[116] *See, e.g.*, for example, Thernstrom, *Whose Votes Count?*, pp. 140–43; Allen, "Municipal Annexation in North Carolina," p. 224; Ubell, "Consent Not Required," p. 1634; lYurko, "Annexation in Florida," p. 699.

[117] Statistics in this discussion are based on an objection count by submission, not by change (i.e., in this section, one objection represents one submission to which one or more changes were objected. Simply put, one objection does not equal one objected-to-change.

[118] Staggered term refers to the scheduling of terms of office such that all members of a legislative body are not selected at the same time.

FIGURE 5
Method of Election Objection by Type, July 1, 1982 through June 30, 2004



Caption: The Justice Department interposed objections in 15 types of methods of election objections. Six categories each accounted for more than 8 percent of methods of election changes.
Sources: U.S. Department of Justice, Civil Rights Division, Voting Section, "Complete Listing of Objections Pursuant to Section 3 (c) and 5 of the Voting Rights Act of 1965," response to U.S. Commission on Civil Rights (USCCR) document request, July 31, 2004; supplemented by a review of all objection letters, as provided to USCCR, Aug. 20, 2004.

The adoption of at-large elections represents another type of change to which the Justice Department has consistently objected since 1965, and which constituted 8.4 percent of the election method objections since July 1982. (See figure 5.) During the current extension period, these objections often involved jurisdictions changing to at-large elections from a district-based system, which the Justice Department found to be retrogressive (and sometimes purposefully discriminatory as well). The objections also included several instances in which newly created jurisdictions adopted an at-large system and the Justice Department objected based on discriminatory purpose (there was no retrogression since there was no pre-existing election system).[119]

Beginning in the early to mid-1980s, a large proportion of the election method objections (21.6 percent) concerned changes from at-large election systems to mixed systems of district and at-large seats. (See table 8.) As noted above, the enactment of the Section 2 results test in 1982 spurred numerous jurisdictions to adopt district or mixed election systems. These changes were not retrogressive , and thus did not violate the Section 5 effect test. However, on a number of occasions, the Justice Department found that discriminatory purposes prompted jurisdictions to

[119] *See Lockhart v. United States*, 460 U. S. 125 (1983).

adopt particular mixed election systems. Specifically, the department objected when a relatively large proportion of the governing body remained elected at-large, or the use of a majority vote requirement and/or numbered posts or staggered terms limited minority voters' opportunity to elect any of the at-large representatives.[120] Occasionally, these objections were based on a finding of a clear Section 2 violation, though typically in combination with a finding of discriminatory purpose. (See appendix table A6.) As a result of the Supreme Court's *Bossier Parish* decisions, the Justice Department may no longer object to changes from at-large to mixed election systems based on discriminatory purpose and/or a Section 2 violation.

TABLE 8
Method of Election Objections and Submissions, July 1, 1982, through June 30, 2004

Change	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993
Additional judges							1	2	7	5	1	3
Full slate ballots(in at- large systems)	1	4	5	3	8	4	1	1	1		4	
Appointive system			1		1		1	1		1		1
At-large	1	4	3	1	1	1		1	1			1
Change in number of officials (not judges)		2	1	1	1		4	1			3	3
Cumulative/limited voting												
45% plurality requirement												
Implementation schedule for new MOE			1	1	1				1			1
Majority vote req't (in at-large systems)	1		2	3	4	1	2		3	2		6
Mixed at-large/districts	2		2	3	7	5	2	7	2	5	3	4
Multi-member districts			1		1		1					
Partisan/nonpartisan elections												
Single-member districts			1		1		1	3				1
Single-member and multi-member districts			1						1			1
Other									3	2		

Change	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	Total

[120] The objections did not represent any de facto Justice Department rule against mixed election systems and, indeed, the department precleared numerous changes from at-large to mixed systems.

Additional judges	15	1										35
Full slate ballots(in at large systems)							2	1			1	36
Appointive system	1		1									8
At-large	1		1	1					2			19
Change in number of officials (not judges)	2	1								1		20
Cumulative/limited voting	1	1				1		1				4
45% plurality requirement	1											1
Implementation schedule for new MOE												5
Majority vote req't (in at-large systems)	2						1	1			1	29
Mixed at-large/districts	5				1					1		49
Multi-member districts								1				4
Partisan/nonpartisan elections	1										1	2
Single-member districts												7
Single-member and multi-member districts												3
Other												5

Caption: Of the 15 categories of methods of election changes, the Justice Department has interposed the highest number of objections to six: mixed at-large districts (49), full-slate ballots (in at-large systems, 36), additional judges (35), majority vote requirement (in at-large systems, 29), change in number of officials (20), and at-large (19). In the other nine categories, the Justice Department interposed fewer than eight objections.
Sources: U.S. Department of Justice, Civil Rights Division, Voting Section, "Complete Listing of Objections Pursuant to Section 3 (c) and 5 of the Voting Rights Act of 1965," response to U.S. Commission on Civil Rights (USCCR) document request, July 31, 2004; supplemented by a review of all objection letters, as provided to USCCR, Aug. 20, 2004.

The Justice Department also interposed 35 objections to the establishment of new elected state court judgeships, between 1988 and 1995, and none in other years during the extension period. (See table 8.) In reasoning that may be open to question, the Justice Department concluded that adding judgeships was discriminatory if it represented an extension of an underlying discriminatory election system. The Justice Department typically interposed these objections based on a combination of discriminatory purpose and a clear Section 2 violation (the creation of additional judgeships was not retrogressive). (See appendix table A6.) The objections led New York, Georgia, Texas, and Arizona to file Section 5 declaratory judgment actions, and in each case the District Court for the District of Columbia granted preclearance (finding that there was no discriminatory purpose and holding, ahead of *Bossier Parish I*, that a Section 2 violation was

not a basis for withholding preclearance). (See appendix table A1.) These district court decisions brought an end to these objections.

The last numerically significant category of election method objections since July 1982 concerned objections to changes in the number of elected officials other than judges (8.8 percent of the election method objections). (See figure 5.) The Justice Department interposed objections when the number of new seats proposed, in the context of the election system being used, arguably reduced a minority population's opportunity to win a seat.

Redistricting plans. The Justice Department interposed a higher number of objections to redistricting plans adopted after the 1980 and 1990 censuses (approximately 110 plans following the 1980 census and 180 following the 1990 census), relative to other post-census periods.[121] This included objections to statewide plans for Congress and state legislatures (in 10 states following the 1980 census and 13 states after the 1990 census), as well as to a large number of plans for municipal and county governing bodies and for school boards. The objections were based partly on retrogression (or a combination of retrogression and discriminatory purpose), and partly on discriminatory purpose where the plans were non-retrogressive (a few objections also were based on Section 2 violations, often in conjunction with a finding of discriminatory purpose).The Justice Department reviewed the post-2000 plans after the two *Bossier Parish* decisions, and interposed many fewer objections (only 30 in all, with objections interposed to statewide plans in just three states, one of which was later reversed by the Supreme Court in *Georgia v. Ashcroft*). (See table 9 and appendix tables A6 and A7.)

TABLE 9
Redistricting Objections Following the Decennial Censuses

Subject	1970s (1971 to 1974)	1980s (April 1981 to June 30, 1985)	1990s (April 1991 to June 30, 1995)	2000s (2001 to June 30, 2004)
Submitted	c. 400	c. 1500	c. 2800	c. 2600
Objections (% of submitted)	58 (15%)	c. 113 (8%)	184 (7%)	30 (1%)
Retrogression objections (% of objections)	Not tallied	56 (50%)	31 (17%)	30 (100%)
States in which AG interposed an objection to one or more statewide plans	6	10	13	3

Caption: The number of Department of Justice objections to redistricting plans because of retrogression declined considerably from the 1980s to the 1990s.

[121] The data for the redistricting objections following the 1980 census include objections interposed in 1981 and the first six months of 1982, as well as objections interposed following the extension of Section 5 in June 1982.

Note: Redistrictings include both redistrictings and the first-time adoption of districting plans in jurisdictions that changed to a district method of election. Retrogression objections include objections where retrogression either was the sole basis or was one of multiple bases for interposing the objection.
Sources: U.S. Department of Justice (DOJ), Civil Rights Division (CRD), Voting Section, "Complete Listing of Objections Pursuant to Section 3(c) and 5 of the Voting Rights Act of 1965," response to U.S. Commission on Civil Rights (USCCR) document request, July 31, 2004; DOJ, CRD, Submission Tracking and Processing System (STAPS) data, as provided to USCCR, Sept. 20, 2004; supplemented by a review of all objection letters, as provided to USCCR, Aug. 20, 2004.

Geographic Distribution of Submitted Changes and Objections

Congress originally intended the Section 5 formula to target states with a history of discrimination. In contemplating Section 5 extension, an analysis of objections the Justice Department interposed on covered states is instructive. Overall, the Justice Department interposed a higher rate of objection to states with smaller numbers of submitted changes and a lower rate to states with larger numbers of changes. In other words, some of the states that have been required to submit the greatest number of changes have yielded low rates of objection.

From July 1982 to June 2004, 22 states submitted 359,452 proposed changes for Justice Department review. Texas proposed 41.6 percent, followed by Georgia, 13.7 percent. Together, they accounted for slightly more than half of all proposed changes. Submitted changes from the remaining states were distinctly lower. Proposed changes from five states comprised between 6.1 percent and 7.8 percent of all proposed changes, from four states, between 1.2 and 3.2 percent, and from 11 states (or 50 percent of all states), less than 1 percent. (See table 10.)

The pattern of objections is striking in that for many states,[122] the percentage of objections is highly disproportionate to that of submitted changes. Texas, Virginia, and Arizona all submitted changes that were disproportionate to the number of objections interposed. Texas, for example, with a 41.6 percent share of proposed changes claimed only 8.3 percent of objections. Texas and Virginia accounted for approximately half of all submitted changes, but less than 10 percent of all objections. On the other hand, the clearest example of objections disproportionately higher than submitted changes is South Carolina, contributing only 6.1 percent of all changes and registering the highest percentage of objections, 35.9 percent, or 5.9 times its submitted changes. South Carolina and Louisiana combined for 48 percent of the objections even though they represented barely more than 12 percent of the submitted changes. The other states in which the rates of objections are higher relative to submitted changes are Mississippi, North Carolina, Alabama, and Georgia (See table 10.) These six states' relative share of objections must, however, be considered in context. Even in these six states, the objections as a percentage of submitted changes are relatively low: South Carolina, 3.7 percent, Louisiana, 1.2 percent, Mississippi, 1.3 percent, North Carolina, 1.2 percent, and Alabama, 0.9 percent and Georgia, 0.7. (See table 10.) The objection rates for all other states are less than 1 percent.

[122] This analysis examined states that submitted at least three percent of all proposed changes.

TABLE 10
Submitted Changes and Objections by State, July 1, 1982 through June 30, 2004

	Submitted changes by state as a percent of all submitted changes	Objections by state as a percent of all objections by state	Objections by state as a percent of the submitted changes by the state
Texas	41.6%	8.3%	0.1%
Georgia	13.7%	15.6%	0.7%
Virginia	7.8%	1.1%	0.1%
Arizona	7.0%	1.3%	0.1%
Alabama	6.3%	8.8%	0.9%
Louisiana	6.2%	12.0%	1.2%
South Carolina	6.1%	35.9%	3.7%
North Carolina	3.2%	6.1%	1.2%
Mississippi	3.1%	6.7%	1.3%
Alaska	1.5%	0.1%	0.0%
New York	1.2%	0.6%	0.3%
Florida	0.9%	0.6%	0.4%
California	0.8%	2.7%	2.0%
South Dakota	0.3%	0.0%	0.1%
Michigan	0.1%	0.0%	0.0%
Hawaii	0.1%	0.0%	0.0%
Wyoming	0.1%	0.0%	0.0%
New Mexico	0.0%	0.0%	0.6%
New Hampshire	0.0%	0.0%	0.0%
Colorado	0.0%	0.0%	0.0%
Illinois	0.0%	0.0%	0.0%
Arkansas	0.0%	0.0%	0.0%
Total	100.0%	100.0%	0.6%

Caption: Of the 22 states, Texas submitted the higher number of proposed changes, 41.6 percent, followed by Georgia, 13.7 percent. Together, they accounted for slightly more than a majority of changes. South Carolina received 35.9 percent of all objections, followed by Georgia, 15.6 percent. Together they accounted for a majority of the objections.

Note: See note in appendix table A3. Submitted changes are therefore approximate. The South Carolina figure for objected-to changes includes a 1985 objection to 525 annexations. The Justice Department did not interpose objections to proposed changes from Michigan, Hawaii, Wyoming, New Hampshire, Colorado, Illinois, and Arkansas.

Sources: U.S. Department of Justice (DOJ), Civil Rights Division (CRD), Voting Section, "Section 5 Objection Determinations," June 30, 2005, <http://www.justice.gov/crt/voting/sec_5/obj_activ.html> (last accessed December 15, 2005); DOJ, CRD, "Chart 1 (B-1): Changes Received Aug. 6, 1965 to June 30, 2004," response to U.S. Commission on Civil Rights document request, Oct. 8, 2004.

In conclusion, the Justice Department interposed low percentages of objections relative to proposed voting changes during the current extension period as well as previous extensions. This finding held whether analysis of Section 5 determinations is for all submitted changes, particular change types, or by the years of the extensions of the Voting Rights Act. Moreover, the number of objections has continued to decrease in recent years. The department's few objections were clustered primarily among change types which represent slightly more than a quarter of the total

change submissions, while the major change types yielded a negligible number of objections. The Justice Department interposed a large majority of objections (85.8 percent) to three types of changes: annexations, methods of elections, and redistrictings. Submissions and objections were also clustered geographically during the current extension period, with two states (Texas and Georgia) submitting more than half of all changes, and one state (South Carolina) receiving more than a third of all objections.

In testimony before Congress, the former Acting Assistant Attorney General for Civil Rights offered the following observations about the declining number of objections over the last decade:

> Employing this standard [whether the purpose or effect of a voting change would put minority voters in a position inferior to the status quo] over the last 40 years, we have found retrogression in an extremely small number of cases. Since 1965, out of the 120,868 total section 5 submissions received by the Department of Justice, the Attorney General has interposed an objection to just 1,401. And in the [last] 10 ten [sic] years, there have been only 37 objections. In other words, the overall objection rate since 1965 is only a hair over 1%, while the annual objection rate since the mid-1990's has declined even more, now averaging less than 0.2%. This tiny objection rate reflects the overwhelming—indeed, near universal—compliance with the Voting Rights Act by covered jurisdictions.[123]

The Justice Department's enforcement record and the pattern of submitted changes and objections during the current extension period will inform Congress' examination of Voting Rights Act compliance, particularly among Section 5 jurisdictions.

Section 5 Legislative Extension Questions

The impact of Section 5, by some accounts positive and by others negative, on the electoral opportunity of minority voters, as well as on the jurisdictions covered by the preclearance requirement, has been substantial since Congress last extended the statute. While preclearance has prevented retrogression of minority voter influence as Congress intended, the following discussion shows that its implementation also arguably has resulted in several negative consequences.

By some accounts, the Justice Department required a "max-black" redistricting outcome, thus on occasion turning Section 5 into a gerrymandering tool and distorting the Voting Rights Act, with

[123] Bradley J. Schlozman, acting assistant attorney general, Civil Rights Division, U.S. Department of Justice, testimony before the Subcommittee on the Constitution, Committee on the Judiciary, U.S. House of Representatives, Oct. 25, 2005, <http://www. http://www.usdoj.gov/crt/speeches/voting15.pdf> (last accessed Mar. 3, 2006). Also available at <http://judiciary.house.gov/media/pdfs/schlozman102505.pdf> (last accessed Mar. 3, 2006).

sometimes deleterious effects.[124] Finding that methods concentrating minority voters could, in some circumstances, lead to their isolation and a narrowing of political influence to only a fraction of political districts, the Supreme Court now requires Section 5 preclearance actions to assess all relevant circumstances.[125] In a slightly different context, earlier Supreme Court cases explained that concentrating minorities in isolated districts "reinforces racial stereotypes and threatens to undermine our system of representative democracy by signaling to elected officials that they represent a particular racial group rather than their constituency as a whole."[126] Other critics argue that Section 5 has had a negative impact on election competitiveness, guaranteeing safe seats for incumbents, and simultaneously insulating white Republican officials from a full appreciation of minority issues and minority officials from white voters. Some suggest that the provision acts as a glass ceiling for statewide or at-large office-seekers.[127] Additionally, the Justice Department's measure of retrogression, until, recently, was not sophisticated enough and relied on a formulaic examination of only districts which had majority-minority populations.[128]

The Justice Department's enforcement of Section 5 since 1981 can suggest, in part, whether or not the provision is necessary and appropriate. Furthermore, past enforcement activities also illustrate the effectiveness of the discriminatory purpose standard, which changes Section 5 ought to cover, and the necessity for bailout provisions.

Extension of Section 5

The most important questions in the extension debate likely will be: (1) whether the department's objections demonstrate a continuing need for Section 5, and (2) whether there remains continuing justification for singling out jurisdictions currently covered. When Congress extended Section 5 in 1982, it emphasized the importance of the objections interposed during the previous extension period.[129] Similarly, when the Supreme Court upheld the constitutionality of the 1975 extension, it highlighted Congress' determination that the objections interposed after the 1970

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[124] *See* Miller v. Johnson, 864 F. Supp. 1354 (S.D.Ga. 1994) (noting that the Justice Department's preclearance decisions rely on the creation of "max-black" districting plans); *See also* Thernstrom, *Whose Votes Count?*, pp. 157-91; Hayden, "Resolving the Dilemma of Minority Representation," p. 1,589; Edward Blum, visiting fellow, American Enterprise Institute, written statement to the U. S. Commission on Civil Rights, Washington, D. C., October 7, 2005. The U.S. District Court for the Southern District of Georgia and other commentators concluded that the Justice Department's goal was to leverage the control it had to maximize the number of minority districts.

[125] *See* Georgia v. Ashcroft, 539 U.S. 461, 481 (2003).

[126] *See* Shaw v. Reno, 509 U.S. 630, 650 (1993).

[127] *See, e.g.*, for example, USCCR briefing, Oct. 7, 2005, testimony of Edward Blum, visiting fellow, American Enterprise Institute, transcript, pp. 33–34, 37–38, 39; Roger Clegg, "Revise Before Reauthorizing," *National Review Online*, Aug. 4, 2005; Abigail Thernstrom and Edward Blum, "After 40 Years, It's Time for Virginia to Move On," *Richmond Times-Dispatch*, Aug. 1, 2005.

[128] USCCR briefing, Oct. 7, 2005, testimony of Edward Blum, visiting fellow, American Enterprise Institute, transcript, p. 35.

[129] *1982 Senate Report*, pp. 10–12; *1981 House Report*, pp. 14–20.

extension "clearly bespeak the continuing need for this preclearance mechanism."[130] However, some commentators suggest Congress should look beyond the numbers of objections to their geographic distribution, and also at evidence of discrimination in non-covered jurisdictions. They assert that the South has changed dramatically since 1965 and that voting problems today are not limited to the South, and therefore, that it no longer makes sense to subject the same jurisdictions to preclearance. [131]

Lastly, Congress should also consider reversing the Supreme Court's ruling in *Georgia* v. *Ashcroft* and returning the retrogression test to its historical meaning. Although the case was only decided in 2003 and the Section 5 enforcement record to date offers little on which to base an impact evaluation, the potential for reaching conflicting results in identically situated jurisdictions calls for clarification. In place of a clear pre-2003 standard for the retrogression analysis, the Supreme Court introduced consideration of all relevant circumstances in a manner that will foster litigation. Congress should either clarify the Supreme Court's interpretation of retrogression or provide an alternate interpretation.

