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109TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
109–478

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

MAY 22, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 9]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 9) to amend the Voting Rights Act of 1965, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006".

SEC. 2. CONGRESSIONAL PURPOSE AND FINDINGS.

(a) PURPOSE.—The purpose of this Act is to ensure that the right of all citizens to vote, including the right to register to vote and cast meaningful votes, is preserved and protected as guaranteed by the Constitution.

(b) FINDINGS.—The Congress finds the following:

(1) Significant progress has been made in eliminating first generation barriers experienced by minority voters, including increased numbers of registered minority voters, minority voter turnout, and minority representation in Congress, State legislatures, and local elected offices. This progress is the direct result of the Voting Rights Act of 1965.

(2) However, vestiges of discrimination in voting continue to exist as demonstrated by second generation barriers constructed to prevent minority voters from fully participating in the electoral process.

(3) The continued evidence of racially polarized voting in each of the jurisdictions covered by the expiring provisions of the Voting Rights Act of 1965 demonstrates that racial and language minorities remain politically vulnerable, warranting the continued protection of the Voting Rights Act of 1965.

(4) Evidence of continued discrimination includes—

(A) the hundreds of objections interposed, requests for more information submitted followed by voting changes withdrawn from consideration by jurisdictions covered by the Voting Rights Act of 1965, and section 5 enforcement actions undertaken by the Department of Justice in covered jurisdictions since 1982 that prevented election practices, such as annexation, at-large voting, and the use of multi-member districts, from being enacted to dilute minority voting strength;

(B) the number of requests for declaratory judgments denied by the United States District Court for the District of Columbia;

(C) the continued filing of section 2 cases that originated in covered jurisdictions; and

(D) the litigation pursued by the Department of Justice since 1982 to enforce sections 4(e), 4(f)(4), and 203 of such Act to ensure that all language minority citizens have full access to the political process.

(5) The evidence clearly shows the continued need for Federal oversight in jurisdictions covered by the Voting Rights Act of 1965 since 1982, as demonstrated in the counties certified by the Attorney General for Federal examiner and observer coverage and the tens of thousands of Federal observers that have been dispatched to observe elections in covered jurisdictions.

(6) The effectiveness of the Voting Rights Act of 1965 has been significantly weakened by the United States Supreme Court decisions in Reno v. Bossier Parish II and Georgia v. Ashcroft, which have misconstrued Congress' original intent in enacting the Voting Rights Act of 1965 and narrowed the protections afforded by section 5 of such Act.

(7) Despite the progress made by minorities under the Voting Rights Act of 1965, the evidence before Congress reveals that 40 years has not been a sufficient amount of time to eliminate the vestiges of discrimination following nearly 100 years of disregard for the dictates of the 15th amendment and to ensure that the right of all citizens to vote is protected as guaranteed by the Constitution.

(8) Present day discrimination experienced by racial and language minority voters is contained in evidence, including the objections interposed by the Department of Justice in covered jurisdictions; the section 2 litigation filed to prevent dilutive techniques from adversely affecting minority voters; the enforcement actions filed to protect language minorities; and the tens of thousands of Federal observers dispatched to monitor polls in jurisdictions covered by the Voting Rights Act of 1965.

(9) The record compiled by Congress demonstrates that, without the continuation of the Voting Rights Act of 1965 protections, racial and language minority citizens will be deprived of the opportunity to exercise their right to vote, or will have their votes diluted, undermining the significant gains made by minorities in the last 40 years.

SEC. 3. CHANGES RELATING TO USE OF EXAMINERS AND OBSERVERS.

(a) USE OF OBSERVERS.—Section 8 of the Voting Rights Act of 1965 (42 U.S.C. 1973f) is amended to read as follows:

"SEC. 8. (a) Whenever—

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

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

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

"(B) in the Attorney General's judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to the Attorney General to be reasonably attributable to violations of the 14th or 15th amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the 14th or 15th amendment), the assignment of observers is otherwise necessary to enforce the guarantees of the 14th or 15th amendment;

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

"(b) Except as provided in subsection (c), such observers shall be assigned, compensated, and separated without regard to the provisions of any statute administered by the Director of the Office of Personnel Management, and their service under this Act shall not be considered employment for the purposes of any statute administered by the Director of the Office of Personnel Management, except the provisions of section 7324 of title 5, United States Code, prohibiting partisan political activity.

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

"(d) Observers shall be authorized to—

"(1) enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote; and

"(2) enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated.

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

(b) MODIFICATION OF SECTION 13.—Section 13 of the Voting Rights Act of 1965 (42 U.S.C. 1973k) is amended to read as follows:

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

"(1) with respect to observers appointed pursuant to section 8 or with respect to examiners certified under this Act before the date of the enactment of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, whenever the Attorney General notifies the Director of the Office of Personnel Management, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision described in subsection (b), that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) in such subdivision; and

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

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

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

(c) REPEAL OF SECTIONS RELATING TO EXAMINERS.—Sections 6, 7, and 9 of the Voting Rights Act of 1965 (42 U.S.C. 1973d, 1973e and 1973g) are repealed.

(d) SUBSTITUTION OF REFERENCES TO "OBSERVERS" FOR REFERENCES TO "EXAMINERS".—

(1) Section 3(a) of the Voting Rights Act of 1965 (42 U.S.C. 1973a(a)) is amended by striking "examiners" each place it appears and inserting "observers".

(2) Section 4(a)(1)(C) of the Voting Rights Act of 1965 (42 U.S.C. 1973b(a)(1)(C)) is amended by inserting "or observers" after "examiners".

(3) Section 12(b) of the Voting Rights Act of 1965 (42 U.S.C. 1973j(b)) is amended by striking "an examiner has been appointed" and inserting "an observer has been assigned".

(4) Section 12(e) of the Voting Rights Act of 1965 (42 U.S.C. 1973j(e)) is amended—

(A) by striking "examiners" and inserting "observers"; and

(B) by striking "examiner" each place it appears and inserting "observer".

(e) CONFORMING CHANGES RELATING TO SECTION REFERENCES.—

(1) Section 4(b) of the Voting Rights Act of 1965 (42 U.S.C. 1973b(b)) is amended by striking "section 6" and inserting "section 8".

(2) Subsections (a) and (c) of section 12 of the Voting Rights Act of 1965 (42 U.S.C. 1973j(a) and 1973j(c)) are each amended by striking "7,".

(3) Section 14(b) of the Voting Rights Act of 1965 (42 U.S.C. 1973l(b)) is amended by striking "or a court of appeals in any proceeding under section 9".

SEC. 4. RECONSIDERATION OF SECTION 4 BY CONGRESS.