Section 5 Bailout Procedure

To bail out from Section 5 coverage, a jurisdiction must obtain a declaratory judgment from the District Court for the District of Columbia. The United States is the statutory defendant in these cases.

Prior to August 1984, the bailout standard required jurisdictions to demonstrate that the test or device for voting or voter registration that they used immediately prior to coverage (and which, in part, triggered the coverage determination) was not used in a discriminatory fashion at that time. In addition, where a state was covered in its entirety, only the state was allowed to file for bailout, and not any of its subjurisdictions. The 1982 extension included two significant changes to the procedure, which became effective in 1984. First, Congress provided that where a state is covered in its entirety, individual counties in that state (parishes in Louisiana; counties and independent cities in Virginia) may separately bail out. Second, Congress completely re-designed the bailout standard.

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[130] Rome v. United States, 446 U.S. 156, 181 (1980), *quoting* H.R. Rep. No. 94-196, pp. 10–11 (1975). Congress also relied in 1982 on its finding that Section 5 compliance was inadequate, *1982 Senate Report*, pp. 12–14; *1981 House Report*, pp. 11–13. However, the importance of this issue appears to have receded.

[131] *See, e.g.*, for example, J. Gerald Hebert, attorney-at-law, testimony before the U.S. House of Representative, Committee on the Judiciary, Subcommittee on the Constitution, Oct. 20, 2005; Charles S. Bullock and Ronald Keith Gaddie, "An Assessment of Voting Rights Progress in Georgia," report prepared for the Project on Fair Representation, American Enterprise Institute, Oct. 5, 2005; Issacharoff, "Is Section 5 a Victim of Its Own Success?", pp. 1728-31; USCCR briefing, Oct. 7, 2005, testimony of Edward Blum, visiting fellow, American Enterprise Institute, transcript, p. 38; Roger Clegg, president and general counsel, Center for Equal Opportunity, transcript, p. 58; Commissioner Peter N. Kirsanow, transcript, pp. 84–85; Chairman Gerald A. Reynolds, transcript, p. 105; and Vice Chairman Abigail Thernstrom, transcript, p. 114..

The new post-1984 standard requires that a jurisdiction demonstrate good behavior during the 10 years preceding filing and while the action is pending (e.g., had no Section 5 objections, or any objections except those overturned by a court) and demonstrate that it has taken positive steps to improve minority voters' opportunity to participate in the electoral process.[132] At the time, some critics predicted that these changes would result in numerous bailout lawsuits.[133]

Contrary to predictions, however, only nine bailout suits, all by Virginia counties and independent cities since 1997, have been filed under the amended procedure. In each case, the Justice Department consented to the bailout request (with the jurisdiction obtaining department agreement to consent prior to filing suit), and the district court granted bailout.

Despite the dearth of bailout filings, a large number of subjurisdictions within the covered states potentially are eligible to file. In that regard, the occurrence (or not) of a Section 5 objection is a useful indicator of the jurisdictions that potentially might bail out, although a number of other factors also require consideration in the bailout determination. A review of the geographic distribution of objections within covered states indicates that a large number of counties (as well as a number of parishes and independent cities) have not had a Section 5 objection since at least July 1982 (i.e., the Justice Department has not objected to changes adopted by the county, by any subjurisdiction entirely or partially in the county, or by the state on behalf of the county or any subjurisdiction).[134] The dearth of bailouts in the face of the low number of objections has led

[132] The specific "good behavior" requirements are as follows: 1) no discriminatory test or device has been used to determine eligibility for voting or registering to vote; 2) no court has issued a final judgment finding discrimination in voting, no voting discrimination case is pending, and no voting discrimination case has been resolved through a consent decree or settlement resulting in the abandonment of the challenged voting practice; 3) no federal examiners have been assigned (either to register voters or in connection with the assignment of federal observers); 4) the jurisdiction has complied with the Section 5 preclearance requirement; and 5) there have been no preclearance denials by the District Court for the District of Columbia and no preclearance cases are pending, and no objections from the Attorney General (that have not been overturned by the district court). The "positive step" requirements include: 1) the jurisdiction has eliminated voting procedures and election methods that inhibit or dilute equal access to the electoral process; 2) the jurisdiction has engaged in constructive efforts to eliminate voter intimidation and harassment; and 3) the jurisdiction has engaged in constructive efforts to promote minority participation in the political process, such as expanded registration and voting opportunities, and the appointment of minority persons as poll workers and election officials. 42 U.S.C. 1973b (2000) . *See also* U.S. Department of Justice, Civil Rights Division, Voting Section, "Section 4 of the Voting Rights Act," *n. d.*, <http://www.justice.gov/crt/voting/misc/sec_4.htm> (last accessed Jan. 6, 2006).

[133] See generally *1982 Senate Report*, pp. 43–59; Paul F. Hancock and Lora L. Tredway, "The Bailout Standard of the Voting Rights Act: An Incentive to End Discrimination," 17 *Urban Law* 379 (1985).

[134] In six of the covered states (Alabama, Arizona, Georgia, Louisiana, Mississippi, and Texas), slightly less than half to about two-thirds of the counties (or parishes) have not had an objection since July 1982. In South Carolina, only about 25 percent of the counties have not had an objection. In Virginia hardly any counties or independent cities have had an objection (6 percent) and in Alaska no objections have been interposed to local changes.

some to call for liberalizing the bailout procedures.[135] For example, some have cited the high cost of litigating these cases in the District of Columbia and recommended that Congress allow bailout proceedings to be brought in any federal court.

The Minority Language Requirements of the Voting Rights Act

Statutory Requirements

The substantive requirements of Sections 4(f)(4) and 203 are identical. Jurisdictions covered under either statute (or covered under both) have the same obligation to provide election information in one or more languages other than English. The statutes differ in their coverage formulas, and thus each has its own set of covered jurisdictions (which overlap to some extent). Under both statutes, each jurisdiction is covered for one or more specific language minority group.

Both statutes specify that whenever a covered jurisdiction provides "materials or information relating to the electoral process" in English, it must provide the same materials and information in one or more additional languages, which are identified as part of the coverage determination. A special rule exists where an Alaskan Native or American Indian language is covered and that language is unwritten or historically unwritten; in these cases, the jurisdiction is only required to provide information orally in the covered language. The Attorney General has adopted guidelines to assist covered jurisdictions in understanding their responsibilities under Sections 4(f)(4) and 203.[136] A key provision of the guidelines advises that covered jurisdictions typically may target bilingual materials and information to those areas of the jurisdiction where the language minority citizens reside, and do not need to provide the materials and information indiscriminately throughout the jurisdiction.[137]

Section 4(f)(4), enacted in 1975, uses as its coverage formula the provisions of Section 4(a) that extended the geographic reach of Section 5 in 1975.[138] Significant covered areas under Section 4(f)(4) include: Texas, statewide, for the Spanish language; Arizona, statewide, also for Spanish; Alaska, statewide, for Alaskan Native languages; and Bronx and Kings Counties in New York City, for the Spanish language. (See table 11.) Jurisdictions covered under Section 4(f)(4) also

[135] Pitts, "Section 5: A Once and Future Remedy?" pp. 284–87; Gaddie testimony before Congress, p. 11. Even some supporters of the bailout provision recommend minor amendments. At least one scholar recommends that Congress examine the possibility of allowing local government subunits within a covered county to bailout independently. *See* J. Gerald Herbert, attorney-at-law, testimony before the Subcommittee on the Constitution, Committee on the Judiciary, U.S. House of Representatives, Oct. 20, 2005.

[136] Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 28 C.F.R. pt. 55 (2005).

[137] 28 C.F.R. § 55.17.

[138] The test has three parts: on November 1, 1972, a single language minority group constituted over 5 percent of the voting-age citizens of a state or political subdivision (typically, a county); the jurisdiction provided election materials only in English on November 1, 1972; and less than 50 percent of the jurisdiction's voting-age citizens registered to vote or voted in the 1972 presidential election. 42 U.S.C. § 1973aa-1a. *See also* 28 C.F.R. § 55.5.

are covered under Section 5 and by the examiner and observer provisions of Sections 6 through 9; if a Section 4(f)(4) jurisdiction bails out from Section 5 coverage it also would bail out from Section 4(f)(4) coverage.

TABLE 11
Section 4(f)(4) Jurisdictions

State	Geographic Coverage	Language Coverage of Populations
Alaska	Statewide	Alaskan Native
Arizona	Statewide	Spanish Heritage
	4 counties	American Indian
California	3 counties	Spanish Heritage
Florida	5 counties	Spanish Heritage
Michigan	2 townships	Spanish Heritage
New York	2 counties	Spanish Heritage
North Carolina	1 county	American Indian
South Dakota	2 counties	American Indian
Texas	Statewide	Spanish Heritage

Caption: Texas and Arizona for Spanish language and Alaska for Alaskan Native languages are covered statewide under Section 4(f)(4). Bronx and King Counties in New York for Spanish language are also covered.
Source: U.S. Department of Justice, Civil Rights Division, Voting Section, "List of Counties Added to Sections 4(f)(4) and 203, Sept. 20, 1984 to Aug. 31, 2004," response to U.S. Commission on Civil Rights document request, Aug. 31, 2004.

Congress also enacted Section 203 in 1975. Its original term was 10 years. However, in 1982, Congress extended it until 1992 and modified the coverage formula. In 1992, Congress extended it for another 15 years (thus matching Section 5's 2007 expiration date), and retained the 1982 coverage formula. Jurisdictions covered under Section 203, and not also under Section 4(f)(4), are not subject to the Section 5 preclearance requirement or the examiner and observer provisions of Sections 6 through 9. However, a preclearance requirement and/or examiner and observer coverage may be instituted pursuant to Section 3 as a result of a Section 203 lawsuit.

Section 203's coverage formula has two parts. First, the formula looks to whether the members of a single language minority group who are limited-English proficient constitute more than a minimum percentage or number of voting-age citizens in a particular jurisdiction, or on an Indian reservation.[139] Second, the formula requires that the illiteracy rate of this language minority group be higher than the national illiteracy rate. Section 203 defines "limited English proficient" to mean "unable to speak or understand English adequately enough to participate in the electoral process."[140] "Illiteracy" is defined as "the failure to complete the 5th primary grade" of school.[141]

[139] The coverage test, as applied to states, utilizes a minimum of 5 percent; and as applied to political subdivisions of states (typically, counties), utilizes a minimum of 5 percent or 10,000 citizens. For Indian reservations, the minimum is 5 percent, and all political subdivisions are covered that include any part of a qualifying Indian reservation. 42 U.S.C. § 1973aa-1a. *See also* 28 C.F.R. § 55.6; U.S. Department of Justice, Civil Rights Division, Voting Section, "About Language Minority Voting Rights," no date, <http://www.usdoj.gov/crt/voting/sec_203/activ_203.htm> (last accessed Sept. 26, 2005).

[140] 42 U.S.C. § 1973aa-1a(b)(3)(B).

A covered jurisdiction may bail out by filing a declaratory judgment suit in the District Court for the District of Columbia; the jurisdiction must demonstrate that the illiteracy rate of the covered language minority group in fact is equal to or less than the national illiteracy rate.

Section 203 specifies that the director of the census makes coverage determinations, using census data, which are not reviewable in court. The director of the census makes new coverage determinations after each census; the most current coverage determinations used data from the 2000 census.

Section 203 currently covers approximately 300 political subdivisions in 30 states. (See table 12.) Covered languages include Spanish, Chinese, Japanese, Korean, Vietnamese, Tagalog, several American Indian languages, and several Alaskan Native languages. The most common coverage is for Spanish only.

TABLE 12
Section 203 Jurisdictions

State	Geographic Coverage	Language Coverage of Populations
Alaska	28 boroughs and census areas	Alaskan Native, American Indian, Filipino
Arizona	12 counties	American Indian, Hispanic
California	Statewide	Hispanic
	25 counties	American Indian, Chinese, Filipino, Hispanic, Japanese, Korean, Vietnamese
Colorado	10 counties	American Indian, Hispanic
Connecticut	7 towns	Hispanic
Florida	10 counties	American Indian, Hispanic
Hawaii	2 counties	Chinese, Filipino, Japanese
Idaho	5 counties	American Indian
Illinois	2 counties	Chinese, Hispanic
Kansas	6 counties	American Indian, Hispanic
Louisiana	1 parish	American Indian
Maryland	1 county	Hispanic
Massachusetts	5 cities and 1 town	Hispanic
Michigan	1 township	Hispanic
Mississippi	9 counties	American Indian
Montana	2 counties	American Indian
Nebraska	2 counties	American Indian, Hispanic
Nevada	6 counties	American Indian, Hispanic
New Jersey	7 counties	Hispanic
New Mexico	Statewide	Hispanic American Indian,

[141] 42 U.S.C. § 1973aa-1a(b)(3)(E).

	26 counties	Hispanic
New York	7 counties	Chinese, Hispanic, Korean
North Dakota	2 counties	American Indian
Oklahoma	2 counties	Hispanic
Oregon	1 county	American Indian
Pennsylvania	1 county	Hispanic
Rhode Island	2 cities	Hispanic
South Dakota	8 counties	American Indian
Texas	Statewide 104 counties	Hispanic American Indian, Hispanic, Vietnamese
Utah	1 county	American Indian
Washington	4 counties	Chinese, Hispanic

Caption: Section 203 covers jurisdictions in 30 states across the United States.
Note: The covered languages listed for each subjurisdiction total in a particular state are the languages in which one or more (but not all of) the state's subjurisdictions must provide election information.
Source: U.S. Department of Justice, Civil Rights Division, Voting Section, "List of Counties Added to Sections 4(f)(4) and 203, Sept. 20, 1984 to Aug. 31, 2004," response to U.S. Commission on Civil Rights document request, Aug. 31, 2004.

Justice Department Enforcement

The Justice Department has enforced the language minority requirements in a variety of ways—through lawsuits (and, on one occasion, a non-litigation settlement agreement), Section 5 objections, election monitoring using observers, and informal compliance efforts.

Lawsuits

From July 1982 until November 2004, the department filed 18 lawsuits to enforce the language minority requirements. In addition, the relief obtained in two lawsuits filed prior to July 1982 continued in effect after that date. All but one of these 20 lawsuits were filed under Section 203; one was filed under Section 4(f)(4). On several occasions, the department returned to court in these cases and obtained further relief after the initial remedy. The department mostly filed lawsuits against counties or that dealt with county election procedures (two suits were against states but concerned the election practices of particular counties). It also filed suits against two cities, one combined city/county government, and one school board. A review of these lawsuits reveals several notable patterns. (See table 13 and appendix table A9.)

TABLE 13
Justice Department Enforcement of the Minority Language Requirements: Lawsuits and a Non-Litigation Agreement, Listed by Language and Date of Filing (1975 through November 30, 2004)

Indian Languages	Spanish Language	Asian Languages
San Juan County, NM 1979 (Navajo)	City and County of San Francisco, CA (1978)	City and County of San Francisco, CA (1978) (Chinese)
San Juan County, UT (1983) (Navajo)	Metro Dade County, FL (1993)	Alameda County, CA (1995) (Chinese)
McKinley County, NM (1986) (Navajo and subsequently Zuni also)	City of Lawrence, MA (1998)	Harris County, TX Memo of Understanding (2004)
NM and Sandoval County (1988) (Keres and Navajo*)	Passaic City and Passaic County, NJ (1999)	San Diego County, CA (2004) (Tagalog and Vietnamese**)
AZ (Apache and Navajo Counties (1988) (Navajo)	Orange County, FL (2002)	
Metro Dade County, FL (1993) (Mikasuki)	Brentwood Union Free School District, NY (2003)	
Cibola County, NM (1993) (Keres and Navajo)	San Benito County, CA (2004)	
Socorro County, NM (1993) (Navajo)	Suffolk County, NY (2004)	
Bernalillo County, NM (1998) (Navajo)	Yakima County, WA (2004)	
	Ventura County, CA (2004)	

Caption: Between 1982 and 2004, the Department of Justice filed 18 lawsuits to enforce the language minority requirements. All but 20 of the lawsuits were filed under Section 203; one was filed under Section 4(f)(4).
* Navajo language claim brought under Section 2 (county not covered for Navajo under Section 203 or Section 4(f)(4)).
**Relief obtained included a Vietnamese language program, although jurisdiction is not covered for the Vietnamese language.
Source: U.S. Department of Justice, Civil Rights Division, Voting Section, "Litigation Brought by the Voting Section," no date, <http://www.usdoj.gov/crt/voting/litigation/caselist.htm#sec203cases> (last accessed Jan. 30, 2006).

First, the 20 lawsuits have produced almost no contested litigation. The Justice Department resolved 17 of the 20 cases through settlements without any litigated order from the court, and no trials on the merits occurred in any of the cases. Three cases resulted in litigated preliminary orders. These latter cases do not suggest any trend of more or less litigation because they are widely spaced in time (the preliminary orders were issued in the three cases in 1978, 1993, and 2000–2001, respectively). In addition, there have not been any appellate decisions.

Second, the department filed eight of the first 11 lawsuits (from 1979 until 1998) in Arizona, New Mexico, and Utah; they dealt with the provision of oral information in historically unwritten American Indian languages (Navajo, Zuni, and Keres). The most recent nine lawsuits

(filed since 1998) generally concerned the provision of election information in Spanish; the department filed four in the Northeast and three in California. Lawsuits also focused on the provision of information in Chinese, Tagalog, and Vietnamese, and a non-litigation settlement agreement also addressed the provision of information in Vietnamese.

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

Fourth, the relief obtained in almost all the Justice Department's settlement agreements shared many common requirements, including: (1) all election-related documents that are prepared in English also must be prepared in the language(s) for which the jurisdiction is covered or, if the language is unwritten, must be translated for oral transmission (using video and/or audio tapes); (2) translations must be accurate; (3) an outreach program should be utilized to ensure appropriate targeted dissemination of translated information; (4) an appropriate number of bilingual personnel should be employed at the elections office and targeted polling places; (5) election personnel who participate in the bilingual program should receive appropriate training; (6) a formal procedure should allow the language minority community to provide input regarding the language program; and (7) a full- or part-time coordinator should be responsible for ensuring that the language program is properly implemented. In addition, in almost all Section 203 cases, the settlements subjected the designated jurisdiction to Section 3(a) examiner and observer coverage for a specified period of time, to allow the Justice Department to monitor implementation of the settlement agreement. In some cases, the settlements also provided for Section 3(c) preclearance coverage for a specified period of time.

Cost of Section 203 Compliance

In 1986 and again in 1997, the U.S. Government Accountability Office (GAO)[142] examined the costs associated with the provision of bilingual voting assistance under Section 203.[143] . GAO found such costs vary dramatically by location and type of assistance. For example, some jurisdictions provide oral assistance at little or no cost by using bilingual pollworkers and volunteers. Larger jurisdictions that are required to provide assistance in multiple languages and at numerous polling places report significantly higher costs. Los Angeles, for example, expended more than $1.1 million in 1996.[144] New York City and Santa Clara, California, also spent more

[142] In July 2004, the agency changed its name from the U.S. General Accounting Office.