Paragraphs (7) and (8) of section 4(a) of the Voting Rights Act of 1965 (42 U.S.C. 1973b(a)) are each amended by striking "Voting Rights Act Amendments of 1982" and inserting "Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006".

SEC. 5. CRITERIA FOR DECLARATORY JUDGMENT.

Section 5 of the Voting Rights Act of 1965 (42 U.S.C. 1973c) is amended—

(1) by inserting "(a)" before "Whenever";

(2) by striking "does not have the purpose and will not have the effect" and inserting "neither has the purpose nor will have the effect"; and

(3) by adding at the end the following:

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

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

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

SEC. 6. EXPERT FEES AND OTHER REASONABLE COSTS OF LITIGATION.

Section 14(e) of the Voting Rights Act of 1965 (42 U.S.C. 1973l(e)) is amended by inserting ", reasonable expert fees, and other reasonable litigation expenses" after "reasonable attorney's fee".

SEC. 7. EXTENSION OF BILINGUAL ELECTION REQUIREMENTS.

Section 203(b)(1) of the Voting Rights Act of 1965 (42 U.S.C. 1973aa–1a(b)(1)) is amended by striking "2007" and inserting "2032".

SEC. 8. USE OF AMERICAN COMMUNITY SURVEY CENSUS DATA.

Section 203(b)(2)(A) of the Voting Rights Act of 1965 (42 U.S.C. 1973aa–1a(b)(2)(A)) is amended by striking "census data" and inserting "the 2010 American Community Survey census data and subsequent American Community Survey data in 5-year increments, or comparable census data".

SEC. 9. STUDY AND REPORT.

The Comptroller General shall study the implementation, effectiveness, and efficiency of the current section 203 of the Voting Rights Act of 1965 and alternatives to the current implementation consistent with that section. The Comptroller General shall report the results of that study to Congress not later than 1 year after the date of the enactment of this Act.

PURPOSE AND SUMMARY

The purpose of H.R. 9 is to: (1) extend Section 4(a)(8) and Section 203(b)(1), the temporary provisions of the Voting Rights Act of 1965 currently set to expire on August 6, 2007, for another 25 years; and

(2) amend Section 3(a), Section 4, Section 5, Section 6, Section 7, Section 8, Section 9, Section 14, and Section 203. These changes are necessary to update certain provisions of the Voting Rights Act of 1965 (the "VRA") to reflect the current voting environment and to restore the original intent of Congress in enacting the temporary provisions of the VRA.

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 9 results from the development of one of the most extensive legislative records in the Committee on the Judiciary's history.

LEGISLATIVE HISTORY OF H.R. 9

Oversight Hearings

Prior to introducing H.R. 9, the House Committee on the Judiciary held ten oversight hearings before the Subcommittee on the Constitution examining the effectiveness of the temporary provisions of the VRA over the last 25 years. During these oversight hearings, the Subcommittee heard oral testimony from 39 witnesses, including State and local elected officials, scholars, attorneys, and other representatives from the voting and civil rights community. The Committee also received additional written testimony from the Department of Justice, other interested governmental and non-governmental organizations (NGOs), and private citizens. In all, the Committee assembled over 12,000 pages of testimony, documentary evidence and appendices from over 60 groups and individuals, including several Members of Congress.

In addition to the oral and written testimony, the Committee requested, received, and incorporated into its hearing record two comprehensive reports that have been compiled by NGOs that have expertise in voting rights litigation and extensively documented: (1) the extent to which discrimination against minorities in voting has and continues to occur; and (2) the continued need for the expiring provisions of the VRA. The Committee also requested, received, and incorporated into its record 11 separate reports that document the extent to which discrimination occurred in 11 of the 16 States covered in whole or in part under Section 4(b) over the last 25 years. Those reports also describe the impact that the VRA has had on protecting racial and language minority citizens from discriminatory voting techniques in those jurisdictions.

Legislative Hearings

In addition to ten oversight hearings, the Subcommittee on the Constitution held two legislative hearings on May 4, 2006, to examine H.R. 9. During these hearings, the Committee received oral and written testimony from seven additional witnesses concerning: (1) the impact that H.R. 9 will have on continuing the progress that minority groups have made in the last forty years and on protecting racial and language minority voters over the next 25 years; and (2) the need for H.R. 9 to update the VRA's temporary provisions, and to restore the VRA to its original intent so that it can continue to be an effective remedy in addressing the history and continuing vestiges of racial discrimination.

COMMITTEE STATEMENT ON THE RIGHT TO VOTE AND THE VOTING RIGHTS ACT OF 1965

The right to vote is the most fundamental right in our democratic system of government because its effective exercise is preservative of all others.[1] Prior to the enactment of the VRA, parts of the United States condoned the unequal treatment of certain citizens, including denying the most fundamental right of citizenship—the right to vote. The vestiges of such discrimination continue today. In enacting the VRA in 1965, Congress sought to protect the Nation's most vulnerable citizens' right to vote. In renewing and extending the VRA, Congress sought to ensure that even greater numbers of our citizens were protected, including citizens whose primary language is not English,[2] and to ensure that all aspects of the right to vote are protected, including the right to cast a meaningful ballot.[3]

Substantial progress has been made over the last 40 years. Racial and language minority citizens register to vote, cast ballots, and elect candidates of their choice at levels that well exceed those in 1965 and 1982. The success of the VRA is also reflected in the diversity of our Nation's local, State, and Federal Governments. These successes are the direct result of the extraordinary steps that Congress took in 1965 to enact the VRA and in reauthorizing the temporary provisions in 1970, 1975, 1982, and 1992.

Despite these successes, the Committee finds that the temporary provisions of the VRA are still needed. Discrimination today is more subtle than the visible methods used in 1965. However, the effect and results are the same, namely a diminishing of the minority community's ability to fully participate in the electoral process and to elect their preferred candidates of choice.

Forty years ago, Congress passed the VRA to help ensure that the rights of citizenship were extended to all its citizens.[4] Despite the substantial progress that has been made, the evidence before the Committee resembles the evidence before Congress in 1965 and the evidence that was present again in 1970, 1975, 1982, and 1992. In 2006, the Committee finds abundant evidentiary support for reauthorization of VRA's temporary provisions.

NEED FOR THE ORIGINAL VRA AND SUBSEQUENT REAUTHORIZATIONS

Initial Need—Voting Rights Act of 1965

In 1965, Congress was presented with a record revealing more than 95 years of pervasive racial discrimination in certain areas of the country. The record was replete with evidence demonstrating that, despite the 13th amendment signaling the end of the Civil War[5] and the ratification of the 14th and 15th amendments recog-

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[1] *Reynolds v. Simms,* 377 U.S. 533 (1964).

[2] *See Katzenbach v. Morgan,* 384 U.S. 641 (1966) and *Gaston County v. United States,* 395 U.S. 285 (1969) (finding that the ability to vote cannot be denied because of lack of knowledge of the English language).

[3] *Allen v. State Board of Elections,* 393 U.S. 544 (1969); *Reynolds,* and H.R. Rep. 94–196 (1975), H.R. Rep. 97–227 (1982)to accompany H.R. 6219 (Pub. L. No. 94–73) and H.R. 3112 (Pub. L. No. 97–205).

[4] *See Reynolds* (citing racially based gerrymandering); *Gomillion v. Lightfoot,* 364 U.S. 339 (1960), (regarding the conduct of white primaries); and *Nixon v. Herndon,* 273 U.S. 536 (1927); *Nixon v. Condon,* 286 U.S. 73 (1932); *Smith v. Allwright,* 321 U.S. 649 (1944); *Terry v. Adams,* 345 U.S. 461 (1953) (as activities that unconstitutionally result in denying some citizens their ability to vote).

[5] Ratified in 1865.

nizing the government's commitment to equal treatment and protection under the law,[6] certain State and local government entities continued to defy mandates under the Constitution and Federal law. Congress was presented with evidence demonstrating that racial discrimination was most pronounced in the electoral process where minorities were openly denied the right to participate in the political process by State and local officials.

Testimony presented to Congress revealed that the primary method of keeping minorities from participating in the election process was through the administration of State constitutional amendments and statutorily-authorized tests and devices, such as literacy tests, moral character requirements, and interpretation tests, which required African-Americans to interpret certain passages of various documents during the voting registration process. In particular, Congress was presented with evidence, beginning in the 1900's, that showed States, such as Mississippi, South Carolina, Alabama, Virginia, Georgia, and Louisiana administered reading or writing requirements prior to allowing its citizens the right to register to vote. Mississippi, Virginia, South Carolina, and Louisiana authorized the administration of tests allegedly gauging proficiency in the U.S. Constitution. Georgia, Alabama, Mississippi, and Louisiana authorized and administered tests of moral character.[7] These schemes and devices successfully kept minorities from participating in the most fundamental aspects of the political process, and ultimately denied them any type of representation in local, State, and Federal Governmental affairs.[8] This lack of representation left African-Americans without a voice in the decision making process as it related to education, housing, employment, transportation, and other areas of important interest to African-American constituents.

Congress was also presented with the reality that the civil rights laws enacted in 1957, 1960, and 1964, pursuant to its authority under the 13th, 14th, and 15th amendments[9] proved to be insufficient in addressing and remedying ongoing discrimination in voting.[10] The examples of cases that had been pursued to enforce the prohibitions on voting discrimination revealed that a "case by case" approach was ineffective in protecting the rights of minority citizens and had become too time-consuming, costly, and cumbersome, in some cases taking more than several years to resolve.[11] More importantly, Congress was presented with direct evidence that despite decisions of the Federal courts striking down the use of certain tests and devices as unconstitutional, and the efforts of the Federal Government to enforce the civil rights statutes and governing decisions, State and local officials defied these Federal ef-

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[6] Ratified in 1868 and 1870, respectively.

[7] *See* H.R. Rep. No. 89–439, at 7 (1965) ("Prevalence of Voting Discrimination Through the Use of Devices") and S. Rep. No. 89–162, at 32 (1965) (describing State legislation establishing voting requirements).

[8] Prior to the VRA, registration statistics in Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia were 19.3, 27.4, 31.6, 6.7, 46.8, 37.3, and 38.3 percent, respectively. *See* H.R. Rep 94–196, at 6 (1975)(compiling voting registration statistics).

[9] Collectively known as the "Civil War Amendments."

[10] *See* S. Rep. No. 89–162 (1965) (stating that three times within the past 8 years Congress has attempted to secure the constitutional right to vote free from racial discrimination, and that those attempts have not been fully successful).

[11] *Id.* at 35 (describing history of litigation against Dallas County, Alabama).

forts by simply administering new and novel discriminatory schemes and devices.[12]

Voting Rights Act

In passing the VRA, including the temporary provisions set forth in Sections 4, 5, 6, 7, 8, and 9, Congress sought to provide swift relief to those citizens who had been victims of discriminatory voting tactics for far too long. The temporary provisions brought certain jurisdictions under the scrutiny of Federal law, pursuant to Section 4 (trigger formula), Section 5 (preclearance), and Sections 6 through 8 (Federal examiner and observer programs) and were recognized as necessary remedies to address the widespread injury caused by discriminatory practices that had been employed by certain States and political subdivisions. Congress, in justifying its oversight of traditional State functions, observed "when State power is abused, it is subject to Federal action by Congress . . . under the 15th amendment."[13] In particular, Congress found "there is little basis for supposing that without action, the States and subdivisions affected will themselves remedy the present situation in view of the history of the adoption and administration of the several tests and devices reached by the bill."[14] Thus, to keep minorities from continuing to be victimized by States and political subdivisions' actions, Congress sought, through the temporary provisions, to "shift the benefit of time and inertia from the perpetrators of evil to the victim."[15]

Upholding the constitutionality of the temporary provisions of the VRA, the Supreme Court, in *South Carolina v. Katzenbach,* recognized Congress's broad authority to remedy the history of discrimination in voting.[16] Reiterating that States "have broad powers to determine the conditions under which the right of suffrage may be exercised," the Court held "such insulation is not carried over when State power is used as an instrument for circumventing a Federally protected right."[17] Citing the enforcement powers granted to Congress under the 13th, 14th, and 15th amendments, the Court upheld the temporary provisions as a "legitimate response to the problem for which there is ample precedent."[18] The Court further acknowledged the "uncommon exercise of congressional power," but emphasized that "*exceptional conditions* can justify legislative measures not otherwise appropriate."[19]

The Continued Need for the Temporary Provisions Reauthorization of the Voting Rights Act in 1970, 1975, 1982, 1992, and 2006

In reauthorizing the VRA on four separate occasions, Congress determined that the "exceptional conditions" cited in *Katzenbach* continued to exist in 1970, 1975, 1982, and 1992 such that Congress appropriately found that the temporary provisions were still needed. On each occasion, Congress examined the extent to which minority citizens were able to fully participate in the electoral proc-

[12] *Id.* at 33.
[13] *Id.*
[14] *Id.*
[15] *See South Carolina v. Katzenbach,* 383 U.S. 301 (1966).
[16] *See* 383 U.S. 301 (1966).
[17] *Id.* at 325 (citing *Gomillion v. Lightfoot,* 364 U.S. at 347).
[18] *Id.* at 328.
[19] *Id.* at 334 (emphasis added).