[143] Jurisdictions are not required to maintain cost data, so it is difficult to assess. Moreover, jurisdictions are often unable to estimate the number of voters who actually use the language assistance provided
See also U.S. General Accounting Office (GAO), *Bilingual Voting Assistance: Costs of and Use During the November 1984 General Election*, September 1986 (hereafter cited as GAO, *Bilingual Voting Assistance 1984*), p. 32.

[144] GAO, *Bilingual Voting Assistance: Assistance Provided and Costs*, May 1997, pp. 3, 20–21.

than half a million dollars for this purpose that year.[145] Variation also can be attributed to state laws, which in some cases may require assistance beyond what the Voting Rights Act demands.

GAO estimated that in the 1984 elections, 83 jurisdictions spent on average 7.6 percent of their total costs on providing written language assistance and 2.8 percent on oral assistance.[146] One research team sought to update the GAO studies by surveying 810 jurisdictions in 33 states about Section 203 practices and costs in post-2000 elections. Of those that responded, more than half reported incurring no extra costs for oral (59.1 percent) and written (54.2 percent) assistance. The survey's findings estimate that jurisdictions spend an average of 8.1 percent and 4.9 percent of all election expenses on written and oral assistance, respectively.[147]

Some commentators, argue that Section 203 wastes government resources, requiring jurisdictions to expend limited election funds on materials that are seldom used.[148] The Justice Department encourages jurisdictions to identify the most effective and efficient methods for providing bilingual voting assistance in order to conserve resources.[149]

Section 5 Objections

Between 1985 and 1995, the Justice Department interposed eight Section 5 objections based on violations of Sections 4(f)(4) and 203 to changes adopted in Arizona, New York City, and Texas. The bases of seven of the eight objections were exclusively violations of Sections 4(f)(4) and 203; there was no discriminatory purpose or retrogressive effect associated with the changes. (See appendix table A6.) The Supreme Court's decision in *Bossier Parish I* now precludes the use of the language minority provisions to interpose objections.

Election Monitoring

In numerous elections, the Justice Department has deployed observers to polling places to evaluate jurisdictions' compliance with the language minority requirements. The observers mostly have been sent pursuant to the department's authority under Section 8 of the act or court-ordered coverage under Section 3(a). The department also, in recent years, has expanded its ability to monitor elections for compliance with the language minority requirements by obtaining

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[145] Id.

[146] GAO, *Bilingual Voting Assistance 1984*, pp. 16, 20.

[147] James Thomas Tucker, adjunct professor, Barrett Honors College, Arizona State University, testimony before the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution, Nov. 9, 2005, pp. 4–7.

[148] *See* Linda Chavez, president, One Nation Indivisible, and chair, Center for Equal Opportunity, testimony before the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution, Nov. 8, 2005, pp. 6–7; K.C. McAlpin, executive director, ProEnglish, testimony before the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution, Nov. 9, 2005, p. 5.

[149] Bradley J. Schlozman, acting assistant attorney general, Civil Rights Division, U.S. Department of Justice, testimony before the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution, Nov. 8, 2005, p. 3.

agreements with noncovered jurisdictions to send observers into polling places for particular elections. The information the department obtained from the observers led it to file Section 203 lawsuits, enabled the department to monitor implementation of language minority settlement agreements and obtain supplemental court relief when compliance is inadequate, and resulted in the department providing informal feedback to local election officials regarding the adequacy of their bilingual election programs.[150]

Informal Compliance Efforts

The Justice Department engages in informal efforts to promote compliance with the language minority requirements in several ways. Perhaps the most significant is the information the department provides to covered jurisdictions about the steps necessary to implement an effective bilingual election program. This information is contained in the department's language minority guidelines and in a booklet available through the Division's Voting Section Web site.[151] In addition, the department has placed several of its recent Section 203 settlements on the Internet. The guidelines, booklet, and settlements, when read together, provide a helpful and useful overview of the specific compliance steps that are important. However, the department's informational compliance efforts likely would be better focused, and thus more effective, if it consolidated the information in one location, either by amending the language minority guidelines or expanding the informational booklet.[152]

The department also addresses language minority issues through correspondence, meetings, and telephone conversations. It sent letters to the covered jurisdictions after Congress enacted the language minority requirements in 1975 and to Section 203 jurisdictions following coverage determinations after the 1980, 1990, and 2000 censuses.[153] The department also held meetings with election officials and minority community members in all of the 80 jurisdictions newly covered after the 2000 census, and sent letters to all Section 4(f)(4) and Section 203 jurisdictions prior to the 2004 general election reminding them of their obligations under these statutes. The department also contacts election officials after receiving a complaint or other information indicating possible noncompliance.

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[150] The extent to which the observer program is an essential ingredient of the Justice Department's language minority enforcement program is indicated by the fact that, from July 1982 to June 2004, the state with the third highest number of elections to which the department sent observers (pursuant to Section 3(a) or Sections 6 through 9) is New Mexico, where observers monitored language minority issues. (*See* appendix table A10.)

[151] U.S. Department of Justice, "Minority Language Citizens, Section 203 of the Voting Rights Act," *n d.*, <http://www.usdoj.gov/crt/voting/sec_203/203_brochure.htm> (last accessed Dec. 1, 2004).

[152] The department originally published language minority guidelines in 1976, and has significantly revised them since. The guidelines provide only very general guidance with regard to implementing an effective bilingual election program, and do not reflect the knowledge the Justice Department gained from its numerous post-1976 settlements. The brochure is of more recent origin, and provides an overview of the essential common elements of the settlement agreements.

[153] The letters after the post-1980 census determinations were sent only to newly covered Section 203 jurisdictions. Letters were sent to all Section 203 jurisdictions after the 1990 and 2000 censuses.

In addition, the department began an effort in 2002 to monitor whether an adequate number of bilingual poll officials serve polling places in which a significant number of language minorities vote. This has involved obtaining voter registration and bilingual poll official lists from covered jurisdictions, analyzing the registration lists using lists of surnames common to particular language minority groups, and comparing the results with the bilingual poll official assignments.

The Examiner and Observer Provisions of the Voting Rights Act

Registration Examiners

Both permanent and temporary provisions of the original Voting Rights Act authorize the use of federal examiners.. Section 3 (a), a permanent provision, provides for the appointment of federal examiners through a federal court order.[154]Section 6, a temporary provision, allows the Attorney General to send federal examiners to covered jurisdictions to examine voter registration applications and ensure that jurisdictions add eligible voters to their rolls. Examiners were last used in 1982 and 1983, to register voters in only eight counties. They spent no more than a few days in each county. (See appendix table A10.) Registration procedures are now governed by the National Voter Registration Act of 1993.[155]

Polling Place Observers

The observer program, on the other hand, continues to play a vital role in the Justice Department's Voting Rights Act enforcement efforts. (See appendix table A10.) In some instances, the department uses observers where there are concerns about racial discrimination in the voting process; at other times, monitoring is done to ensure compliance with bilingual election procedures.[156] The U.S. Office of Personnel Management recruits, trains, and supervises the observers, mostly federal employees, who serve as neutral monitors of Election Day procedures.[157]

The department has expanded the observer program in recent years, beyond the provisions of the Voting Rights Act, by sending observers to jurisdictions not covered by Sections 4 or 3(a), and by obtaining agreements from jurisdictions to permit observers in polling places. During the 2004 presidential elections, the department sent observers to 27 jurisdictions covered by Sections 4 or 3(c) (slightly more than half were Section 3(c) jurisdictions), and to 61 jurisdictions not

[154] U.S. Department of Justice, Civil Rights Division, "About Federal Examiners and Federal Observers," Feb. 28, 2006, <http://www.usdoj.gov/crt/voting/examine/activ_exam.htm> (last accessed Mar. 21, 2006).

[155] 42 U.S.C. § 1973gg-2.

[156] U.S. Department of Justice, Civil Rights Division, "About Federal Examiners and Federal Observers," revised Feb. 28, 2006, <http://www.justice.gov/crt/voting/examine/activ_exam.htm> (last accessed Mar. 1, 2006).

[157] Ibid.

covered by either provision.[158] However, as table 14 indicates, many jurisdictions were certified decades ago and remain certified, although observers have not been sent in years. For example, since 1968, the Federal government has not sent observers to Sereven County, Georgia, which has been certified since 1967; Franklin County, Mississippi has been certified since 1967, however no observers have been sent since 1968. Observers are required to report any problems they detect to the Civil Rights Division attorney who accompanies and supervises each observer team, and the attorney in turn can immediately discuss the problem with local officials and seek resolution. The department can also engage in post-election discussions with local officials. And, as indicated above, observers can provide the factual foundation lawsuits under Sections 4(f)(4) or 203 (or under Section 2), and allow the department to monitor compliance with settlement agreements entered in these cases.

TABLE 14
Certification and Coverage of Election Observers, through February 2006

Table 14a Attorney General Certification

State	Jurisdiction	Date Certified	Last Coverage
Alabama	Autauga	10/29/65	
	Barbour	10/6/94	6/2/98
	Bullock County	11/6/78	6/28/94
	Chambers County	7/27/84	6/4/02
	Choctaw County	5/30/66	6/3/86
	Conecuh County	8/28/80	6/24/86
	Crenshaw County	12/29/86	1/6/87
	Dallas County	8/9/65	6/2/98
	Elmore County	10/29/65	
	Greene County	10/29/65	11/5/74
	Hale County	8/9/65	6/4/02
	Jefferson County	1/20/66	8/28/90

[158] U.S. Department of Justice, "Department of Justice Announces Federal Observers to Monitor General Election in States Across the County," press release, Oct. 28, 2004, <http://www.usdoj.gov/opa/pr/2004/October/04_crt_725.htm> (last accessed Dec. 1, 2004); U.S. Department of Justice, "Department of Justice to Monitor November 2 Presidential Election in Cherokee, Delaware, and Adair Counties, Oklahoma," press release, Nov. 1, 2004, <http://www. usdoj.gov/opa/pr/2004/November/04_crt_730.htm> (last accessed Dec. 1, 2004). Observers sent to Section 8 and Section 3(c) jurisdictions are federal employees assigned by the Office of Personnel Management. Observers sent to jurisdictions not covered by either of these provisions are Justice Department employees.

	Lowndes County	8/9/65	11/7/00
	Marengo County	8/9/65	6/28/94
	Monroe County	8/31/84	6/7/88
	Montgomery County	9/29/65	
	Perry County	8/18/65	11/2/76
	Pickens County	9/1/78	1/20/87
	Russell County	9/25/78	9/7/82
	Sumter County	5/2/66	9/4/84
	Talladega County	10/31/74	11/5/74
	Wilcox County	8/18/65	11/2/82
Arizona	Apache County	10/31/86	11/2/04
	Navajo County	10/31/86	11/2/04
	Yuma County	2/26/91	11/2/04
Georgia	Baker County	11/4/68	9/4/84
	Baldwin County	8/7/84	11/6/84
	Brooks County	7/11/90	7/18/00
	Bulloch County	7/30/80	8/5/80
	Burke County	11/7/78	1/4/88
	Butts County	8/25/82	
	Calhoun County	7/30/80	7/9/96
	Chattahoochee County	8/7/84	8/14/84
	Early County	7/30/80	8/5/80
	Hancock County	11/7/66	4/10/78
	Jefferson County	8/7/84	11/5/96
	Johnson County	7/30/80	11/5/96
	Lee County	3/23/67	9/11/68
	McIntosh County	7/20/92	1/26/93
	Meriwether County	8/8/76	8/6/96
	Mitchell County	7/30/80	8/5/80

	Peach County	11/4/72	7/21/92
	Pike County	8/7/84	3/13/90
	Randolph County	8/10/92	8/10/04
	Screven County	3/23/67	9/11/68
	Stewart County	8/3/76	6/29/93
	Sumter County	7/30/80	8/8/00
	Talbot County	8/4/88	8/10/93
	Taliaferro County	11/4/68	7/21/98
	Telfair County	7/30/80	8/9/88
	Terrell County	3/23/67	8/10/76
	Tift County	7/30/80	8/5/80
	Twiggs County	9/3/74	7/18/00
	Worth County	8/7/84	9/4/84
Louisiana	Bossier Parrish	3/23/67	
	Caddo Parrish	3/23/67	
	De Soto Parrish	3/23/67	11/1/75
	East Carroll Parrish	8/9/65	11/20/99
	East Feliciana Parrish	8/9/65	8/14/76
	Madison Parrish	8/12/66	11/1/75
	Ouachita Parrish	8/18/65	8/13/66
	Plaquemines Parrish	8/9/65	12/27/79
	Sabine Parrish	9/27/74	9/28/74
	St. Helena Parrish	8/16/72	10/22/83
	Tensas Parrish	10/22/99	10/7/00
	West Feliciana Parrish	10/29/65	11/6/71
Mississippi	Adams County	9/12/91	11/5/02
	Amite County	3/23/67	11/5/02
	Benton County	9/24/65	8/25/87

Bolivar County	9/24/65	8/25/87
Carroll County	12/20/65	11/2/99
Chickasaw County	8/2/99	11/2/99
Claiborne County	4/12/66	11/3/87
Clay County	9/24/65	11/4/80
Coahoma County	9/24/65	5/15/01
Copiah County	12/9/83	11/5/85
Covington County	8/6/79	8/24/99
De Soto County	10/29/65	5/10/77
Forrest County	6/1/67	
Franklin County	3/23/67	3/12/68
Greene County	8/6/79	11/6/79
Grenada County	7/20/66	11/7/00
Hinds County	10/29/65	11/4/86
Holmes County	10/29/65	5/6/97
Humphreys County	9/24/65	6/7/05
Issaquena County	6/1/67	11/6/84
Jasper County	4/12/66	10/8/91
Jefferson County	10/29/65	8/20/85
Jefferson Davis County	8/18/65	8/25/87
Jones County	8/18/65	11/2/04
Kemper County	10/31/74	11/2/04
Leake County	7/26/99	11/2/04
Leflore County	8/9/65	11/5/96
Lowndes County	8/19/83	11/5/96
Madison County	8/9/65	5/20/97
Marshall County	8/5/67	8/3/99
Monroe County	9/12/91	5/4/04
Neshoba County	10/29/65	11/2/04

	Newton County	12/20/65	11/2/04
	Noxubee County	4/12/66	11/4/03
	Oktibbeha County	3/23/67	11/5/96
	Pearl River County	4/29/74	5/21/85
	Quitman County	10/29/80	8/24/99
	Rankin County	4/12/66	11/5/96
	Scott County	5/17/93	5/20/97
	Sharkey County	6/1/67	11/8/83
	Simpson County	12/20/65	8/8/67
	Sunflower County	4/29/67	1/15/02
	Tallahatchie County	8/14/71	5/1/01
	Tunica County	10/31/75	1/22/99
	Walthall County	10/29/65	8/24/99
	Warren County	12/20/65	5/6/97
	Washington County	8/8/83	10/6/03
	Wilkinson County	8/5/67	2/12/02
	Winston County	4/12/66	11/2/04
	Winston County	4/12/66	11/2/04
	Yazoo County	10/28/71	11/3/87
North Carolina	Edgecombe County	5/3/84	11/8/94
New York			
	Bronx County	11/1/85	11/6/01
	Kings County	11/1/85	11/8/05
	New York County	11/1/85	11/8/05
South Carolina	Bamberg County	10/10/84	2/12/85
	Calhoun County	9/28/84	11/8/88
	Chester County	6/8/90	6/25/96
	Clarendon County	10/29/65	10/2/84
	Colleton County	10/10/84	10/11/84

	Darlington County	11/6/78	11/7/78
	Dorchester County	10/29/65	12/11/02
	Hampton County	10/10/84	10/1/84
	Marion County	6/26/78	6/11/96
	Richland County	9/28/84	10/2/84
	Williamsburg County	9/28/84	6/25/96
Texas	Atascosa County	10/29/80	11/4/80
	Bee County	10/29/76	11/2/76
	Crockett County	8/11/78	8/12/78
	Dallas County	4/5/84	11/2/04
	El Paso County	11/6/78	11/7/78
	Fort Bend County	4/28/76	5/1/76
	Frio County	10/29/76	4/14/92
	Galveston County	12/5/96	12/10/96
	Hidalgo County	11/4/88	11/8/88
	Jefferson County	12/5/96	12/10/96
	La Salle County	10/29/76	11/2/76
	Medina County	4/28/76	5/1/76
	Reeves County	5/5/78	6/3/78
	Titus County	11/1/02	11/5/02
	Uvalde County	4/28/76	5/1/76
	Victoria County	3/31/87	4/4/87
	Wilson County	4/28/76	5/1/76

Table 14b Court Certification

State	Jurisdiction	Date Certified	Last Coverage

California	City of Azusa (Los Angeles County)	8/26/05 through 8/6/07	
	City of Paramount (Los Angeles County)	8/23/05 through 8/8/07	
	City of Rosemont (Los Angeles County)	9/8/05 through 8/6/07	
	San Benito County	10/1/04 through 12/31/06	11/2/04
	San Diego County	7/7/04 through 3/31/07	11/8/05
	Ventura County	9/2/04 through 8/1/07	11/8/05
	Expired Jurisdictions		
	Alameda County	1/22/96 through 1/22/01	11/7/02
	San Francisco County	11/01/78 through 11/7/78; 10/15/79 through end of court jurisdiction; 5/19/80 through 8/6/85	12/11/79
Illinois	**Expired Jurisdictions**		
	Alexander County	10/31/83 (effective for 5 years)	
	Town of Cicero (Cook County)	10/23/00 through 12/31/05	2/22/05
	City of East Chicago (Lake County)	9/13/04 through 12/31/04	12/28/04
Louisiana	St. Landry Parrish	12/5/79	4/5/80
Massachusetts	City of Boston (Suffolk County)	10/18/05 through 12/31/08	11/8/05
Michigan	City of Hamtramck (Wayne County)	1/28/04 through 1/31/06	11/8/05
Nebraska	**Expired Jurisdictions**		
	Thurston County	5/9/79 (effective for 5years)	
Nevada	Humboldt County	9/7/78 (effective for 1 election only)	9/12/78
New Jersey	Passaic County	4/19/04 through 12/31/05	

New Mexico	Cibola County	5/3/04 through 12/31/06	
	Sandoval County	11/8/04 through 1/15/07	11/2/04
	Expired Jurisdiction		
	Bernalillo County	7/1/03 through 1/31/05	11/2/04
	Chaves County	12/17/84 (effective for 10 years)	
	Curry County	12/17/84 (effective for 10 years)	
	McKinley County	2/7/97 through 2/1/01	11/7/00
	Otero County	12/17/84 (effective for 10 years)	11/5/02
	Socorro County	7/13/04 through 12/15/04	
New York	Brentwood Union Free School District (Suffolk County)	7/14/03 through 1/31/07	5/17/05
	Suffolk County	9/27/04 through 1/31/08	11/8/05
	Westchester County	7/18/05 through 8/7/07	11/8/05
Pennsylvania	Berks County	8/21/03 through 6/30/07	11/8/05
South Dakota	Buffalo County	2/12/04 through 1/1/13	11/2/04
Texas	Ector County	8/26/05 through 8/6/07	11/8/05
Utah	**Expired Jurisdiction**		
	San Juan County	12/31/98 through 12/31/02	11/5/02
Washington	Yakima County	9/7/04 through 13/31/06	3/8/05
Wisconsin	**Expired Jurisdiction**		
	Shawano County	2/17/78 (effective for six months)	4/4/78

Source: U.S. Department of Justice, Civil Rights Division, Voting Section, "AG Certifications as of February 26, 2006" and "Court Certification, Current as of February 28, 2006" facsimile submission to the U.S. Commission on Civil Rights, Mar. 2, 2006.