ess and weighed the record against the continued need for the temporary provisions. On each occasion, Congress found it necessary to continue the temporary provisions to ensure that minority voters continued to be protected in exercising their right to electoral franchise.[20]

1970 Amendments and Extension

In 1970, Congress reviewed the progress that had been made by minorities over the preceding 5 years and extended Section 4's covered jurisdiction status and Section 5's pre-clearance requirement for an additional 5 years. In extending the temporary provisions, Congress determined that there had been a lack of enforcement by the Department of Justice. A "5 year cooling off period imposed by the bill . . . is both reasonable and necessary to permit the dissipation of the long established political atmosphere and tradition of discrimination in voting because of color in those States and subdivisions in which literacy tests and low registration have gone hand in hand."[21]

1975 Amendments and Extension

In 1975, Congress determined that there was a continued need for the temporary provisions and extended the protections for an additional 7 years. In extending Section 4 and Section 5 for another 7 years, Congress found that "while minority political progress [that] has been made under the Voting Rights Act is undeniable . . . the nature of that progress has been limited. It has been modest and spotty insofar as there are continuing and significant deficiencies yet existing in minority registration and political participation."[22]

In addition, Congress was presented with substantial evidence demonstrating the necessity of broadening the protections afforded by the VRA to include minority citizens who did not speak English. By expanding the temporary provisions to include Sections 4(f) and 203 under its 14th amendment enforcement power, Congress sought to remedy the voting inequities resulting from the disparate treatment experienced by language minority citizens in educational opportunities. In doing so, Congress "documented a systematic pattern of voting discrimination and exclusion against minority group citizens who are from environments in which the dominant language is other than English,"[23] and "[b]ased on the extensive evi-

[20] The VRA withstood two additional constitutional challenges in 1970 and 1980. In 1970, in *Oregon v. Mitchell,* 400 U.S. 112 (1970), the Supreme Court upheld the nationwide ban on literacy tests citing "the long history of the discriminatory use of literacy tests to disenfranchise voters on account of race. And, as to the Nation as a whole, Congress had before it statistics which demonstrate that voter registration and voter participation are consistently greater in States without literacy tests." In 1980, the VRA withstood a third constitutional challenge in *City of Rome v. United States,* 446 U.S. 156,180 (1980). Although recognizing broad improvements in minority voting registration since the implementation of the VRA in 1965, the Supreme Court again deferred to Congress's record that "significant disparity persisted between percentages of whites and Negroes registered in at least several of the covered jurisdictions" in upholding the constitutionality of the VRA. Citing Congress's consideration of the relatively "minor positions" held by African-Americans and none having held "statewide office and their number in the State legislatures fell far short of being representative of the number of Negroes residing in the covered jurisdictions," as evidence of the continued need for the VRA, the Court reiterated that "Congress gave careful consideration to the propriety of readopting Section 5's pre-clearance requirement." *Id.* at 181.

[21] H.R. Rep. No. 91–397, at 4 (1970).

[22] H.R. Rep. No. 94–196, at 7 (1975).

[23] *Id.*

dentiary record demonstrating the prevalence of voting discrimination and high illiteracy rates among language minorities, the [relevant] Subcommittee acted to broaden its special coverage to new geographic areas in order to ensure protection of the voting rights of language minority citizens." [24]

1982 Amendments

In 1982, Congress extended the temporary provisions of the VRA for an additional 25 years. Congress found that "despite the gains in increased minority registration and voting and in the number of minority elected officials . . . continued manipulation of registration procedures and the electoral process, which effectively exclude minority participation from all stages of the political process" continued to occur.[25] Moreover, in extending the temporary provisions for an additional 25 years, Congress reiterated its intent "that protection of the franchise extend[] beyond mere prohibition of official actions designed to keep voters away from the polls . . . [and] include[] prohibition of State actions which so manipulate the elections process as to render the vote meaningless," [26] including "at-large elections, high fees and bonding requirements, shifts from elective to appointive offices, majority vote run-off requirements, residency requirements, annexations, incorporations, malapportionment, and racial gerrymandering." [27] Congress acknowledged that the length of time under which certain States and political subdivisions would continue to remain covered was a source of concern. To address these concerns, Congress liberalized the bailout process, enabling qualified jurisdictions to terminate coverage beginning in 1984. In addition, the bailout process was amended to allow a political subdivision to terminate coverage independent of a covered State.[28] The Committee notes that in amending the bailout process in 1982, it was the expectation of Congress that a majority of covered jurisdictions would utilize the liberalized bailout procedures set forth in Section 4(a), such that few jurisdictions would remain covered 25 years later.[29] For reasons that will be more fully discussed, the Committee finds that covered jurisdictions have not utilized the bailout process, with all but 11 counties from the State of Virginia remaining covered.

The 1982 amendments to the VRA also clarified Congress's intent with respect to Section 2. Addressing the recent Supreme Court decision *City of Mobile v. Bolden,* Congress amended Section 2 to require that plaintiffs bringing lawsuits under the section show only that an act resulted in a denial or abridgment in the right to vote, rather than require a plaintiff prove both purpose and effect.[30] During the Committee's review, it received testimony revealing the impact that Section 2 has had over the last 25 years in eliminating many of the barriers that continued to exist despite

[24] *Id.* at 16.
[25] H.R. Rep. No. 97–227, at 14 (1982).
[26] *Id.*
[27] *Id.* at 18.
[28] Eleven political subdivisions (counties in these cases) in Virginia have successfully terminated "covered" status. Virginia remains a covered State.
[29] *See* S. Rep. No. 97–417, at 60 (1982).
[30] Section 2 was amended in response to the Supreme Court decision in *City of Mobile v. Bolden,* 446 U.S. 55 (1980). Prior to the 1982 amendments, the Supreme Court interpreted Section 2 to require that a plaintiff prove both a discriminatory purpose and a discriminatory result to prevail on a vote dilution claim.

the passage of the VRA. Section 2 has been instrumental in paving the way for minority voters to more fully participate in the political process across the country. Together with Section 5, Section 2 has been a driving force in achieving the gains made by minorities over the last several decades in the covered jurisdictions.