Conclusion

Confronted by explosive social turmoil that accompanied the painful struggle for voting rights for African Americans 40 years ago, Congress enacted in 1965 the Voting Rights Act. The enactment made "the promise of the right to vote under the 15th Amendment of the U. S. Constitution a reality, ninety-five years after [its] passage."[159] The Voting Rights Act of 1965 was, and remains, landmark legislation that indisputably elevated the political power of African Americans and other minority groups.[160] Along with its core temporary provisions, in particular Section 5, the Voting Rights Act has increased minority voter registration, voter turnout, and officeholding.[161] In carrying out this study, the Commission examined quantitative and qualitative data that include voting rights experts' testimonies to evaluate Justice Department decisions on Section 5, in particular its pattern of objections. The resulting report offers key findings. It should be recalled that Justice Department objections may undercount or overcount covered jurisdictions' actual or potential efforts to bring about voting changes to the detriment of minority voters. Nevertheless, Justice Department objections remains the best single indicator available.[162]

During the three legislative periods that the Commission examined, 1965–1974, 1975–1982, and 1982–2004, the number of submitted changes from jurisdictions rose substantially, from 4,998 to 414,927. The proportion of objections to submitted changes decreased throughout, from 5.5 percent in the first period to 1.2 percent in the second, and to 0.6 percent in the third. Over the last ten years, the overall objection rate was so low as to be practically negligible, at less than 0.1 percent.

Focusing on the current extension period, the Commission reviewed objection rates by types of proposed voting changes and found that the Justice Department interposed few objections relative to submitted changes irrespective of change type. Of note, changes which concerned precincts/polling place/absentee vote, annexations/boundary changes, and voter registration, comprised almost 76 percent of all submitted changes. Despite this proportion, however, the former involved lower objection rates, only 1.5 percent collectively. Ironically, the Justice Department objected to proposals on redistrictings and methods of elections at higher rates, 7.8 percent combined, even though they made up only 6.6 percent of all proposals. Analysis by state showed objection rates disproportionate to the number of changes submitted for many

[159] The Judiciary's Subcommittee on the Constitution, United States House of Representatives hearing, Oct. 18, 2005, testimony of Joe Rogers, National Commission on the Voting Rights Acts, p. 1.

[160] *See*, for example, USCCR briefing, Oct. 7, 2005, testimony of Ronald Keith Gaddie, professor of political science, the University of Oklahoma, p. 41; Francis, "Preserving a Fundamental Right," p. 1; the Honorable Jack Kemp, former member of Congress and former secretary of housing and urban development, testimony before the Subcommittee on the Constitution, Committee on the Judiciary, U.S. House of Representatives, Oct. 18, 2005.

[161] *See*, for example, Donahue, "The Report of My Death Are Greatly Exaggerated," p. 1651.

[162] *See Protecting Minority Voters The Voting Rights Act at Work 1982–2005*, A Report by The National Commission on Voting Rights Act, February 2006, *n. d.*, Figure 1.

jurisdictions. For example, Texas ranked first among the states that submitted proposals, contributing 41.6 percent, yet the numbers of objections it received comprised a small proportion of all the objections the Justice Department interposed. In contrast, South Carolina submitted a smaller number of changes, only 6.1 percent, but its objections comprised 35.9 percent of all objections. Furthermore, objection rates to submitted changes from an overwhelming majority of states are negligibly low, less than 1 percent.

What plausible conclusions might one draw from this pattern of findings? Many observers may consider the declining trend in objections as indicative that the Voting Rights Act (and Section 5 among its core temporary provisions) have been successful against the blatant virulent discrimination the nation witnessed in the 1960s and 1970s. Findings from recent studies documenting the increase in the numbers of minority candidates running for office and increased minority participation in elections would bolster this view. Some might extract from the Justice Department's statistical record that Section 5has been victim to its success. That is, Section 5's utility has dropped to a point which renders reauthorization unnecessary. Others may not go as far. They may conclude Section 5 requires retooling, for example, revising the coverage formula, liberalizing the bailout procedure, or limiting any future extension period. Still others might conclude that, taken together, these data suggest that the President and Congress should try to replicate the success of covered jurisdictions in non-covered ones.[163] Alternatively, some may want Section 5 to be reauthorized as long as any discrimination in the electoral process remains. They might note, for example, that even though the proportion of objections to jurisdictions' proposed changes is extremely low, the Justice Department continues to interpose them. The purpose of this report has not been to select from among these competing perspectives, each of which may arise from a particular perspective, set of beliefs, and view of constitutional law and federal authority. Rather, it is intended that this report provide an analysis of the historical record that may inform decision-makers of all perspectives.

[163] One obstacle to this approach is that a simple extension of Section 5 will not suffice because it will not be construed as "narrowly tailored" or "congruent and proportionate" to remedy the harms it is intended to cure. *See*, for example, National Commission on the Voting Rights Act and Lawyers' Committee for Civil Rights Under Law "Background on the Expiring Provisions of the Voting Rights Act," *n. d.*, p. 2.

Appendix

TABLE A1
Merit Decisions in Section 5 Declaratory Judgment (DJ) Actions (July 1, 1982 through June 30, 2004)

Case	Jurisdiction	Changes at Issue	Decision	Reasoning
Busbee v. Smith, 549 F. Supp. 494 (D.D.C. 1982), *aff'd. mem.*, 459 U.S. 1166 (1983)	Georgia	Redistricting	DJ denied	Discriminatory purpose (plan was not retrogressive)
City of Lockhart v. U.S., 460 U.S. 125 (1983)	Lockhart, TX	Numbered posts; staggered terms	Supreme Court vacated district court denial of DJ; case was dismissed on remand	Supreme Court ruled that the retrogression analysis requires that the proposed change be compared to the system actually in effect on the coverage date, and changes that are neither retrogressive nor ameliorative do not violate the effect standard.
County Council v. U.S., 596 F. Supp. 35 (D.D.C. 1984)	Sumter County, SC	At-large method of election	DJ denied	Discriminatory purpose and retrogression.
City of Pleasant Grove v. U.S., 479 U.S. 462 (1987)	Pleasant Grove, AL	Annexations	DJ denied	Discriminatory purpose (annexations were racially selective). The Section 5 purpose test is not limited to the issue of intent to retrogress, but rather looks at whether the voting change had a discriminatory purpose in the constitutional sense.
New York v. *U.S.*, 874 F. Supp. 394 (D.D.C. 1994), *reconsideration denied*, 880 F. Supp. 37 (D.D.C. 1995)	Bronx and Kings Counties, NY	Additional judgeships	DJ granted	No discriminatory purpose or retrogression. Preclearance may not be denied based on a Section 2 violation.
Georgia v. Reno, 881 F. Supp. 7 (D.D.C. 1995)	Georgia	Additional judgeships	DJ granted	No discriminatory purpose or retrogression. Preclearance may not be denied based on a Section 2 violation.
Texas v. U.S., No. 94-1529, 1995 WL 456338 (D.D.C. 1995)	Texas	Additional judgeships	DJ granted	No discriminatory purpose or retrogression. Preclearance may not be denied based on a Section 2 violation.
Arizona v. Reno, 887 F. Supp. 318 (D.D.C. 1995)	Coconino and Navajo Counties, AZ	Additional judgeships	DJ granted	Preclearance may not be denied based on a Section 2 violation. Summary judgment was denied. (Subsequent to this decision, DOJ consented to preclearance.)
Bossier Parish School Board v. Reno, 520 U.S. 471 (1997)	Bossier Parish School District, LA	Redistricting	DJ granted	In *Bossier Parish I*, the Supreme Court held that preclearance may not be denied based on a Section 2 violation.
Bossier Parish School Board v. Ashcroft, 528 U.S. 320 (2000)	Bossier Parish School District, LA	Redistricting	DJ granted	In *Bossier Parish II*, the Court held that the Section 5 purpose test is limited to the issue of intent to retrogress, and does not include consideration of whether the voting change had a discriminatory purpose in the constitutional sense.
Georgia v. Ashcroft, 539 U.S. 461 (2003)	Georgia	State senate redistricting	District court denial of DJ vacated; on remand, case was dismissed	Supreme Court held that where the existing voting practice allows minority voters some opportunity to elect candidates of choice, the retrogression determination is not based only on whether the change reduces that opportunity to elect. Instead, the Attorney General or district court must consider all facts associated with changes to minority voters' opportunity to participate in the political process, including the opportunity to exert substantial influence in elections where they lack the opportunity to elect candidates of choice and the opportunity of minority voters' elected representatives of choice to exert legislative leadership, influence, and power.

Caption: The table contains 11 decisions involving proposed voting changes by jurisdictions seeking compliance with Section 5 through United States District Court for the District of Columbia.
Source: U.S. Department of Justice, Civil Rights Division, Voting Section, "Section 5 Declaratory Judgment Actions (United States District Court for the District of Columbia)," response to U.S. Commission on Civil Rights document request, Aug. 3, 2004.

TABLE A2
Summary Declaratory Judgment Statistics for All Years (through June 30, 2004)

Subject	1965 – June 1983	July 1982 – June 2004	Total
Declaratory judgment actions filed	27	41	68
Granted (contested)	3	5	8
Granted (no DOJ opposition)	4	3	7
Denied	8	3	11
Dismissed	7	35	42
Percentage of contested declaratory judgment actions in which preclearance was denied	73%	37%	58%

Caption: Eighty-seven percent of submitted Section 5 voting changes and 71 percent of Department of Justice objections to these changes occurred after July 1982. Similarly, most declaratory judgment actions were filed after July 1982.

Note: Data for Section 5 Declaratory judgments reflect the final decision in each case, by the District Court for the District of Columbia or the Supreme Court.

Source: U.S. Department of Justice, Civil Rights Division, Voting Section, "Section 5 Declaratory Judgment Actions (United States District Court for the District of Columbia)," response to U.S. Commission on Civil Rights document request, Aug. 3, 2004.

TABLE A3
Preclearance Statistics by Year for the Current Extension Period, July 1, 1982 through June 30, 2004

Subject	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
Submitted													
Submissions	1,047	3,130	3,827	3,662	4,536	4,273	4,995	3,843	4,685	4,494	5,225	4,321	4,545
Changes	5,881	12,360	16,209	14,896	20,314	15,608	19,587	13,213	17,106	18,238	22,349	17,524	17,615
Objections													
Submissions	30	48	42	23	32	24	23	22	37	76	77	69	61
Changes	53	70	110	172	639	85	135	168	110	129	92	193	133
Declaratory judgment actions filed	1	2	1	0	2	3	0	0	2	3	3	3	6
Granted (contested)	0	0	0	0	0	0	0	0	0	0	0	0	1
Granted (no DOJ opp.)	0	0	0	0	0	0	0	0	0	0	1	0	1
Denied	1	0	1	0	0	1	0	0	0	0	0	0	0
Dismissed	1	2	2	1	1	2	2	0	0	0	4	2	1
More information submissions	135	237	242	175	175	145	100	115	120	207	164	163	139

Subject	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004*	Total
Submitted											
Submissions	3,899	4,459	3,932	3,928	3,909	4,506	4,061	5,734	4,692	3,375	95,078
Changes	13,809	17,841	15,270	14,627	13,363	15,925	13,666	17,878	15,785	10,388	359,452
Objections											
Submissions	19	7	8	8	5	4	7	21	8	3	654
Changes	32	9	18	17	5	6	10	23	9	5	2,223
Declaratory judgment actions filed	3	4	1	0	0	2	1	3	1	0	41
Granted (contested)	2	1	0	0	0	1	0	0	0	0	5
Granted (no DOJ opp.)	0	1	0	0	0	0	0	0	0	0	3
Denied	0	0	0	0	0	0	0	0	0	0	3
Dismissed	4	2	3	1	0	2	0	2	1	2	35
More information submissions	90	57	50	53	36	57	61	125	44	23	2,713

Caption: During the current extension period, Section 5 objections reached a high between 1982 and 1995, and began declining in 1996.
Notes: (1) Data for the total number of submissions received since July 1, 1982 are an approximation. During the 1980s, the Justice Department maintained data on the number of changes submitted but not on the number of submissions. Subsequently, the Department reconstructed the number of 1980s submissions. However, the method used proved to be an overestimate. (2) Data for Section 5 declaratory judgments reflect the final decision in each case by the Supreme Court or the district court. The date is the year of the final decision, except that if the district court decision was summarily affirmed, the year is that of the district court's decision. (3) The two time periods overlap to some extent. Hence, figures in the "total" column include some double counting.
Source: Compiled from U.S. Department of Justice, Civil Rights Division, Voting Section, Submission Tracking and Processing System (STAPS) data, as provided to the U.S. Commission on Civil Rights, Sept. 20, 2004.

TABLE A4
Preclearance Statistics by Year, Prior to the Current Extension Period, 1965 through June 30, 1982

Subject	1965	1966	1967	1968	1969	1970	Subtotal
Submitted changes	1	26	64	114	166	358	729
Objections							
Submissions	0	0	0	4	15	3	22
Changes	0	0	0	6	16	3	25

Subject	1971	1972	1973	1974	1975	Subtotal
Submitted changes	1,377	917	859	1,116	2,642	6,911
Objections						
Submissions	52	32	27	34	40	185
Changes	86	52	37	73	138	386

Subject	1976	1977	1978	1979	1980	1981	1982	Subtotal	Total 1965-1982
Submitted changes	7,949	3,952	5,477	6,962	7,404	7,221	8,870	47,835	**55,475**
Objections									
Submissions	64	36	39	26	32	4	23	244	**451**
Changes	151	104	49	45	51	33	58	491	**902**

Caption: Between August 1965 and 1970, jurisdictions covered under Section 5 submitted only 729 changes. From 1971 to 1975 they submitted roughly 6,900 changes, and between 1976 and 1982, they submitted 47,835 changes.
Note: Data are not available for the number of submissions the Justice Department received during this time period.
Source: Compiled from U.S. Department of Justice, Civil Rights Division, Voting Section, Submission Tracking and Processing System (STAPS) data, as provided to the U.S. Commission on Civil Rights, Sept. 20, 2004.

TABLE A5

Preclearance Statistics by Change Type (July 1, 1982 through June 30, 2004)

Subject	1982	1983	1984	1985	1986	1987	1988	1989
Submitted								
Annexations, boundary changes	506	1525	2648	3652	4448	3449	4871	2999
Methods of election	125	454	509	773	831	1032	872	774
Precinct/polling place/absentee ballot	3920	6101	6819	5541	8542	4825	7126	4201
Redistrictings	153	860	258	247	265	263	336	201
Special elections	150	430	535	710	1029	1153	1181	968
Voter registration	464	2164	3959	2304	2664	2784	3053	1952
Total (all change types)	5881	12,360	16,209	14,896	20,314	15,608	19,587	13,213
Objections								
Annexations, boundary changes	5	6	49	137	574	53	22	8
Methods of election	10	15	22	12	40	16	59	84
Precinct/polling place/absentee ballot	5	5	7	7	0	3	1	11
Redistrictings	24	40	16	10	14	8	9	8
Special elections	3	1	4	1	1	0	22	0
Voter registration	2	0	1	0	0	0	0	0
Other	4	3	11	5	10	57	22	57
Total (all change types)	53	70	110	172	639	168	135	168

Subject	1990	1991	1992	1993	1994	1995	1996	1997
Submitted								
Annexations, boundary changes	4004	2356	2394	2322	3315	3443	3419	3172
Methods of election	907	955	1085	1250	640	719	456	526
Precinct/polling place/absentee ballot	5541	7867	11,912	8433	8363	5213	8990	8118
Redistrictings	158	903	953	494	312	206	112	100
Special elections	1214	922	1264	1237	1130	1073	1090	1301
Voter registration	3083	3571	3303	2058	2571	1628	1858	472
Total (all change types)	17,106	18,238	22,349	17,524	17,615	13,809	17,841	15,270
Objections								
Annexations, boundary changes	9	1	1	91	22	12	2	5
Methods of election	83	52	18	25	76	7	1	2
Precinct/polling place/absentee ballot	3	5	1	24	2	1	0	0
Redistrictings	6	66	67	40	10	7	3	2
Special elections	1	1	0	2	12	0	0	1
Voter registration	4	1	3	1	2	2	1	8
Other	4	3	2	10	9	3	2	0
Total (all change types)	110	129	92	193	133	32	9	18

Subject	1998	1999	2000	2001	2002	2003	2004	Total
Submitted								
Annexations, boundary changes	3358	3605	4204	3194	4253	4234	2912	74,283 (21%)
Methods of election	478	584	408	655	473	459	182	15,147 (4%)
Precinct/polling place/absentee ballot	7946	5958	7808	5536	8361	5856	4171	157,148 (44%)
Redistrictings								
Special elections	63	65	48	963	1111	379	172	8,622 (2%)
Voter registration	1203	1196	1237	1164	1455	1212	731	23,585 (7%)
Total (all change types)	274	359	524	349	364	545	571	40,874 (11%)
	14,627	13,363	15,925	13,666	17,878	15,785	10,388	359,452
Objections								
Annexations, boundary changes	1	1	0	0	0	2	0	1001 (45%)
Methods of election	3	1	4	5	2	2	4	543 (24%)
Precinct/polling place/absentee ballot	5	2	0	0	0	0	0	82 (4%)
Redistrictings	3	1	1	4	19	5	1	364 (16%)
Special elections	0	0	0	0	0	0	0	49(2%)
Voter registration	0	0	0	0	0	0	0	25 (1%)
Other	5	0	1	1	2	0	0	159 (7%)
Total (all change types)	17	5	6	10	23	9	5	2,223

Caption: Although the number of Section 5 submitted voting changes remained high for each year from 1982 to 2004, the number of Department of Justice objections to such changes decreased markedly after 1994.

Sources: U.S. Department of Justice, Civil Rights Division, Voting Section, "Number of Changes by Type of Change for All Calendar Years" and "Number of Changes to Which Objections Have Been Interposed by Type for All Calendar Years," Submission Tracking and Processing System (STAPS) Statistics Reports, Sept. 20, 2004.