1992 Amendments

In 1992, Congress extended Section 203 for an additional 15 years through 2007, at which time, if not renewed, would expire along with the remaining temporary provisions. In extending and amending Section 203, Congress found that "the four language minority groups covered by Section 203—Hispanics, Asian-Americans, American Indians, and Alaskan Natives—continue to experience educational inequities, high illiteracy rates, and as a result low voting participation."[31] In reauthorizing Section 203, Congress sought to expand coverage in order to reach segments of the language minority populations that remained unaided by the VRA. First, finding that a significant number of language minority citizens located in large cities were not covered under the original formula, Congress established a numerical coverage threshold of 10,000 to ensure that language minority citizens in large cities would be protected even if they did not meet the 5 percent threshold. In addition, Congress expressly reaffirmed its commitment to assist Native Americans, particularly those who live on reservations, as intended beneficiaries of the language assistance provisions.[32] Furthermore, Congress clarified that jurisdictions covered under Section 203 were required to provide language minorities with not only bilingual election materials but also bilingual election assistance, including oral assistance and other written election and voting assistance, such as instructions, guides, forms, notices, and ballots, in response to the needs demonstrated by limited English speaking citizens.[33]

COMMITTEE FINDINGS—PROGRESS

2006

The Committee's review of the temporary provisions was no less extensive in 2006 than in prior years. Forty-six total witnesses representing a spectrum of interests appeared before the House Judiciary's Subcommittee on the Constitution during the Committee's review of the temporary provisions. In addition, the Committee received numerous reports and written documentation describing personal experiences with regard to voting discrimination and the effectiveness of the temporary provisions in protecting voters from such conduct over the last 25 years. The number of witnesses appearing before the Committee is consistent with the number of witnesses who appeared before Congress during previous reauthoriza-

[31] S. Rep. No. 102–315, at 4 (1992).

[32] H.R. Rep. No. 102–655, at 4 (1992)(citing "because many Native American communities are divided into two or more counties or States, the concentration of Native American populations is frequently diluted by the balance of the county population."). To account for the "unique history and demography of Native Americans," Congress made the 5 percent trigger applicable to entire reservations without regard to whether they crossed current jurisdictional boundaries. *Id.*

[33] *See* Pub. L. No. 102–344.

tions of the VRA.[34] The Committee hearing record reflects the breadth of interests represented during the hearings and provides the Committee with insight into the voting experiences of minority citizens over the last 25 years. The direct testimony provided by the witnesses, together with the investigative reports submitted, support the Committee's conclusion that the gains made under the VRA are the direct result of the VRA's temporary provisions, and that reauthorization of these provisions is both justified and necessary.

Increased Numbers of Citizens Who Are Registered and Turn Out to Vote

The record reveals that many of the first generation barriers to minority voter registration and voter turnout that were in place prior to the VRA have been eliminated. The Committee finds that the number of African-Americans who are registered and who turn out to cast ballots has increased significantly over the last 40 years, particularly since 1982. In some circumstances, minorities register to vote and cast ballots at levels that surpass those of white voters.

A chart compiled by the Department of Justice reveals that the disparities between African-American and white citizens who are registered to vote have narrowed considerably in six southern States covered by the temporary provisions (Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia) and in the 40 counties covered in the State of North Carolina. For example, the disparity between the percentage of African-American citizens and the percentage of white citizens who were registered to vote in Mississippi narrowed significantly to 6.3 percent in November 1988, from the 63.2 percent gap experienced by African-Americans in March 1965.

Chart A: Voter Registration Rates (1965 v. 1988)

	March 1965			November 1988		
	Black	White	Gap	Black	White	Gap
Alabama	19.3	69.2	49.9	68.4	75.0	6.6
Georgia	27.4	62.2	35.2	56.8	63.9	7.1
Louisiana	31.6	80.5	48.9	77.1	75.1	–2.0
Mississippi	6.7	69.9	63.2	74.2	80.5	6.3
North Carolina	46.8	96.8	50.0	58.2	65.6	7.4
South Carolina	37.3	75.7	38.4	56.7	61.8	5.1
Virginia	38.3	61.1	22.8	63.8	68.5	4.7

The number of African-Americans who registered to vote and who turned out to cast ballots has continued to increase since 1982. For example, in Texas, 68.4 percent of African-Americans were registered to vote in 2004 compared to 61.5 percent of white citizens. Moreover, 55.8 percent of African-Americans turned out to vote in 2004 compared to 50.6 percent of white voters. In Georgia, 64.2

[34] *See South Carolina v. Katzenbach,* 383 U.S. 301, 308 (1966) ("Before enacting the measure, Congress explored with great care the problem of racial discrimination in voting. The House and Senate Committees on the Judiciary each held hearings for 9 days and received testimony from a total of 67 witnesses.")

percent of African-Americans were registered to vote in 2004 compared to 63.5 percent of white citizens, with 54.4 percent of African-Americans turning out to vote compared to 53.6 percent of white voters.

Chart B1: Reported Registration by Race in Texas and Outside the South
1980–2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
TEXAS													
Black	56.4	56.6	65.3	66.6	64.2	60.0	63.5	58.5	63.2	62.1	69.5	65.1	68.4
White	61.4	59.4	66.0	58.2	66.5	61.1	66.1	59.7	62.7	59.7	61.8	57.7	61.5
Latino	39.3	43.2	45.2	43.1	45.5	40.0	42.9	39.2	42.7	39.7	43.2	39.1	41.5
NON–SOUTH													
Black	60.6	61.7	67.2	63.1	65.9	58.4	63.0	58.3	62.0	58.5	61.7	57.0	NA
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.9	65.9	63.0	NA
Latino	35.5	33.9	39.0	33.2	32.4	30.4	32.9	29.1	33.8	31.9	32.7	30.6	NA

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

Chart B2: Reported Turnout by Race in Texas and Outside the South
1980–2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
TEXAS													
Black	40.7	37.8	51.2	39.8	47.0	38.7	50.1	33.1	47.1	35.5	57.5	44.3	55.8
White	52.7	40.6	55.5	37.5	55.2	42.5	57.2	39.4	46.7	33.5	48.1	35.0	50.6
Latino	29.7	26.8	32.7	23.6	33.2	22.5	33.1	18.9	27.9	15.3	29.5	19.1	29.3
NON–SOUTH													
Black	52.8	48.5	58.9	44.2	55.6	38.4	53.8	40.2	51.4	40.4	53.1	39.3	NA
White	62.4	53.1	63.0	48.7	60.4	48.2	64.9	49.3	57.4	44.7	57.5	44.7	NA
Latino	29.8	25.8	32.8	23.8	26.8	20.5	27.4	20.8	26.3	21.4	26.8	18.2	NA

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

Chart C1: Reported Registration by Race in Georgia and Outside the South
1980–2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
GEORGIA													
Black	59.8	51.9	58.0	55.3	56.8	57.0	53.9	57.6	64.6	64.1	66.3	61.6	64.2
White	67.0	59.7	65.7	60.4	63.9	58.1	67.3	55.0	67.8	62.0	59.3	62.7	63.5
NON–SOUTH													
Black	60.6	61.7	67.2	63.1	65.9	58.4	63.0	58.3	62.0	58.5	61.7	57.0	NA
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.9	65.9	63.0	NA