TABLE A6
Objections Based on Other Provisions of the Voting Rights Act (July 1, 1982 to May 12, 1997, when the Supreme Court issued its decision in *Bossier Parish I*)

Objections Based on Section 2 Violations				**Total**
Absentee Voting				1
TX, Dallas City 2/27/89				
Judgeship Changes				25
AL 11/8/91	AL 12/23/91	AL 11/16/93	AL 4/14/94*	
AZ, Coconino City 4/8/94*	AZ, Navajo City 5/16/94*	GA 6/16/89	GA 4/25/90	
GA 6/7/91	GA 10/1/91	GA, Baldwin City 8/13/93	GA 1/24/95	
LA 9/23/88*	LA 5/12/89*	LA 9/17/90	LA, Monroe City Court 10/23/90	
LA 11/20/90	LA 9/20/91	LA 3/17/92	LA, Monroe City Court 3/22/93	
LA, Shreveport City Court 9/6/94	LA 10/5/94	NY 12/5/94	NC 2/14/94	
TX 11/5/90				
New Method of Election and/or Districting Plan				14
MS, Houston Mun. SD 4/18/89	MS, Quitman 12/19/94	NC, Halifax City 5/16/84	NC, Granville City SD 8/1/88*	
NC, Camp Butner Reservation 2/3/97	SC, Edgefield City 6/11/84*	SC, Bennettsville (implementation schedule for new MOE) 2/2/90	SC, Anderson City SD 4/23/90	
TX, Nolan City Hospital District 2/12/90	TX, Dallas (delay election for new MOE) 3/13/91*	TX, Dallas 5/6/91	TX, Gonzales City Water District 10/31/94	
TX, Karnes 10/31/94	TX, Andrews 6/26/95			
Redistrictings				12
LA, Washington Parish SD 6/21/93	LA, Bossier Parish SD 8/30/93	LA congressional 8/12/96*	MS, Copiah City 4/11/83	
MS, Amite City 6/6/83	MS, Oktibbeha City 6/17/83*	MS, Walthall City 9/30/91	MS, Chickasaw City 3/26/93	
MS, Monroe City 9/17/93	MS, Chickasaw City 4/11/95	SC state senate 4/1/97	TX state senate 3/9/92*	

Objections Based on Minority Language Provision Violations (Sections 4(f)(4) and/or 203)	
AZ, Apache County 7/17/87	TX, Dawson County 8/16/85*
AZ, Apache County 2/10/88	TX, San Antonio 10/21/94*

NY, Bronx, Kings, and NY Counties 8/9/93*	TX, Judson Independent School District 11/18/94*
NY, Bronx, Kings, and NY Counties 5/13/94*	TX 2/17/95*
Total objections	8

Objections Based on Registration Tests or Devices Violations (Sections 4 and 201)	
MS (witness certification requirement for mail-in voter registration) 5/1/92*	
Total objections	1

Objections Based on Voter Assistance Requirements Violations (Section 208)	
FL 1/15/85*	
TX, Dawson County 8/6/85*	
MS, Bolivar County 4/16/84	
VA 9/11/84*	
SC 9/11/84*	
Total objections	5

Caption: Section 2 was instrumental in the objections interposed to judgeship, method of election, and districting changes between 1988 and 1997. The Justice Department also interposed objections based on violations of other provisions of the Voting Rights Act.

*Indicates that the objection was based solely on the other provision of the Voting Rights Act. All objections not marked with an asterisk also were based on a determination that the jurisdiction had not met its burden of showing the absence of discriminatory purpose and effect.

Sources: U.S. Department of Justice, Civil Rights Division, Voting Section, "Complete Listing of Objections Pursuant to Section 3(c) and 5 of the Voting Rights Act of 1965," response to U. S. Commission on Civil Rights (USCCR) document request, July 31, 2004; supplemented by a review of all objection letters, as provided to USCCR, Aug. 20, 2004.

TABLE A7
Objections to Statewide Redistricting Plans Since 1965

State	1970s	1980s	1990s	2000s
Alabama		House (2 plans) Senate (2 plans)	Congress	
Alaska			House Senate	
Arizona		House/Senate**	House/Senate (2 plans)**	House/Senate**
Florida			Senate	House
Georgia	Cong. House Senate	Cong. House Senate	Cong. (2 plans) House (4 plans) *** Senate (3 plans) ***	
Louisiana		House	Cong. House Senate BESE****	
Mississippi	House* Senate*	Cong.	House Senate (2 plans)	
New Mexico	Not covered		Senate	
New York	Cong. Assembly Senate	Cong. Assembly Senate	Assembly	
North Carolina	House (2 plans) Senate (2 plans)	Cong. House (3 plans) Senate (2 plans)	Cong. House Senate	
South Carolina	House Senate (2 plans)	House	House Senate	
Texas	House	Cong. House Senate	House Senate	House
Virginia		House (2 plans) Senate	House	
Total no. of plans	16	26	32	3

Caption: After the 1980 and 1990 censuses, a substantial number of objections to redistricting plans were interposed. Significantly fewer objections have been interposed after the 2000 census.

Note: * Mississippi subsequently obtained a Section 5 declaratory judgment for its House and Senate plans. Mississippi v. United States, 490 F. Supp. 569 (D.D.C. 1979), *aff'd mem.*, 444 U.S. 1050 (1980).

** Arizona uses the same districting plan to elect both its State House and State Senate.

*** The objections interposed on March 15, 1996 to plans for the Georgia State House and Senate subsequently were withdrawn on October 15, 1996.

**** BESE is the Louisiana Board of Elementary and Secondary Education.

Sources: Compiled from U.S. Department of Justice, Civil Rights Division, Voting Section, Submission Tracking and Processing System (STAPS) data, as provided to the U.S. Commission on Civil Rights (USCCR), Sept. 20, 2004; U.S. Department of Justice, Civil Rights Division, Voting Section, "Complete Listing of Objections Pursuant to Section 3(c) and 5 of the Voting Rights Act of 1965," response to USCCR document request, July 31, 2004; supplemented by a review of all objection letters, as provided to USCCR, Aug. 20, 2004.

TABLE A8
Preclearance Statistics by State, July 1, 1982 through June 30, 2004

State	Submissions (% of all submissions)	Submitted changes	Submission objections (% of all objections)	Change objections
Alabama	6,487 (7%)	22,773	56 (9%)	196
Alaska	1,700 (2%)	5,490	1	2
Arizona	4,314 (5%)	24,993	18 (3%)	30
Arkansas	6	7	0	0
California	841 (1%)	3,017	4 (1%)	60
Colorado	26	61	0	0
Florida	758 (1%)	3,307	5 (1%)	14
Georgia	15,245 (16%)	49,079	89 (14%)	346
Hawaii	8	327	0	0
Illinois	4	13	0	0
Louisiana	8,652 (9 %)	22,196	112 (17%)	266
Michigan	59	349	0	0
Mississippi	4,515 (5%)	11,223	114 (17%)	150
New Hampshire	58	82	0	0
New Mexico	52	165	1	1
New York	852 (1%)	4,194	12 (2%)	14
North Carolina	4,383 (5%)	11,530	45 (7%)	135
South Carolina	6,808 (7%)	21,788	77 (12%)	798
South Dakota	38	1,218	1	1
Texas	32,983 (35%)	149,404	103 (16%)	185
Virginia	7,286 (8%)	28,035	16 (2%)	25
Wyoming	3	201	0	0
Total	95,078	359,452	654	2,223

Caption: Between July 1982 and June 2004, Georgia and Texas combined for 51 percent of Section 5 submissions and 30 percent of Section 5 objections. Over the same period, Louisiana, Mississippi, and South Carolina experienced higher rates of objections than Georgia and Texas despite having fewer submissions.
Note: Submission data are approximate (see notes to Table 5).
The South Carolina figure for objected-to changes includes a 1986 objection to 525 annexations.
Sources: U.S. Department of Justice (DOJ), Civil Rights Division (CRD), Voting Section, "Section 5 Objection Determinations," June 30, 2005, <http://www.justice.gov/crt/voting/sec_5/obj_activ.htm> (last accessed December 15, 2005); DOJ, CRD, "Chart 1 (B-1): Changes Received August 6, 1965 to June 30, 2004," response to U.S. Commission on Civil Rights document request, Oct. 8, 2004.

TABLE A9
Justice Department Enforcement of the Minority Language Requirements: Relief Granted in Lawsuits and Non-Litigation Agreements (1975 through Nov. 30, 2004)

Jurisdiction (language) (date filed)	Issue	Initial Relief (date)	Supplemental Relief (date)	Relief includes Section 3(a) Examiners and Observers?	Relief Includes Section 3(c) Preclearance Requirement?
City and County of San Francisco, CA (Spanish and Chinese) (1978)	Failure to provide translated voter registration information and bilingual poll officials	TRO (1978)	Preliminary injunction (1979) Consent decree (1980)	Yes	No
San Juan County, NM (Navajo) (1979)	Failure to provide translations throughout the election process	Stipulation (1980)	Letter of agreement (1986)	No	No
San Juan County, NM (Navajo) (1983)	Failure to provide translations throughout the election process	Settlement (1984)	Amended settlement (1990) Order extending federal examiner coverage (1997) Order extending federal examiner coverage (1998)	Yes	No
McKinley County, NM (Navajo and subsequently Zuni also) (1986)	Failure to provide translations throughout the election process	Consent decree (1986)	Amended consent decree (1990) Amended complaint (1996) (including Zuni language) Stipulation (1977)		
NM and Sandoval County (Keres and Navajo) (1988)	Failure to provide translations throughout the election process	Settlement (1990)	Consent decree (1994) Consent order (1997) (re: absentee voting in a 1997 special election)	Yes (Sandoval County)	
AZ (Apache and Navajo Counties (Navajo) (1988)	Failure to provide translations throughout the election process	Consent decree (1989)	Amended consent decree (1993	Covered under Section 6 and certified by the Attorney General	Covered under Section 5
Metro Dade County, FL (Spanish and Milasuki) (1993)	Failure to translate election pamphlet into Spanish Failure to provide election info in Mikasuki	TRO (1993 (requiring provision of pamphlet in Spanish)	Consent decree (1993)	No	No
Cibola County, NM (Keres and Navajo) (1993)	Failure to provide translations throughout the election process	Stipulation (1994)	Stipulation (2004)	Yes	Yes

Jurisdiction (language) (date filed)	Issue	Initial Relief (date)	Supplemental Relief (date)	Relief includes Section 3(a) Examiners and Observers?	Relief Includes Section 3(c) Preclearance Requirement?
Socorro County, NM (Navajo) (1993)	Failure to provide translations throughout the election process	Consent agreement (1994)	Modified Consent Agreement (2004)	Yes	Yes
Alameda County, CA (Chinese) (1995)	Failure to provide translated election materials, bilingual poll officials and registrar's office personnel	Settlement agreement (1996)		Yes	Yes
Bernalillo County, NM (Navajo) (1998)	Failure to provide translations throughout the election process	Consent decree (1998)	Stipulation (2003)	Yes	Yes
City of Lawrence, MA (Spanish) (1998)	Failure to provide translated election materials, oral language assistance at the polls and bilingual poll officials	Settlement agreement (1999)		No	No
Passaic City and Passaic County, NJ (Spanish) (1999)	Failure to provide translated election materials and bilingual poll officials	Consent decrees (2 in 1999)	Order (providing additional relief) (2000) Orders (appointing independent elections monitor and extending the term of the monitor) (2000 and 2001) Supplemental consent order (2001) Stipulation (2004)	Yes	No
Orange County, FL	Failure to provide translated materials and bilingual poll officials	Consent decree (2002)		No, but DOJ may observe elections	No
Brentwood Union Free School District, NY (Spanish) (2003)	Failure to provide translated materials and bilingual poll officials	Consent decree (2003)		Yes	No
Harris County, TX (Vietnamese) (2004)	Failure to provide translated materials and bilingual poll officials	Memo of Understanding (2004)		Covered under Section 6, but not certified by the Attorney General	Covered under Section 5
San Benito County, CA (Spanish) (2004)	Failure to provide translated materials and bilingual poll officials	Consent decree (2004)		Yes	No

Jurisdiction (language) (date filed)	Issue	Initial Relief (date)	Supplemental Relief (date)	Relief includes Section 3(a) Examiners and Observers?	Relief Includes Section 3(c) Preclearance Requirement?
San Diego County, CA (Spanish, Tagalog and Vietnamese) (2004)	Failure to provide translated materials and bilingual poll officials	Memo of agreement (ledged with the court) (2004)	Stipulation (2004)	Yes	No
Suffolk County, NY (Spanish) (2004)	Failure to provide translated materials and bilingual poll officials	Consent decree (2004)		Yes	No
Yakima County, WA (Spanish) (2004)	Failure to provide translated materials and bilingual poll officials	Consent decree (2004)		Yes	No
Ventura County, CA (Spanish)	Failure to provide translated materials and bilingual poll officials	Consent decree (2004)		Yes	No

Caption: None of the lawsuits filed between 1982 and 2004 produced contested litigation. Seventeen of the 20 lawsuits were resolved through settlements without any litigated order from the court, and there have been no trials on the merits in any of the cases. Eight of the first 11 lawsuits were filed in Arizona, New Mexico, and Utah and dealt with the provision of oral information in historically unwritten American Indian languages. The most recent nine lawsuits filed since 1998 dealt with the provision of election information in Spanish. Lawsuits have also been filed as a result of a lack of information in Chinese, Tagalog, and Vietnamese.

Sources: U.S. Department of Justice, Civil Rights Division, Voting Section, "Voting Section Cases in Which the United States' Participation Began Since October 1, 1976, " response to U.S. Commission on Civil Rights (USCCR) document request, Aug. 20, 2004; supplemented by a review of all lawsuits and litigation agreements, as provided to USCCR, Aug. 20, 2004.

TABLE A10
Federal Examiners and Observers (July 1, 1982 through June 30, 2004)

State	Section 6 Coverage Since 7/1/82	Section 6 Certifications by AG	Section 3(a) Coverage Since 7/1/82	Examiner Assignments Since 7/1/82	Observer Assignments Since 7/1/82
Alabama	Statewide	22 counties (four since 7/1/82)	No	None	89
Alaska	Statewide	None	No	None	None
Arizona	Statewide	Three counties (two since 7/1/82)	No	None	40
California	Four counties	None	San Francisco County (1978-85) Alameda County (1996-2001) San Diego County (2004-07) San Benito County (2004-06) Ventura County (2004-07)	None	7
Colorado	One county (bailed out in 1984)	None	No	None	None
Connecticut	Three towns (bailed out in 1983 or 1984)	None	No	None	None
Florida	Five counties	None	No	None	None
Georgia	Statewide	29 counties (10 since 7/1/82)	No	Two counties (in 1982)	56
Hawaii	One county (bailed out in 1984)	None	No	None	None
Idaho	One county (bailed out in 1982)	None	No	None	None
Illinois	No		Alexander County (1983-88) Cicero (2000-05)	None	3
Louisiana	Statewide	12 parishes (one since 7/1/82)	St. Landry Parish (1979 until further order of the court)	None	9

Massachusetts	Nine towns (bailed out in 1983)	None	No	None	None
Michigan	Two townships	None	Hamtramck (2000-06)	None	8
Mississippi	Statewide	50 counties (eight since 7/1/82)	No	Six counties (in 1983)	242
Nebraska	No		Thurston County (1979-84)	None	None
New Hampshire	Ten towns	None	No	None	None
New Jersey	No		Passaic County (1999-04)	None	17
New Mexico	No		Bernalillo County (1998-05) Chaves County (1984-94) Cibola County (1984-2006) Curry County (1984-94) McKinley County (1984-94) (1997-01) Otero County (1984-02) Sandoval County (1984-04) Socorro County (1994-04)	None	73
New York	Three NYC counties	Three counties (all since 7/1/82)	Brentwood Union Free School District (2003-07) Suffolk County (2004-08)		
North Carolina	40 counties	One county (one since 7/1/82)	No	None	6
Pennsylvania	No		Berks County (2003-07)	None	3
South Carolina	Statewide	11 (seven since 7/1/82)	No	None	23
South Dakota	Two counties	None	Buffalo County (2004-13)	None	1
Texas	Statewide	17 (six since 7/1/82)	No	None	10
Utah	None		San Juan County (1984-02)	None	9
Virginia	Statewide (except for nine independent cities and	None	No	None	None

	counties that have bailed out since 1997)				
Washington	None		Yakima County (2004-06)	Covered as of September 2004	Covered as of September 2004
Wyoming	One county (bailed out in 1982)	None	No	None	None

Caption: No federal examiners have been appointed to register voters since 1983. They were used last in 1982 and 1983, but to register voters only in eight counties for a few days in each county. From 1982 to 2004, the Justice Department utilized polling place observers roughly 500 times in elections in counties and parishes covered by the Section 4 coverage formula and certified for examiners and observers by the Attorney General. In recent years, the Department of Justice expanded the observer program by sending observers to jurisdictions not covered by Section 4 or 3(a). The Department of Justice obtained agreements from jurisdictions to permit the observers into the polling places.

Note: Counts of observer assignments were made by separately counting each election for which observers were assigned to a specific county or other subjurisdiction in a particular state. (For example, the assignment of observers to ten counties in a particular state for a specific election was counted as ten; the assignment of observers to a particular county for a primary and then for the primary runoff was counted as two; the assignment of observers to two municipalities in the same county for municipal elections held on the same date was counted as two.)

Source: U.S. Department of Justice, Civil Rights Division, Voting Section, "About Federal Examiners and Federal Observers," updated Oct. 19, 2005, <http://www.usdoj.gov/crt/voting/examine/activ_exam.htm> (last accessed Jan. 30, 2006).

CONCURRING STATEMENT OF COMMISSIONER ABIGAIL THERNSTROM

I am proud to have my name associated with this report on "Voting Rights Enforcement and Reauthorization." The Commission has played a long and influential role in investigating the enforcement of Fourteenth and Fifteenth Amendment voting rights, and, in issuing this report, the agency continues that important tradition. I am particularly pleased by the intellectual integrity of the work, credit for which goes to our often uncelebrated staff. The report is scrupulous in making clear the complexity of the questions that today swirl around the enforcement of the 1965 Voting Rights Act and its subsequent amendments. Rather than arriving at inevitably controversial conclusions, it attempts to depict the landscape—providing an invaluable picture of the variety of views that different observers bring to the table. This is a report that serious scholars of the statute will be reading for years to come.

No one can doubt the historical importance of the Voting Rights Act, arguably the most important of America's civil rights statutes. It made good on the promise of the Fifteenth Amendment, ninety-five years late. By enfranchising southern blacks, it revolutionized politics in the nation as a whole. And it revolutionized the status of blacks as well. "Right or wrong, we don't aim to let them vote. We just don't aim to let 'em vote," a Mississippi Democrat told political scientist V.O. Key in the mid-1940s. As Maynard Jackson, Atlanta's first black mayor, was later to say, the Talmadges, Stennises, the Bilbos, and the Thurmonds all knew that once blacks got their Fifteenth Amendment rights no white supremacist would hold office securely. With the passage of the 1965 act, America was changed irrevocably. At long last.

I write this concurrence in rejoinder to Commissioner Yaki's dissent. His suggestion that the Commission in issuing this report has abandoned "wholesale" the civil rights battlefield is a baffling charge. Surely he knows that the definition of voting rights has lost the moral simplicity that it had in 1965 when the Voting Rights Act was passed. Today, the issue is not access to the polling booth, but the entitlement of minority voters to, say, eight safe black and Hispanic legislative seats when seven have been drawn and an eighth requires abandoning competing and traditionally legitimate considerations. Like racial and ethnic preferences in education, employment, and contracting, the protection of minority candidates for political office from white competition (by means of racial gerrymandering) has become a question about which equally moral people can disagree.

Likewise, the extension of temporary, emergency provisions that, in 1965, were expected to expire in five years is a question over which honorable people can differ. Those provisions were analogous to a curfew imposed in the wake of a riot—an emergency measure enacted with the expectation that it would be lifted as soon as conditions allowed. So the question is: Do conditions today—forty years after the passage of the act—allow that emergency "curfew" to be lifted? The Commission's report provides much data of use in formulating an answer—data that Commissioner Yaki describes as "cold." He wants, instead "field interviews," "examples of harassment

and intimidation," and the like—anecdotes based on talking to people selected to make his points. But stories are just…stories. And I do not find them useful as evidence.