Chart C2: Reported Turnout by Race in Georgia and Outside the South
1980–2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
GEORGIA													
Black	43.7	32.5	45.9	37.3	42.4	42.3	47.1	30.9	45.6	40.2	51.6	38.5	54.4
White	56.0	40.7	55.3	40.5	53.2	42.6	58.7	38.3	52.3	36.8	48.3	44.8	53.6
NON–SOUTH													
Black	52.8	48.5	58.9	44.2	55.6	38.4	53.8	40.2	51.4	40.4	53.1	39.3	NA
White	62.4	53.1	63.0	48.7	60.4	48.2	64.9	49.3	57.4	45.4	57.5	44.7	NA

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

In other covered States, such as Louisiana, the gap between the number of African-American and white citizens who registered to vote and turned out to cast ballots has narrowed, with 71.1 percent of African-Americans registering to vote in 2004 compared to 75.1 percent of whites. Voter turnout among African-Americans also increased between 1980 and 2004, with 62.1 percent of African-Americans turning out to cast ballots in 2004, compared to the 60.1 percent of African-Americans who turned out in 1980. In addition, the disparity between the number of African-Americans and whites who turned out to vote in Louisiana in 2004 narrowed to less than 2 percent. (64 percent of whites compared to 62.1 percent of African-Americans).

Chart D1: Reported Registration by Race in Louisiana and Outside the South
1980–2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
LOUISIANA													
Black	69.0	68.5	74.8	71.9	77.1	72.0	82.3	65.7	71.9	69.5	73.5	73.5	71.1
White	74.5	67.5	73.2	71.4	75.1	74.1	76.2	72.7	74.5	75.2	77.5	74.2	75.1
NON-SOUTH													
Black	60.6	61.7	67.2	63.1	65.9	58.4	63.0	58.3	62.0	58.5	61.7	57.0	NA
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.9	65.9	63.0	NA

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

Chart D2: Reported Turnout by Race in Louisiana and Outside the South
1980–2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
LOUISIANA													
Black	60.1	32.0	66.4	55.8	61.5	55.9	71.5	30.9	60.9	46.0	63.2	46.9	62.1
White	65.6	23.6	64.7	57.5	67.5	50.2	68.3	35.6	62.6	35.7	66.4	51.0	64.0
NON-SOUTH													
Black	52.8	48.5	58.9	44.2	55.6	38.4	53.8	40.2	51.4	40.4	53.1	39.3	NA
White	62.4	53.1	63.0	48.7	60.4	48.2	64.9	49.3	57.4	45.4	57.5	44.7	NA

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

Increased Number of African-American Elected Officials

The Committee finds that the increased number of African-American citizens who are registered to vote and who have cast ballots, together with the protections afforded by the temporary provisions against dilutive techniques (discussed *infra*), have resulted in significant increases in the number of African-Americans serving in elected offices. As of 2000, more than 9,000 African-Americans have been elected to office, an increase from the 1,469 officials who held office in 1970. As of 2004, 43 African-Americans currently serve in the United States Congress, with 42 individuals serving in the United States House of Representatives, and one serving in the United States Senate. At the State level, more than 482 African-Americans serve in State legislatures, with thousands more African-Americans serving in county, township, and other locally elected positions.

In testimony presented to the Committee, the National Commission on the Voting Rights Act reported that the number of African-American elected officials serving in the original six States covered by the temporary provisions of the Voting Rights Act (Louisiana, Mississippi, South Carolina, Virginia, Georgia, and Alabama) increased by approximately 1000 percent since 1965, increasing from 345 to 3700. For example, the Committee received testimony revealing that citizens in the State of Louisiana, which as late as the 1960's maintained all-white assemblies, had elected 705 African-Americans to office as of 2001. Such elected officials include: one Member of the United States House of Representatives; nine State Senators; and 22 State Representatives. In addition, 131 African-Americans had been elected to positions on county bodies; 33 African-Americans had been elected mayor; 219 African-Americans had been elected to municipal governing bodies; and one African-American had been elected to Justice of the State Supreme Court. Statistics from South Carolina reveal similar results: one Member of the United States House of Representatives has been elected, eight African-Americans have been elected to the State Senate; 23 African-Americans have been elected to the State Legislature; 99 African-Americans have been elected to county councils; and 164 have been elected to positions on local school boards.

The progress made by African-Americans in States, such as Louisiana and South Carolina, is representative of the progress made in other covered States and jurisdictions and demonstrates the effectiveness of the temporary provisions in fostering and protecting minority participation in the electoral process, with the most visible progress occurring at the county and local level.

Progress Made by Language Minority Citizens Under Sections 4(f) and 203

The Committee also finds that Sections 4(f) and 203 have been instrumental in fostering progress among language minority citizens. Included in the VRA beginning in 1975, Sections 4(f) and 203 were enacted in response to substantial evidence received by Congress documenting the discrimination and unequal educational opportunities experienced by Asian American, Native American, Hispanic, and Native Alaskans compared to white citizens. Since 1975 and 1992 (when Section 203 was last reauthorized), the number of language minority citizens who have registered to vote, turned out

to vote, and who are casting ballots for preferred candidates of their choice has increased.

Asian American Citizens

The Committee received testimony from representatives from the Asian American community describing the impact that Section 203 has had on Asian American citizens. Evidence presented shows that "Section 203 has removed barriers to voting and opened up the political process to thousands of Asian Americans, many of them first time voters and new citizens."[35] Since 1992, "there have been important gains in Asian American electoral representation."[36] The Asian American Justice Center (AAJC) reported that as of 2004, 346 Asian Americans have been elected to office, including six to Federal offices. This is an increase from the 120 such elected officials that served in 1978. The AAJC further reported that, as of 2004, 260 Asian Americans serve at the local level, up from 52 in 1978, with 75 percent of those elected Asian Americans representing jurisdictions covered by Section 203. Despite these gains, there continues to be widespread non-compliance with Section 203 in jurisdictions with substantial Asian populations. In jurisdictions that are brought into compliance with Section 203, there can be an immediate impact. A recent Memorandum of Agreement between the Department of Justice and Harris County, Texas helped double Vietnamese voter turnout, allowing the first Vietnamese candidate in history to be elected to the Texas legislature—defeating the incumbent chair of the Appropriations Committee by 16 votes out of 40,000 cast.[37]

Citizens of Hispanic Origin

The Committee received similar testimony from the Latino and Hispanic community indicating "the number of registered Latino voters grew from 7.6 million in 2000 to 9 million in 2004."[38] As of 2000, more than 5,200 Latinos had been elected to office, including 25 to the United States House of Representatives and two to the United States Senate. Consistent with the findings reported by the Asian American community, a link was also established between the assistance provided to citizens under Section 203 and the increased participation of Hispanic citizens. For example, the National Commission on the Voting Rights Act directed the Committee to "a causal link between effective language assistance and voter turnout. In particular . . . the importance Latino citizens attach to having election materials, especially registration cards in Spanish."[39] This causal link was also confirmed in reports presented to the Committee by voting experts residing in jurisdictions

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[35] *See* Letter from Karen K. Narasaki, President and Executive Director, Asian American Justice Center to the Honorable Steve Chabot, Chairman, Subcommittee on the Constitution (November 22, 2005) (describing the impact of Section 203 on Asian-American citizens.).