Everyone celebrates both the basic enfranchisement of southern blacks and the election of minorities to office—a consequence in part of race-conscious districting, but in great part the result of a revolution in racial attitudes and the status of minorities across America. Race-driven districting imposed by the Voting Rights Act has not been responsible for the election of black mayors in New York, Los Angeles, and other majority-white cities, some of which have been unaffected by the enforcement of the statute. He seems to think the country has been frozen in time, at least that racism is still so pervasive that black and Hispanic candidates cannot win in majority-white settings. Indeed, his dissent contains a truly bewildering statement: "Newer communities, such as Latinos or Asian Americans, are encountering the *same* types of discrimination faced by African Americans (and continuing to this date) 40 years ago." (Italics mine.) I have to assume that Commissioner Yaki does know what American apartheid looked like forty years ago. And he should be familiar, as well, with the current data on the status of Asians and Hispanics today. In general, on the level of current racism, I would be glad to match my statistics against his, although I suspect he would mainly offer anecdotes that, again, do not meet social science standards.

The dissent states that the Voting Rights Act "was designed not simply to prevent disfranchisement and increase minority turnout, but to give meaning and substance to the franchise once utilized." It argues that "preclearance, in its inception, was created to prevent the type of mischief that dilutes the growth and influence of minority voters." The point is historically inaccurate, as the congressional hearings that preceded passage of the act make clear. In 1965, the act had a simple aim: ensuring basic Fifteenth Amendment rights to southern blacks, kept from the polls by fraudulent literacy tests, violence, and intimidation. Four years later, however, it became apparent that Mississippi would play nakedly racist games with the method of election in order to stop blacks from becoming county commissioners ("supervisors"), and the Supreme Court, in response, redefined the meaning of disfranchisement to include the dilution of the minority vote.

Basic enfranchisement had been the sole goal of the statute, but confronted with such a bald maneuver on the part of Mississippi, the Court could hardly refuse to act. Section 5, the preclearance provision, had been envisioned as a prophylactic device to prevent backsliding, and Mississippi had clearly tried to pull blacks back from the gains they could expect to make. Nevertheless, *Allen v. State Board of Elections* (1969) rewrote the Voting Rights Act. As Justice John Marshall Harlan pointed out, and Chief Justice Earl Warren acknowledged, *Allen* adopted "the reapportionment cases' expansive concept of voting...." It adopted, that is, that concern with the *weight* of the ballots cast that was at the heart of the Fourteenth Amendment, equal population decisions.

If county-wide voting, new districting maps, and other changes in the method of voting could "nullify" the ability of black voters "to elect the candidate of their choice" (in the words of the Chief Justice), there were obviously votes that counted and votes that did not. Section 5, a provision initially inserted to guard against the manipulation of an

electoral system for racist ends, had evolved into a means to ensure that black votes had value—had the power, that is, to elect blacks. For that was inevitably the meaning of ballots that carried their proper weight. By what other measure could that weight be gauged? The logic of *Allen* was an invitation to insist on proportional racial representation—safe seats in proportion to the minority population. (After all, would anyone argue that blacks were entitled to *less* than their share of votes that "fully" counted?) And yet the standard of proportional representation is no less controversial, no less debatable, in the context of voting rights enforcement than in that of higher education admissions.

The Court, in *Allen*, actually delivered a mixed message: On the one hand, it issued an invitation to regard any election scheme that arguably "diluted" the power of the black vote as objectionable. On the other hand, it did stick to the original conception of section 5 as anti-backsliding. The dissent completely ignores the importance of retaining the backsliding notion, reaffirmed by the Supreme Court in 1976 and in subsequent decisions. That understanding of the preclearance provision was absolutely central to the original act and remains so. And thus in 1965, as the distinguished civil rights attorney Joseph Rauh put it, the provision was included in the statute "to stop ways around voting legislation...simply [as] self-defense." Congress was well aware that southern states were adept at the fine art of circumvention. Banishing literacy tests, it was feared, might not be sufficient; new devices could be created with the same impact as old ones, and the vote could be blocked anew. The fear, in other words, was of what the Court later termed "retrogression."

That is, at the outset the preclearance provision was seen as nothing more than a corollary of section 4—the latter banning literacy tests, the former making sure that the effect of that ban stuck. The demand that federal authorities approve any new voting procedure in counties and states in which literacy tests had been suspended had an unambiguous and limited aim: guarding against renewed disfranchisement, the use of the back door once the front one was blocked. Any other understanding of section 5 both violates the original logic of the statute and turns the provision into one that cannot be enforced through an administrative process, a point to which I will return below.

Section 5 protects against both discriminatory "effect" and "purpose." The Supreme Court' s first opportunity to define the meaning of discriminatory "effect" came in *Beer v. United States* (1976). The issue was councilmanic districts in New Orleans, and the lower court found the districting plan drawn after the 1970 census to be discriminatory in effect. None of the old wards had black majorities; the proposed plan contained two out of five that were majority-black (although only one in which the majority of registered voters were African American). Moreover, blacks had been elected at large to offices other than the city council. But the district court found that New Orleans blacks had a "natural potential" of 2.42 seats and the plan only guaranteed one.

The high Court vacated the judgment. Whether New Orleans could have devised a plan likely to result in more black councilmen was not the question, Justice Stewart contended. It was, instead, whether the "ability of minority groups to participate in the

political process and to elect their choices to office [had been] augmented, diminished, or not affected by the change in voting." How could a change that improved the position of minorities be called discriminatory? The purpose of section 5 had been to bar changes that would result in a "retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Since the change at issue—new district lines—had actually increased the likelihood of a victorious black candidate, it could hardly be termed "retrogressive."

Backsliding—the standard that the Court embraced in *Beer* and that clearly flows from the structure of the 1965 act—is a question appropriate to administrative review. The alternative—that of equal electoral opportunity—is not. Adjudicating competing claims about racial fairness, in some absolute sense, requires, as the Supreme Court has noted, an "intensely local appraisal," the specific, detailed knowledge that only a court can obtain. Voting section procedures are no substitute for a trial. In fact, there is no surrogate for a court; the institution is *sui generis*." In the internal memos that pass for argument within the Justice Department, no one speaks for the jurisdiction. A city undertaking an annexation will submit required material, but it may have no opportunity to challenge the evidence (perhaps hearsay) that minority or other contacts, often arbitrary selected, provide. The forum is not judicious and the opinions are not judicial. A letter of objection seldom reveals the basis of decision; stock phrases substitute for close analysis.

In addition, to allow a process of federal administrative review to settle the broad and subtle question of equal electoral opportunity is to permit excessive intrusion upon constitutionally sanctioned local prerogatives. Section 5 is a drastic provision. The decision to alter the location of a polling place even half a block or to draw a district line along a natural boundary is now subject to federal veto if it seems even possibly racially suspect. The burden is on the jurisdiction to prove the racial neutrality of its action beyond any doubt. In other words, section 5 entails a radical shift in federal-state relations, originally sanctioned on an emergency basis and assumed to be of limited scope.

The organized civil rights groups have never liked the *Beer* retrogression standard for measuring discriminatory effect under section 5. Their view has been that of the lower court in the case: racial "fairness" is the measure of discriminatory effect, and blacks are entitled to officeholding in proportion to the black population (to the degree that districting plans can provide it). In this belief, they were joined by the Department of Justice in the 1980s and 1990s. One reason why the mainstream civil rights groups are so committed to another extension of the section 5—apparently believing that the emergency justifying the special provisions is permanent—is that the Justice Department has simply ignored the Court's holding in *Beer* and forced jurisdictions, under the guise of enforcement, to draw egregiously race-driven maps in the interest of maximizing minority officeholding.

One of many appalling stories illustrating the DOJ drive to get what the ACLU has called "max-black" districting maps is spelled out by the Supreme Court in *Miller v.*

Johnson (1995). As the lower court discovered, in the process of drawing congressional districts for Georgia the "DOJ was more accessible—and amenable—to the opinions of the ACLU than to those of the Attorney General of the State of Georgia." It was from the ACLU plan that the Civil Rights Division of the Justice Department lifted its own objection letters, which made clear to the state's General Assembly that 'preclearance would not be forthcoming without adopting this *raison d'être* of the max-black proposals." The DOJ cultivated informants within the legislature, and used their information to float disgusting accusations against, for instance, a black legislator (labeled a "quintessential Uncle Tom"), while keeping the names of such "informants" secret. And the link between the DOJ and the ACLU meant that an objection letter (to a plan that clearly did not violate section 5) arrived in the office of the state's attorney general *after* the Georgia Black Caucus was already discussing it with the press.

As noted above, section 5 protects against purposeful discrimination, as well as discriminatory effect (retrogression). In the original act, the two "prongs" (as they're called) were inseparable. In 1965, the framers and sponsors of the act hoped to eliminate every device whose impact was to keep southern blacks from the polls—whatever its stated purpose. Hence section 5 refers to changes that are discriminatory in either purpose or effect. But in the context, "purpose" and "effect" were close to interchangeable terms; the former was simply circumstantial evidence of the latter. That is, when the question was the legality of a recent alteration in voting procedure in a jurisdiction known to have had a long history of Fifteenth Amendment violations, the effect of the alteration was assumed to suggest strongly its purpose. The adverse impact of a sudden change in rules involving the franchise was viewed as a signal of improper motive when that change took place in the South and affected newly enfranchised blacks.

Over time, however, the Justice Department came to view a reluctance to create a maximum number of majority-black districts as—in and of itself—evidence of discriminatory intent. It's an indefensible notion. Such an interpretation would make the effects test contained in section 5 superfluous; a finding of discriminatory purpose would suffice to condemn every electoral plan with an allegedly insufficient number of safe black single-member districts. In addition, the authors of the Voting Rights Act and its amendments explicitly and wisely rejected the notion of a "right" number of black legislative seats. Black candidates were not guaranteed safe districts in which to run. A state that fails to adopt a plan pushed, say, by the ACLU or the NAACP cannot—on that basis—properly be charged with racism. When the Justice Department suggests otherwise, it gives every minority organization with a "better" districting scheme the potential power to veto arrangements negotiated in good faith by all the major players.

Commissioner Yaki would like to see Congress overturn the Supreme Court's 2000 decision in *Reno v. Bossier Parish School Board* (*Bossier II*). As the Commission report notes, the Court "held that the Section 5 purpose standard is limited to a determination of whether an intent to cause *retrogression*, not simply maintain the status quo—however discriminatory the status quo might be—motivated the voting change." It was a holding based squarely on *Beer*. Nevertheless, the dissent says it is impossible to underestimate the impact of the Court's decision on Department of Justice objections.

"At least one commentator," it states, "has noted that under the *Bossier II* standard, a blatantly discriminatory redistricting plan which would have continued a history of zero districts for minority elected officials would not be found to be in violation of Section 5."

Well, yes, that's the retrogression standard and it applies to all of section 5, the Court has said. And that is the only standard consistent with the logic of the 1965 act—with section 5 as an anti-backsliding provision. On the other hand, last I knew, the Fourteenth Amendment had not been repealed; nor had the Voting Rights Act been amended to eliminate the right of plaintiffs to sue under section 2 on the ground that a method of voting has a discriminatory "result." The dissent argues that "especially in a state as large as Texas, with population centers throughout the state, the ability of Latino populations to mobilize Section 2 challenges is very limited." But that claim is very misleading. By and large, section 2 suits are top-down; they require no grassroots organization. And thus civil rights organizations like MALDEF (itself a top-down creation by the Ford Foundation) will find jurisdictions that they believe are vulnerable to section 2 suits, find the plaintiffs, and fund the litigation. And when they prevail (which is extremely easy to do given the highly questionable legal standards developed in the case law), they collect attorneys' fees, of course.

The dissent further argues that withdrawal letters are an indicator of the positive impact of section 5. (These are letters in which a jurisdiction backs off its proposed change and thus withdraws its original request for preclearance.) But the number of such letters would seem most likely to be a sign that many jurisdictions decided that it was futile to hope for preclearance, given the Justice Department's commitment to egregiously racially gerrymandered districts in an effort to meet the standard of racial and ethnic proportionality. In addition, there are high political costs to appearing in opposition to black and Hispanic voting "rights," even though that alleged "opposition" may in fact be a perfectly legitimate, Supreme Court-sanctioned concern with the Justice Department's naked distortion of the law. Likewise, whereas Commissioner Yaki suggests that the drop in the number of objections "may be evidence that covered jurisdictions now understand that they must comply with Section 5," the real story may (again) be a capitulation to DOJ legal standards that are indefensible.

A related point: "Especially in Texas, the history of discrimination against Latino voters since the 1982 extension has been a case history for the continued need for Section 5 protections," the dissent argues. But it is pointing to a period in which the Justice Department was finding discrimination in every failure to draw a maximum number of possible majority-Latino districts in the Lone Star state.

"Data compiled by independent third parties shows that racially polarized voting exists at almost every elected office level, from 'governor to the recorder of mortgages.'… It is pervasive and all-encompassing…a troubling trend..," Commissioner Yaki asserts. To begin with, the category "independent third parties" appears, from this dissent, to consist entirely of professional plaintiffs experts and attorneys who speak for MALDEF and other advocacy organizations. And what is the evidence upon which he draws in describing a "*trend*" suggesting increasing polarization? The measurement of polarization is no straightforward matter. The dissent accepts Justice William J. Brennan's amazing definition of polarization that rejects the distinction between partisan

bloc voting and that which is racially motivated, and sees racial polarization in every jurisdiction in which the majority of blacks vote for Democrats, while the majority of whites cast their ballots for Republicans. That Republican vote may of course be quite unrelated to race. If the Brennan definition makes sense to Commissioner Yaki, okay, but it seems absurd to me.

The dissent calls the results-driven work of such experts as Richard Engstrom "independent," but labels the Commission's careful work as "biased." I strongly suspect that an unbiased report, in Commissioner Yaki's view, is one that squares with the views of the Leadership Conference on Civil Rights and allied groups. If I am wrong, I would certainly welcome a definition of "objective" and "neutral."

I return to my opening point: The Commission's report is one that both the staff and *all* Commissioners should be proud of. But if there is not consensus, at least there is vigorous, open and respectful debate within the Commission itself—which, for many years, was not the case.

DISSENTING STATEMENT OF COMMISSIONER MICHAEL YAKI. COMMISSIONER ARLAN MELENDEZ JOINED IN THE DISSENT.

Fifty years ago, a young woman names Rosa Parks braved jail time, scorn, intimidation, and worse to assert her right to sit in the front of a bus in Montgomery, Alabama. That single act set in motion an inexorable chain of events that led to the belated recognition by the President and the Congress that federal leadership was required in the arena of civil rights. Thus, late in 1957, the Commission on Civil Rights was born, charged with a mandate to investigate and make recommendations to the executive and legislative branches on how best to end racial discrimination and achieve equality in this country through the exercise of the federal power.

One of the seminal early achievements of the bipartisan Commission was its 1961 report on Voting Rights in this country.[1] That report, in which the Commission journeyed to the Deep South to conduct hearings, subpoena witnesses, and gather data, was the genesis of legislation that would become the Voting Rights Act of 1965.

In subsequent decades the Commission has conducted thorough monitoring of the implementation and enforcement, successes and failures, of the Voting Rights Act.[2] Throughout these decades, the Commission has never wavered in its support and belief that the Voting Rights Act, including the "temporary" provisions that have been extended time and again, is a necessary and critical component of the American civil rights agenda which has yet to be concluded.

Until now.

This Commission, in this statutory report (hereafter “the Commission Report”), abandons its historic support for the extension of Sections 4 through 9 and section 203 of the Voting Rights Act. It offers no recommendation other than a series of "questions" for executive and legislative branches that, by themselves, are hollow and with little moral or legal force, and even scarcer facts, behind them. Far from continuing "the Commission's record of service in the field of voting rights," the Commission Report constitutes a wholesale abandonment of the field of battle that, until now, the Commission had fought on behalf of and in partnership with African-Americans, Hispanics, and Asian Americans for full participation in the franchise.

Extension of the temporary provisions is not, as some critics would say, a declaration of defeat that the Voting Rights Act has been a failure. Nor is it to discount the substantial gains made by minorities in the exercise of the franchise in this country. On the other hand, nor should the success of the Voting Rights Act in increasing the number of minority voters and minority elected officials[3] be held against it and argue against extension.

No sentient being can argue that the Voting Rights Act has not been a success. No one can argue that the participation of minorities in the electoral process has not made great strides, and the

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[1] U.S. Commission on Civil Rights, U.S. Commission on Civil Rights Report, Book 1: Voting, 1961.
[2] USCCR, The Voting Rights Act . . . The First Months, 1965; USCCR, Political Participation 1968; USCCR, The Voting Rights Act: Ten Years After, 1975; USCCR, The Voting Rights Act: Unfulfilled Goals, 1981.
[3] On a personal note, I was one such minority elected official in California as a member of the San Francisco Board of Supervisors.

election of minorities in local, state, and the federal government is testament to the power and efficacy of the Act.

But it is another to conclude that the need for the temporary provisions has run its course. This is where the Commission Report fails. Any meaningful analysis and discussion of the temporary provisions of the Voting Rights Act must examine not simply voter participation rates or the numbers of minority elected officials in this country, as this report has done. Nor can it simply look at the cold data tracking objections under the preclearance standard of Section 5, as this report has done. Instead, we must examine the true purpose and effect of the Voting Rights Act and the nature of the temporary provisions in fulfilling its purpose. Only then can we conclude, as we must, that the temporary provisions of the Voting Rights Act not only must be renewed, but renewed with additional safeguards and enforcement standards.

Intent and Section 5

The Voting Rights Act was designed not simply to prevent disfranchisement and increase minority turnout, but to give meaning and substance to the franchise once utilized. In simple terms, it would be meaningless for a jurisdiction to grant someone the right to vote while, on the other hand, that same jurisdiction created a system to ensure that the vote would have little to no meaning. Decades ago, this meant that local elected officials retired to the proverbial smoke-filled room and drew maps that so diluted the impact of minority votes that it ensured that minorities never had opportunities for elected office. Today, sophisticated computer programs still attempt to minimize minority participation by creating max-pack districts of minority voters – creating opportunities for minority elected officials, to be sure, but still limiting the overall opportunities that could be created through fairer, more equitable and ultimately more competitive district boundaries.

Thus, the continued need for Section 5. Preclearance, in its inception, was created to prevent the type of mischief that dilutes the growth and influence of minority voters. While perhaps temporary in creation, in fact the struggle for equality continues, particularly as the Voting Rights Act deals with two growing communities not contemplated in the 1965 Act -- Hispanic and Asian Americans.

Declining Objections Do Not Support Non-renewal

The Commission Report fails on several analytical fronts with regard to its treatment of Section 5. First, it largely relies on only three data sets: 1) that African American turnout has increased in the south; 2) the rate of Department of Justice objections has decreased over time and 3) there are more minority elected officials.

The fact is, one would expect that if the VRA and Section 5 were of utility, you would track these three trends in the directions noted in the report. Where the Commission Report fails miserably, however, is taking this data to the next level of data gathering and analysis.

For example, the National Commission on the Voting Rights Act has done a detailed analysis of Section 5 objections as well as other indicators of Section 5 at work in covered jurisdictions. One such indicator within the Section 5 context are withdrawal letters – where a jurisdiction withdraws its proposed change or changes in question, usually in response to requests for further

information from the Department of Justice. According to the NCVRA, there were at least 205 withdrawal letters from 1982 and December 2003.[4]

When combined with other variables[5] that are indicators of Section 5 at work, it is self-evident that Section 5 continues to be an important tool in enforcing the Voting Rights Act. If one plots these variables over time, as shown in Appendix A, there is a very consistent level of enforcement-related activity related to Section 5 from 1982 to the present, in contrast to the findings of the Commission Report.

The Commission's reliance on the statistical decrease in objections, therefore, is misleading as to the continued import of Section 5. The decline of objections over time may be expected as covered jurisdictions comply with the Voting Rights Act OR it could be attributed to a drop in enforcement activities related to the current Administration, which now spans the last 5 years of data.[6] The impact that the Supreme Court decision in *Reno v. Bossier Parish School Board*[7] (*Bossier II*) had on Department of Justice objections also cannot be underestimated. In *Bossier II*, the Supreme Court ruled that the intent standard of Section 5 required not simply a discriminatory purpose, but that the action proposed by a jurisdiction would make the situation worse for minorities than before – the so-called "retrogression" standard. At least one commentator has noted that under the *Bossier II* standard, a blatantly discriminatory redistricting plan which would have continued a history of zero districts for minority elected officials would not be found to be in violation of Section 5.[8]

A upcoming report reveals that in the 1990s Section 5 objections based upon the pre-*Bossier II* intent standard comprised 43% of the total of objections letters (151) issued by the Department of Justice. Post-*Bossier II*, the percentage of objection letters based upon the intent standard decreased to a total of 2 between 2001 and 2004.[9] While the authors do not attribute the decline entirely to the new Bossier II standard, as has been observed, "[t]he sheer reduction in the number of overall number of Section 5 objections since the Bossier Parish decision also suggests that the loss of a meaningful intent standard has substantially reduced the effectiveness of Section 5."[10] The Commission Report wholly ignores this data.

, [4] National Commission on the Voting Rights Act, Protecting Minority Voters: The Voting Rights Act at work 1982-2005 (2006) (hereafter NCVRA Report), pp. 58-59.

[5] Other variables include: declaratory judgment actions, observer coverages pursuant to Section 5, and DOJ enforcement actions. NCVRA Report at 76.

[6] There are even allegations that vigorous enforcement of Section 5 is discouraged or punished within the current Department. See NCVRA Report at 77, and n. 261. William Yeomans, a former career staff attorney in the Civil Rights Division of the Department of Justice, published an article in Legal Affairs in which he wrote "decisions increasingly were made in isolation from career attorneys and were communicated as orders. Attorneys who sought to engage in discussion or propose alternative approaches were viewed as disloyal and suffered the consequences."

[7] 528 U.S. 320 (2000).

[8] Testimony of Brenda Wright, Managing Attorney, National Voting Rights Institute, before the House Judiciary Subcommittee on the Constitution, November 1, 2005

[9] Peyton McCrary, Christopher Seaman, and Richard Valelly, "The End of Preclearance as We Knew It: How the Supreme Court Transformed Section 5 of the Voting Rights Act," Michigan Journal of Race and Law 11 (Spring 2006), forthcoming.

[10] Testimony of Brenda Wright, supra.

Deterrence Impact of Section 5

The Commission Report completely ignores the deterrent effect and impact of Section 5. For example, the drop in objections may be evidence that covered jurisdictions now understand that they must comply with Section 5. It may be evidence that jurisdictions have developed procedures to ensure the likelihood of preclearance. Anecdotal evidence exists that local officials have become more sophisticated in meeting with local advocates of minority voting interests to ensure changes are in compliance with Section 5.[11]

Deterrence cannot be overstated. Like any regulatory provision in government, deterrence has its own continuing merit and use. People, or in this case, jurisdictions, adopt behavior and practices designed to incorporate the goal of compliance. As in the case of a stop sign at an intersection, the fact that the number of collisions decreases over time is not an argument to say that there is no longer a need for a stop sign. Removing the stop sign may, and probably will, result in a spike of collisions. Similarly, removing Section 5 from the arsenal of the Voting Rights Act may result in a renewal of the discriminatory behavior sought to be prevented. Given the fact that racism still rears its ugly head in this country, including in the context of Voting Rights (see discussion of Section 2, below), not renewing Section 5 is a risk that our country should not, and can not, take.

Lack of Data regarding Latino Voters

The severe limitations of the Commission Report can be seen in the lack of data concerning the fastest growing minority group in this country: Latino voters.

Latinos now outnumber African Americans. Even though the proportion of non-citizens makes up a significant number of Latinos in the voter population, the voting rate among citizens is still at a much lower rate than Caucasians – 45% as compared to 62%.[12] This disparity requires further examination by the Commission.

Especially in Texas, the history of discrimination against Latino voters since the 1982 extension has been a case history for the continued need for Section 5 protections. The Department of Justice has interposed a number of times in the 1990s on cases that sought to dilute the influence of Latino voters. The cases involved redistricting, annexations, and method of election changes. The fact that the report states that the "percentage of objections is highly disproportionate to that of submitted changes" does not diminish the findings of the Department of Justice that in those cases where objections were filed, DOJ found egregious violations of the Voting Rights Act that constituted blatant discrimination.[13]

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[11] NCVRA Report at pgs. 57, 80.
[12] NCVRA Report, page 8.
[13] Nina Perales, Luis Figueroa, and Criselda G. Rivas, "The Minority Voting Experience in Texas since 1982: Demonstrating the Importance of Reauthorization of the Voting Rights Act," published by the Mexican American Legal Defense and Educational Fund, found at http://www.maldef.org/publications/pdf/Texas_VRA_Report.pdf.

Without the presence of Section 5, many of the jurisdictions involved would have effectively gone unnoticed. Especially in a state as large as Texas, with population centers throughout the state, the ability of Latino populations to mobilize Section 2 challenges is very limited.

Discounting/Ignoring Racially Polarized Voting

Data compiled by independent third parties shows that racially polarized voting exists at almost every elected office level, from "governor to the recorder of mortgages."[14] The data extends from Louisiana to South Carolina, Georgia, Florida, Alabama, and North Carolina and Texas. It was found with Latino populations and Native Americans.[15] The mere fact that it is pervasive and all-encompassing should be a subject of extensive Commission hearing and report. See Appendix B, Tables 1, 2 and 3.

Racially polarized voting is a serious component in vote dilution. At-large methods of election, the need for adequate bilingual materials where Latino and Asian American voters are present, and redistricting are all implicated by racially polarized voting.

The existence of racially polarized voting is a troubling trend that should, at minimum, give pause to any effort to not renew the temporary provisions of the Voting Rights Act. Section 5 provides a safeguard against vote dilution efforts that must remain in place until such a time as we have achieved the type of society where race is not a factor in electoral politics. The fact is, we are not there.

Section 2 vs. Section 5

Some critics of extension point to the existence of Section 2 enforcement as an available remedy to Voting Rights Act violations. 117 successful suits were brought between 1982 and the present, with judicial findings of discrimination against minorities by whites. The Voting Rights Initiative at the Michigan Law School compiled data showing that successful Section 2 suits have been brought as recently as 2004.[16]

Other data, not relying on published decisions, shows an even greater number of favorable outcomes under Section 2. Such data shows that over 600 Section 2 lawsuits were favorably resolved in Section 5 covered jurisdictions.[17]

However, it should be noted that Section 2 suits can be brought on the basis of results alone, not having to rely on an intent standard (pre or post-Bossier II). The fact is, the resources needed to challenge under Section 5 are more properly assessed to an entity with the resources to cover all Section 5 jurisdictions – the federal government. Coupled with the sheer number of town, cities, and counties covered by Section 5, there are simply not enough third-party resources, as some critics suggest, to be able to cover the possible challenges in this country.

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[14] Testimony of Richard Engstrom, Professor of Political Science, University of New Orleans, in NCVRA Report at 89-90.
[15] NCVRA Report at pp. 92-97.
[16] Ellen Katz et al., Documenting Discrimination: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982, Final Report of the Voting Rights Initiative, University of Michigan Law School (Dec. 2005).
[17] NCVRA Report at pp. 84-88.

Rather than undercutting Section 5, the volume of successful Section 2 suits is unfortunate but definitive proof that voter discrimination and vote dilution still exists. Because of this, the inescapable conclusion is that this nation, despite the passage of 40 years, still needs the temporary provisions contained in Section 5.

The Language Assistance Provisions

Similar to Section 5, the Commission Report provides only a cursory overview of the provisions of the law and data associated with it. It does not offer any recommendation regarding reauthorization, even though, by many commentators, there is little objection to its renewal. The growth in America of minorities from Asia and Spanish-speaking countries through immigration requires renewal to ensure full participation of these communities.

It must be reiterated, however, that criticisms regarding cost are vastly overstated and usually advanced by opponents of language assistance. A recent study has stated:

> Some critics have opposed Section 203 because they believe it imposes high costs on local election officials. Their fears have not materialized. The costs of compliance are modest if there are any costs at all. Of the 154 jurisdictions reporting oral language assistance expenses, 59.1 percent (91 jurisdictions) incur no extra costs.18 Similarly, of the 144 jurisdictions reporting written language material expenses, 54.2 percent (78 jurisdictions) do not incur any additional costs.19 Of the 158 jurisdictions reporting complete election expenses, 39.5 percent (60 jurisdictions) do not incur any added costs for either oral or written language assistance.
>
> Of the 154 jurisdictions reporting complete data for oral language assistance, the average cost is 4.9 percent of all election expenses. However, the top ten percent of respondents (16 jurisdictions) skew this result by reporting average costs of 34 percent. By contrast, the remaining 138 jurisdictions report average costs of only 1.5 percent. Two factors contribute to the disparate results. Some of the sixteen jurisdictions attribute all of their election expenses, including costs for hiring permanent staff and Election Day poll workers who have to be hired regardless of Section 203, to oral language assistance. Furthermore, these sixteen jurisdictions are less populated, with an average total population of 40,262 compared to an average total population of 170,439 in the remaining jurisdictions. When these factors are taken into consideration, our study reveals oral language costs close to the average of 2.9 percent originally reported by the GAO in 1984. The average cost of oral language assistance remain approximately the same, regardless of the percentage of voters who need language assistance. . . .
>
> A similar pattern emerges for the cost of written language materials. Of the 144 jurisdictions reporting complete data for written materials, the average cost is 8.1 percent. Again, the top ten percent of all respondents skewed the results, with fifteen jurisdictions reporting average written costs of 51.8 percent. The remaining 129 jurisdictions report average written costs of only 3.0 percent. These disparate results occur for the same reasons as those reported for oral language assistance. The fifteen outlying jurisdictions have an average total population of 35,664 compared to an average total population of 180,529 for the other 129 jurisdictions. All of the outliers also attribute most – and in a

few cases all – of their total written costs to bilingual election materials. When these factors are taken into consideration, the average cost of providing written language materials is substantially below the 7.6 percent reported by the GAO in 1984.

Even where some costs are incurred, most jurisdictions report that they are negligible because they target language assistance to only those areas that require it.[18]

Overall, Data Deficiency Renders Report Irrelevant

Unfortunately, the lack of data hampers even a critical analysis of the Commission Report. For example, the report seems to favor liberalized "bailout" procedures for Section 5. The rationale seems to be predicated on the fact that many covered jurisdictions have had no objections since 1982. However, as noted above, the absence of objections does not incorporate or cover data involving withdrawals or litigation for these jurisdictions. The Commission Report even admits that they are "beyond the scope of this study." This frank admission undermines sweeping conclusions regarding jurisdictions where the full range of data is not present.

The lack of data is even more evident when compared with the 1982 report by the Commission.[19] In that report the Commission conducted numerous field interviews with electoral, elected, and community officials; it sent out data requests that delved into the issues of registration and examples of harassment and intimidation; voting, including issues of assistance, intimidation, and vote-buying; and analysis of electoral systems, rules and other means of affecting minority representation in elected office. By thoroughly documenting the 'variety of problems" that minorities continued to face, the Commission was able to urge for an extension of the temporary provisions of the Voting Rights Act and make recommendations for corrective action.

Lack of Resources as Affecting Report

While I object to the overbroad statements and perceived anti-extension bias[20] contained in the report, the paucity of data is not the fault of the majority nor the staff director. The fact is that the chronic shortage of resources of this Commission is, in part, responsible for the fact-scarce nature of this Commission Report. If Congress and the Executive expect the Commission to provide them with the type of fact-intensive analysis that this Commission has performed for the

[18] Testimony of Dr. James T. Tucker before the House Judiciary Subcommittee on the Constitution, Oversight Hearing on the Voting Rights Act: Section 203, Bilingual Election Requirements, Part II, November 9, 2005.
[19] U.S. Commission on Civil Rights, "The Voting Rights Act: Unfulfilled Goals" (1981).
[20] The report is rife with this bias. On page 3, the report states "Congress could change its coverage formula, amend bailout restrictions, or shorten future extension periods." No other suggestions to Congress appear. On page 16, the report states that there is a "concern about Section 5's encroachment on state authority." This is an argument or "concern" raised by opponents of Section 5. On pages 33, n.112, and page 38, my colleague Commissioner Thernstrom's works are quoted at length to defend annexations and boundary changes as evidence that annexations "nearly always occur for economic, political, urban development and other nondiscriminatory reasons." Mere citation to text pages of Commissioner Thernstrom's work is not enough factual support for such a statement in a report of this importance. Further, the report is footnoted with testimony from Edward Blum and Roger Clegg, both of whom testified before this Commission and both of whom do not believe in the further utility of Section 5. Finally, the report simply glosses over the impact of the Supreme Court's retrogression standard enunciated in *Bossier II*, which is one of the core goals for amending Section 5 by civil rights organizations.

majority of its lifespan, then it must provide the necessary resources. Neither can nor should complain about the utility of a report conducted under such spartan circumstances.

Conclusion

Far from being an objective, neutral, and fact-intensive report, the Commission Report is a reflection of low resources, little time, and bias against extension of the temporary provisions of the Voting Rights Act.

There is irrefutable data that discrimination continues throughout this country, including Section 5 jurisdictions. There is also data that suggests that the post-*Bossier II* retrogression standard has chilled the ability of the Department of Justice to successfully interpose Section 5 objections. Because discrimination continues, and because this nation has made a commitment to utilize its laws and resources to eradicate discrimination and its pernicious effects, the Congress should, as they did with Section 2 in 1982, make findings and amend Section 5 to repeal *Bossier II* and allow for renewed enforcement of Section 5 utilizing the intent, and not retrogressive, standard.

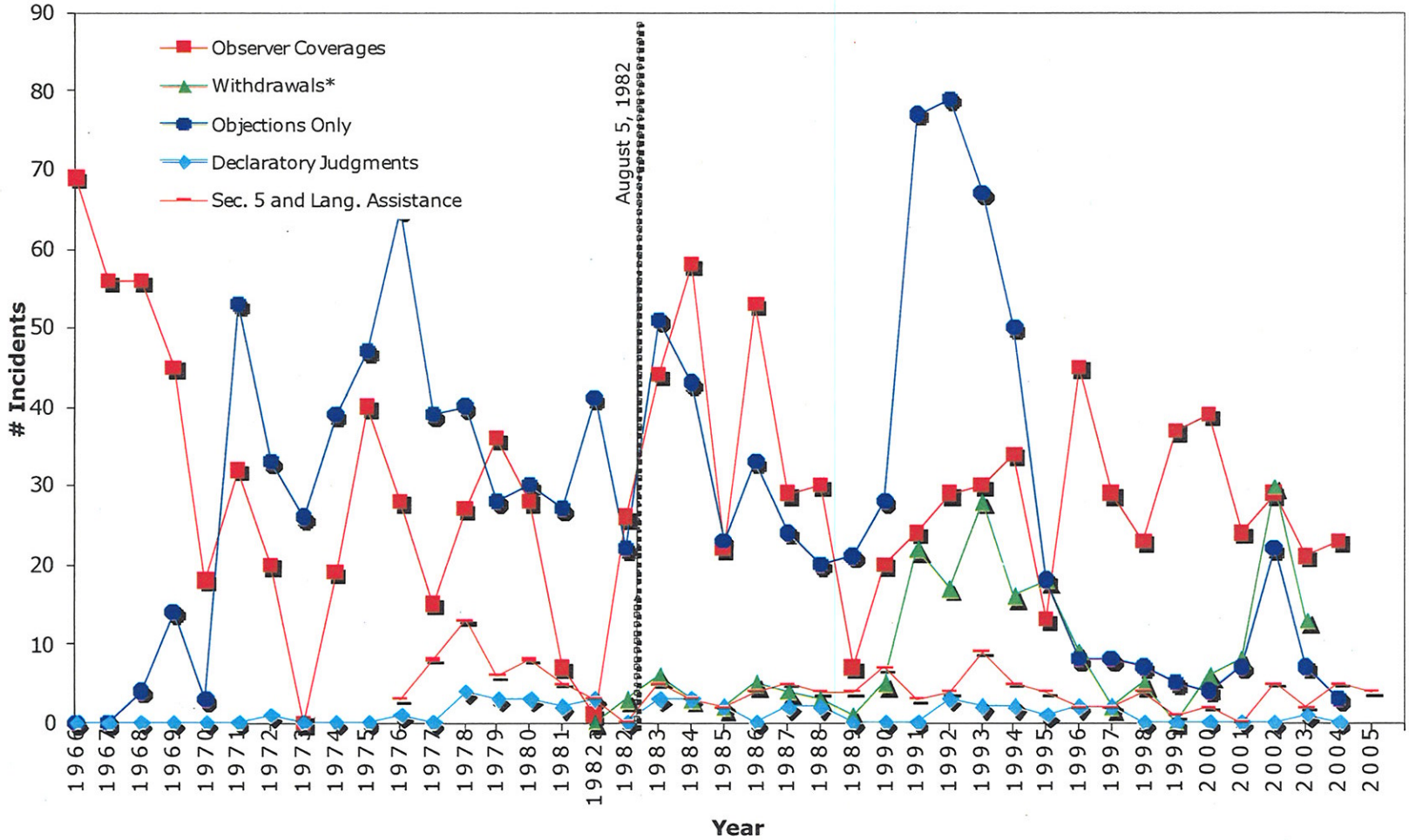
The factual predicate for all the temporary provisions of the Voting Rights Act is the continued existence of discrimination against minorities with respect to the franchise. Newer communities, such as Latinos or Asian Americans, are encountering the same types of discrimination faced by African Americans (and continuing to this date) 40 years ago. Language assistance, the need for observers, and a strong and revitalized Section 5 will continue providing the federal government with the legal and enforcement tools it requires to continue the mission that began over 40 years ago.

While we can justly celebrate the successes of the Voting Rights Act, much remains to be done.

In the last year, the civil rights community lost such living legends as Arthur Fletcher, the former Chair of this Commission and the architect of the “Philadelphia Plan” for minority businesses; Judge Constance Baker Motley, a member of the Brown legal team and the first African American woman appointed to the federal judiciary; C. Delores Tucker, the founder of the National Congress of Black Women; Anne Braden, who was an early confidante and supporter of the Civil Rights Movement; and, of course, Rosa Parks, who lit the spark in Montgomery in 1955. And, just a few months ago, we lost the great and courageous Coretta Scott King. It is, perhaps, fitting to close with and remember the words spoken by her husband in front of the Lincoln Memorial on a warm summer day in 1963. In particular, I think of a passage that answers the question posed by critics of extending the temporary provisions of the Voting Rights Act:

There are those who are asking the devotees of civil rights, "When will you be satisfied?" . . . We cannot be satisfied as long as a Negro in Mississippi cannot vote and a Negro in New York believes he has nothing for which to vote. No, no, we are not satisfied, and we will not be satisfied until "justice rolls down like waters, and righteousness like a mighty stream.”