[36] *Id.*

[37] *Id.*

[38] *See Oversight Hearing, the Voting Rights Act: Section 203—Bilingual Assistance (Part II), Subcommittee on the Constitution, House Committee on the Judiciary,* 109th Cong. 1 (November 9, 2005) (statement of Juan Cartagena, General Counsel, Community Service Society).

[39] *See* Protecting Minority Voters: The Voting Rights Act at Work 1982–2005, The National Commission on the Voting Rights Act, February 2006, at 74.

covered by Sections 4(f) and 203, such as in New York City.[40] It is likewise consistent with the impact of enforcement actions brought by the Department of Justice, such as in Yakima County, Washington, where Hispanic voter registration was up over 24 percent 1 year after the Department sued the County.[41]

Native Americans and Native Alaskans

Positive results were also reported by witnesses for the Native American and Native Alaskan communities who confirmed that "while turnout by Native Americans has traditionally been among the lowest of all communities in the U.S., dramatic changes have occurred recently such that, in some places, Native and non-Native participation rates are closer than ever."[42] In certain cases, the increase in Native American voter turnout has increased by more than "50 to 150 percent."[43] Representatives from the Native community also described to the Committee the impact that Section 203 has had on grass roots participation. The Committee received evidence that the number of Native American voter registration drives has increased substantially such that a "direct correlation between focused localized commitments to increasing participation rates in Native communities and the actual increases that result . . . [M]any Native communities have seen steady, even significant, increases in registration. . . . In recent years, there has been a steady increase in the number of Native American candidates who are being elected to local school boards, county commissions and State legislatures," including the election of seven new Alaskan Natives to the Alaska State legislature.[44]

This evidence demonstrates that the increases in language minority citizen registration and turnout rates are most significant in jurisdictions that are in compliance with Section 203's election assistance requirements. Indeed, the Department of Justice reported to the Committee that enforcement of Section 203 has resulted in "significantly narrowed gaps in electoral participation. In San Diego County, California, Spanish and Filipino registration are up over 21 percent and Vietnamese registration is up 37 percent."[45] The Committee believes that these examples reflect the gains that Congress intended language minority citizens to make under Sections 4(f) and 203, and concludes that all American citizens should have the opportunity to participate in the political process.

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[40] *See* Juan Cartagena, Final Report on the State of Voting Rights in New York City, Including the Impact of Section 5 and Section 203 of the Voting Rights Act on Minority Empowerment, February 27, 2006.

[41] *See Oversight Hearing, the Voting Rights Act: Section 203—Bilingual Assistance (Part I), Subcommittee on the Constitution, House Committee on the Judiciary,* 109th Cong. 1 (November 8, 2005) (statement of the Honorable Bradley J.Schlozman, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice).

[42] *See Oversight Hearing, the Voting Rights Act: Section 203—Bilingual Assistance (Part II), Subcommittee on the Constitution, House Committee on the Judiciary,* 109th Cong. 1 (November 9, 2005) (joint statement of the National Congress of American Indians and the Native American Rights Fund).

[43] *Id.*

[44] *Id.*

[45] *See Oversight Hearing, the Voting Rights Act: Section 203—Bilingual Assistance (Part I), Subcommittee on the Constitution, House Committee on the Judiciary,* 109th Cong. 1 (November 8, 2005) (statement of the Honorable Bradley J. Schlozman, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice).

EFFECTIVENESS OF PROVISIONS

Section 5

The Committee finds that increased participation levels are directly attributable to the effectiveness of the VRA's temporary provisions. These provisions have protected minority voters, especially over the last 25 years and have helped minority citizens to: (1) register to vote unchallenged; (2) cast ballots unhindered; and (3) cast meaningful votes. The Committee finds this to be a significant achievement for citizens who historically have been prevented from effectively exercising the right to vote.

In particular, the Committee finds that Sections 5 and 8 have been vital prophylactic tools, protecting minority voters from devices and schemes that continue to be employed by covered States and jurisdictions. Section 5, which requires jurisdictions covered by the temporary provisions to preclear all voting changes before they may be enforced, ensures that such voting changes do not discriminate against minority voters,[46] and has been an effective shield against new efforts employed by covered jurisdictions. The Department of Justice reported that roughly between 4,000 and 6,000 submissions have been received annually from jurisdictions covered by the VRA.[47] Since 1982, the Department objected to more than 700 voting changes that have been determined to be discriminatory, preventing such changes from being enforced by covered jurisdictions. The Committee received testimony revealing that more Section 5 objections were lodged between 1982 and 2004 than were interposed between 1965 and 1982 and that such objections did not encompass minor inadvertent changes.[48] The changes sought by covered jurisdictions were calculated decisions to keep minority voters from fully participating in the political process. This increased activity shows that attempts to discriminate persist and evolve, such that Section 5 is still needed to protect minority voters in the future.

[46] *See United States v. Beer,* 425 U.S.130 (1976).

[47] *See Oversight Hearing, the Voting Rights Act: Section 5—History, Scope, and Purpose, Subcommittee on the Constitution, Committee on the Judiciary,* 109th Cong. 1 (October 25, 2005) (statement of the Honorable Bradley J.Schlozman, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice).

[48] *See* Protecting Minority Voters: The Voting Rights Act at Work 1982–2005, The National Commission on the Voting Rights Act, February 2006, at 54.