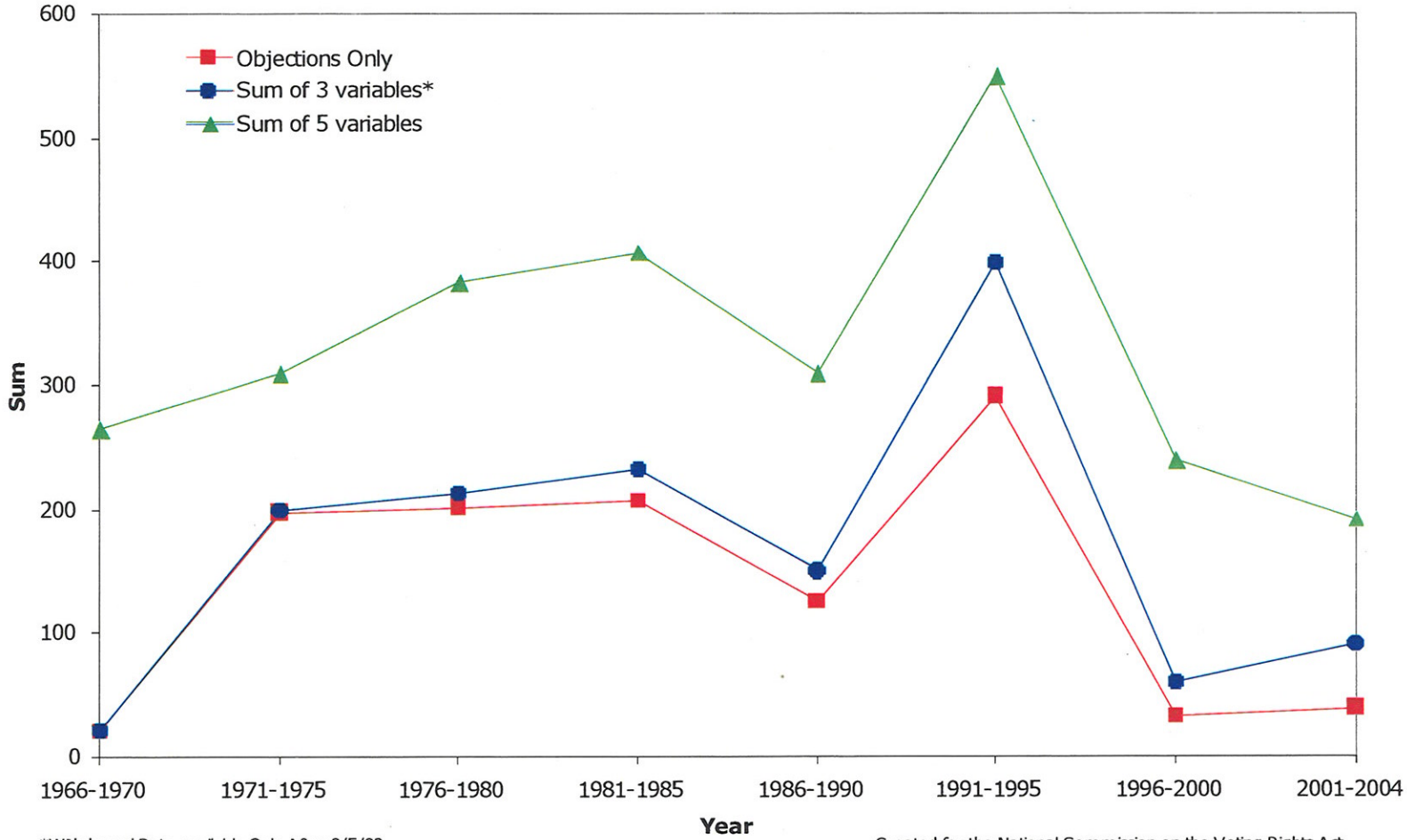
Figure 2 -- VRA-Related Activities (Including Enforcement Actions)
1966 - 2004



*Data for Withdrawals Available only from August 1982

Created for the National Commission on the Voting Rights Act

Figure 1 -- Comparison of Three Measures of Federal VRA-Related Activities
All States (1966-2004)*



*Withdrawal Data available Only After 8/5/82

Created for the National Commission on the Voting Rights Act

TABLE 2
RACIAL COMPOSITION OF DISTRICTS[a]
REPRESENTED BY BEOS, 2000

Type of Office	Composition of District VAP					
	Majority-White[b]		Majority-Minority[b]		Total	
	(N)	%	(N)	%	(N)	%
U.S. Representative	(3)	8	(35)	92	(38)	100
State Senator	(19)	16	(101)	84	(120)	100
State Representative	(65)	18	(297)	82	(362)	100

[a]See note "d" in Table 1 for a list of states whose legislative districts are not included in this table. Congressional data are for all 50 states.

[b]"White" is non-Hispanic white; "minority" is the remaining population in the district, including blacks.

SOURCES: Same as those for Table 1 above.

TABLE 3
RACIAL COMPOSITION OF DISTRICTS[a] REPRESENTED BY HEOS, 2000

Type of Office	Composition of District VAP					
	Majority-White[b]		Majority-Minority[b]		Total	
	(N)	%	(N)	%	(N)	%
U.S. Representative	(0)	0	(19)	100	(19)	100
State Senator	(12)	32	(26)	68	(38)	100
State Representative	(29)	26	(82)	74	(111)	100

[a]See note "d" in Table 1 for a list of states whose legislative districts are not included in this table. Congressional data are for all 50 states.

[b]"White" is non-Hispanic white; "minority" is the remaining population in the district, including blacks.

SOURCES: National Association of Latino Elected Officials (Los Angeles), unpublished data; individual state Web sites; U.S. Bureau of the Census, through Census 2000 American FactFinder (http://factfinder.census.gov/home/saff/main.html?_lang=3n).

TABLE 4

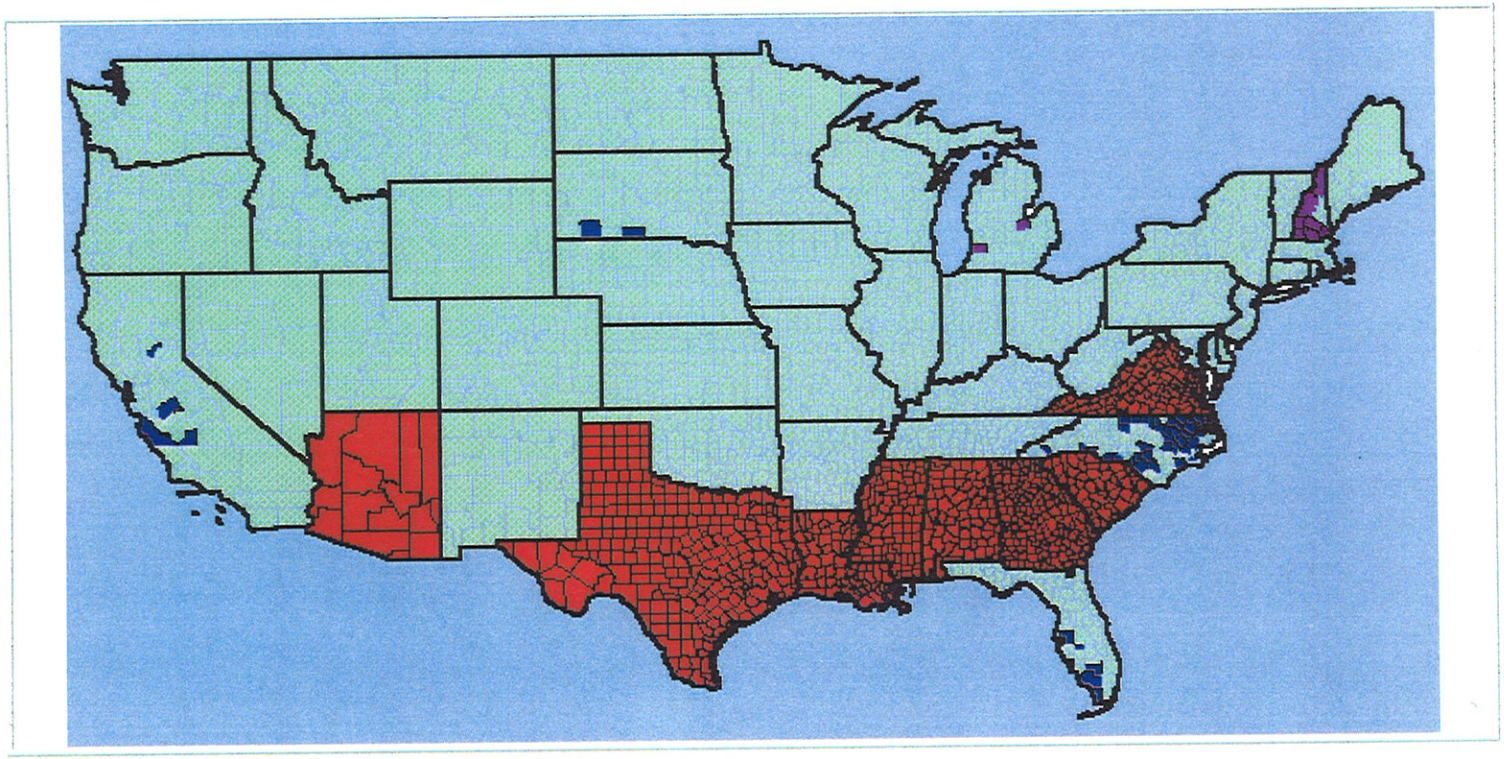
SUCCESSFUL SECTION 5 ENFORCEMENT ACTIONS, NINE STATES, JUNE 29, 1982-DECEMBER 31, 2004

State	Successful Section 5 Cases (N)
Texas	29
Alabama	22
Georgia	17
Mississippi	15
South Carolina	10
Louisiana	5
North Carolina	3
Arizona	3
Virginia	1
TOTAL	105

SOURCE: Data compiled by staff of the National Commission on the Voting Rights Act.

MAP 1

Section 4(b) Covered Jurisdictions



Key: Covered Jurisdictions

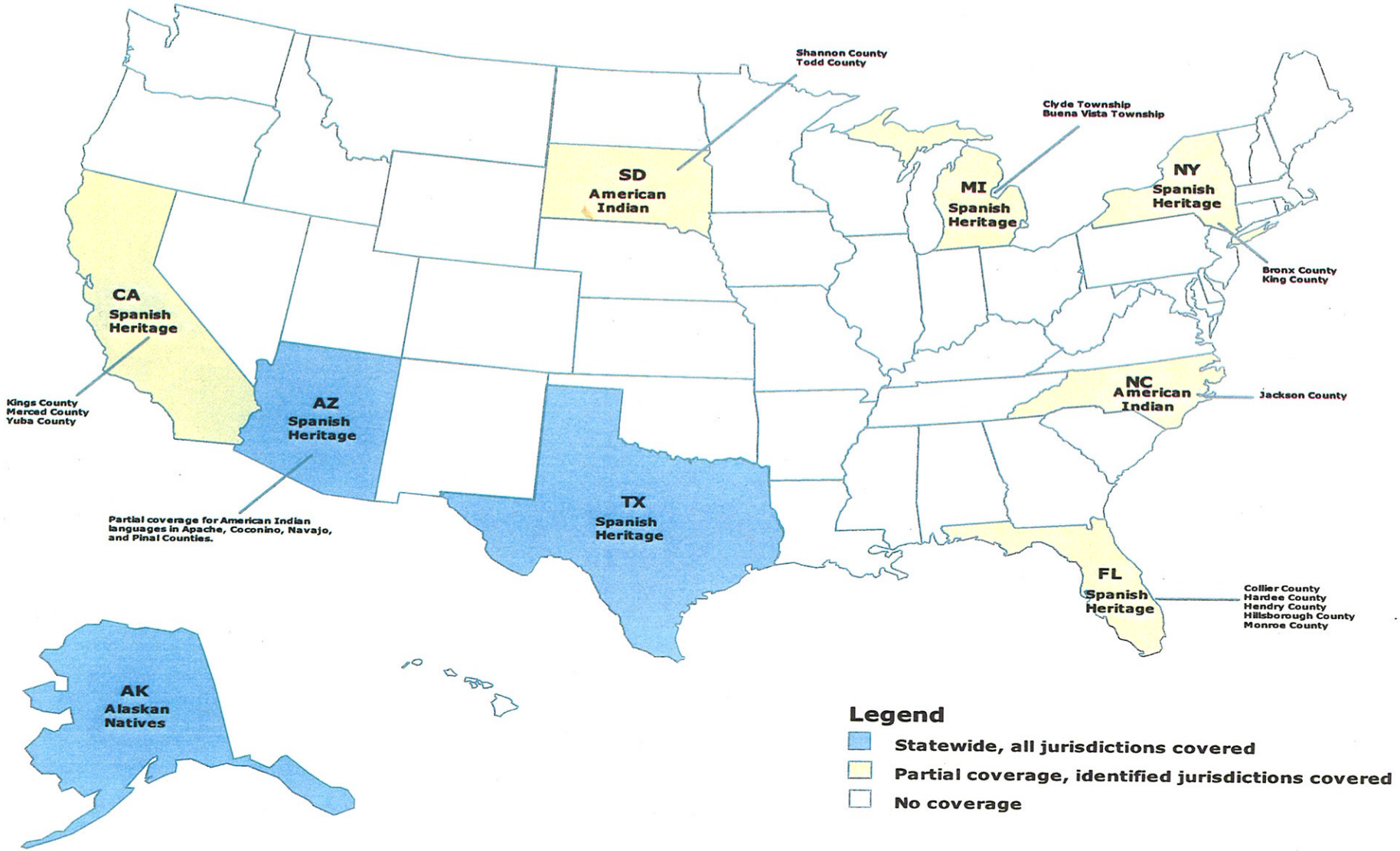
- ***States Covered as a Whole***
- ***Covered Counties in States Not Covered as a Whole***
- ***Covered Townships in States Not Covered as a Whole***

The entire state of Alaska is also covered. No jurisdiction in Hawaii is covered

Map created by the United States Department of Justice based on coverage determinations made by 28 C.F.R. Part 51, Appendix

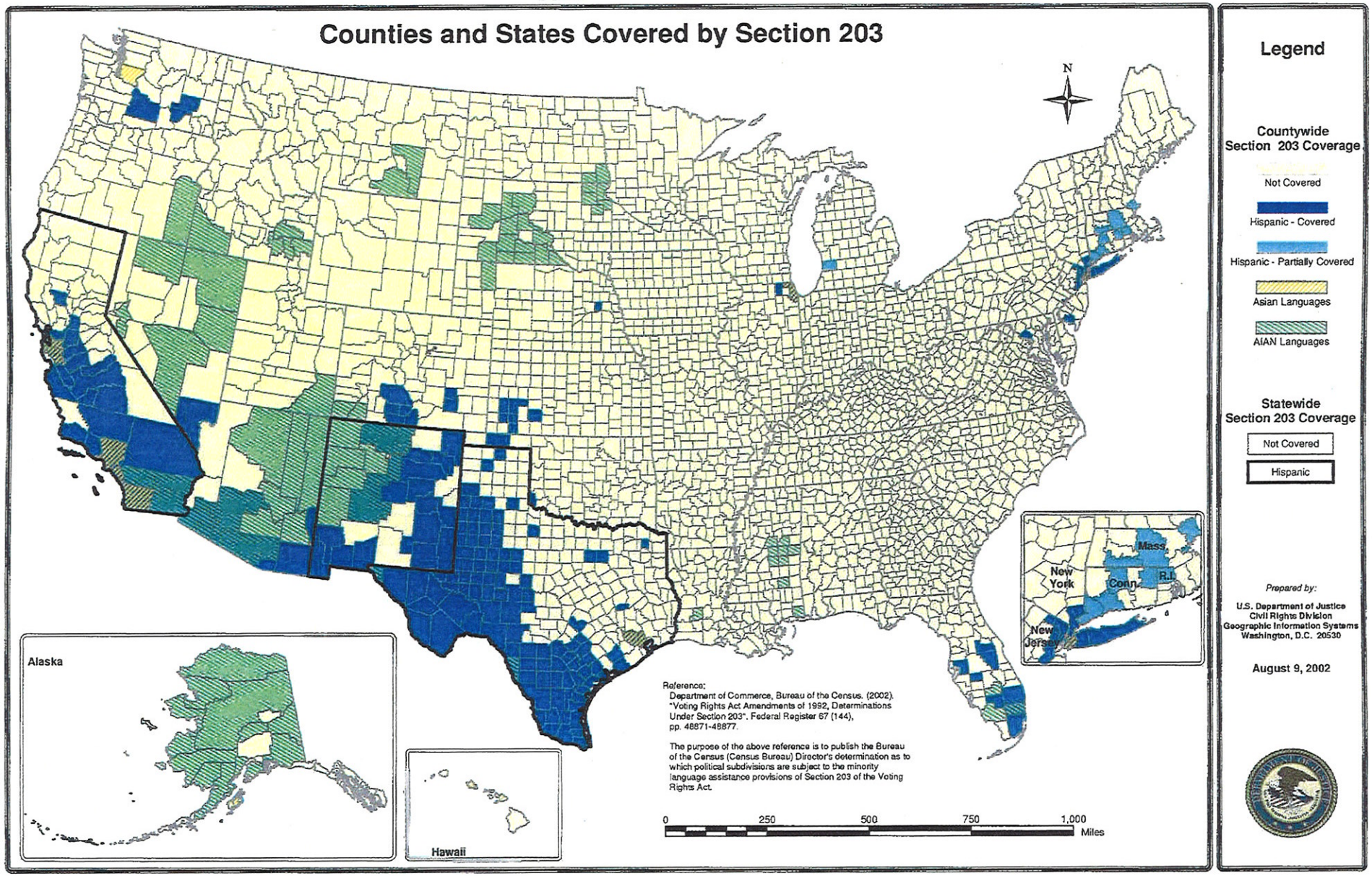
Map 2

Jurisdictions Covered by Section 4(f)(4) of the Voting Rights Act, by State



Map created by James T. Tucker based on coverage determinations contained at 28 C.F.R. Part 55, Appendix.

MAP 3


Counties and States Covered by Section 203
N
Legend
Countywide Section 203 Coverage
Not Covered
Hispanic - Covered
Hispanic - Partially Covered
Asian Languages
AIAN Languages
Statewide Section 203 Coverage
Not Covered
Hispanic
Prepared by:
U.S. Department of Justice
Civil Rights Division
Geographic Information Systems
Washington, D.C. 20530
August 9, 2002
Alaska
Hawaii
New York
Mass.
Conn.
R.I.
New Jersey
Reference:
Department of Commerce, Bureau of the Census. (2002). "Voting Rights Act Amendments of 1992, Determinations Under Section 203". Federal Register 67 (144), pp. 46871-46877.
The purpose of the above reference is to publish the Bureau of the Census (Census Bureau) Director's determination as to which political subdivisions are subject to the minority language assistance provisions of Section 203 of the Voting Rights Act.
0
250
500
750
1,000
Miles