Chart E: Administrative Review of Voting Changes
ADMINISTRATIVE REVIEW OF VOTING CHANGES

1965–2005 (By Calendar Year)				
Year	ALL SUBMISSIONS		REDISTRICTING PLANS	
	Number	Objections	Number	Objections
1965	1	0	0	0
1966	2	0	2	0
1967	6	0	4	0
1968	6	6	0	0
1969	15	5	12	0
1970	60*	4	25	1
1971	331*	66	201	32
1972	362	30	97	11
1973	345	32	47	6
1974	414*	76	55	5
1975	1046*	79	53	11
1976	2685*	124	335	11
1977	1817*	42	79	3
1978	1946*	74	48	12
1979	1914*	54	53	2
1980	2226	32	85	9
1981	2240	24	387	8
1982	2848	66	452	47
1983	3203	52	386	40
1984	3975	49	274	16
1985	3847	37	235	10
1986	4807	41	256	14
1987	4478	29	258	8
1988	5155	39	322	9
1989	3920	30	180	8
1990	4809	37	164	6
1991	4592	75	916	66
1992	5307	77	974	67
1993	4421	69	512	40
1994	4661	61	325	10
1995	3999	19	213	7
1996	4729	7	116	3
1997	4047	8	105	2
1998	4021	8	65	3
1999	4012	5	67	1
2000	4638	4	49	1
2001	4222	7	985	4
2002	5910	21	1138	19
2003	4628	8	400	5
2004	5211	3	241	1
2005	3703	1	88	1

Notes:
*Indicates fiscal year totals
One submission may contain more than one change.
This list does not reflect withdrawals of objections
See Complete Listing of Objections as of July 11, 2005

Section 5's effectiveness in addressing efforts to discriminate was reflected in the various experiences that were reported to the Committee. For example, in the case of *Dillard v. City of Foley, Alabama,* Section 5 was instrumental on two separate occasions (in 1989 and 1993) in preventing the City of Foley from annexing

white areas around the City to the detriment of primarily African-American areas, such as Mills Quarter and Beulah Heights, which were also seeking annexation by the City. As part of its effort to enforce Section 5's requirements, the ACLU compelled the City to adopt a non-discriminatory annexation policy, which resulted in annexation of Mills Quarter and Beulah Heights, in compliance with Section 5.[49]

Other examples were reported to the Committee. In 1990, the City of Monroe, Louisiana attempted to annex white suburban wards to its city court jurisdiction. The Department of Justice noted in its objection to the City's changes that the wards in question had been eligible for annexation since 1970, but there had been no interest in annexing them until just after the first-ever African-American candidate ran for a seat on the Monroe city court.[50] In 1991, the Concordia Parish Police Jury announced that it would reduce its size from nine seats to seven, with the intended consequence of eliminating one African-American district. The parish made the pretextual claim that the reduction was a cost-saving measure, but the Department of Justice noted in its objection that the parish had seen no need to save money until an influx of African-American residents transformed the district in question—originally drawn as a majority-white district—into a majority-African-American district.[51]

Additional examples were reported showing how Section 5 has been instrumental in preventing covered jurisdictions from intentionally reenacting and enforcing changes to which the Department of Justice had previously objected. In South Carolina, Section 5 was instrumental in preventing the Lancaster County School District from attempting to enforce at-large voting systems, to which objections had already been interposed. The General Assembly three times (through Act 1622 of 1972, Act R 700 of 1976, and Act 601 of 1984) adopted staggered terms for the at-large county board of education and area school boards. In 1974, 1983, and 1984, the Department objected to the same device, explaining that "[a]s we indicated in our previous objections, the use of staggered terms in Lancaster County school board elections, where the at-large system is used and racial bloc voting seems to exist, limits the potential for black voters to participate effectively in the electoral process by reducing the ability of those voters to use single shot voting. . . . Finally, with Act 602 of 1984, staggered terms were taken off the books for Lancaster County school elections." [52]

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[49] *See* Laughlin McDonald, The Case For Extending and Amending the Voting Rights Act: Voting Rights Litigation, 1982–2006: A Report of the Voting Rights Project of the American Civil Liberties Union (March 2006) at 51–53 (citing Dillard v. City of Foley, AL, Civ. No. 87–T–1213 N (M.D. Ala); 926 F.Supp. 1053 (M.D. Ala.); letter from James P. Turner, Acting Assistant Attorney General, Civil Rights Division, U.S. DoJ, to Fred Mott, November 6, 1989; letter from James P. Turner, to A. Perry Willbourne, August 30, 1993; and letter from Deval L. Patrick, Assistant Attorney General, Civil Rights Division, U.S. DoJ, to A. Perry Willbourne, July 1, 1996.).

[50] *See* Debo Adegbile, Voting Rights in Louisiana: 1982–2006, February 2006, at 20 (citing letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ to Cynthia Young Rougeou, Assistant Attorney General, State of Louisiana (Oct. 23, 1990)).

[51] *Id.* at 21 (citing letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Robbie Shirley, Secretary-Treasurer, Concordia Parish Police Jury (Dec. 23, 1991)).

[52] *See* John C. Ruoff and Herbert E. Buhl III, Section 5 and the Voting Rights Act in South Carolina Since 1982, February 2006, at 20 (citing letter Wm. Bradford Reynolds to C. Havird Jones, Jr., Esq., April 27, 1984 (84–3398)).

As important as the number of objections that have been interposed to protect minority voters against discriminatory changes, is the number of voting changes that have never gone forward as a result of Section 5. The Committee finds that the existence of Section 5 deterred covered jurisdictions from even attempting to enact discriminatory voting changes. The National Commission on the Voting Rights Act reported that "the deterrent effect of Section 5 is substantial. Once officials in covered jurisdictions become aware of the logic of preclearance, they tend to understand that submitting discriminatory changes is a waste of taxpayer time and money and interferes with their own timetables, because the chances are good that an objection will result."[53] Additional testimony confirms Section 5's strong deterrent effect:

> [a]side from blocking the implementation of discriminatory voting changes, Section 5 has a strong deterrent effect. In 2005, the Georgia state legislature redrew its congressional districts, but before doing so it adopted resolutions providing that it must comply with the non-retrogression standard of Section 5. The plan it drew maintained the black voting age population in the two majority black districts (represented by John Lewis and Cynthia McKinney) at almost exactly their pre-existing levels, and it did the same for the other two districts (represented by Sanford Bishop and David Scott) that had elected black Members of Congress. There was no objection by the Department of Justice when the plan was submitted for preclearence. This does not mean, however, that Section 5 did play a critical role in the redistricting process. Rather, it means Section 5 encouraged the legislature to ensure that any voting changes would not have a discriminatory effect on minority voters, and that it would not become embroiled in the preclearance process.[54]

Section 8

In addition to Section 5, the Committee finds that Section 8, the Federal observer provision, has played a critical role preventing and deterring discrimination inside polling locations over the last 25 years. Section 8, together with Section 6, were designed to ensure that those who are eligible to register to vote and who want to cast ballots are able to do so. Section 8, in particular, was intended to allow the Federal Government access inside polling locations where minority voters were most vulnerable. The Office of Personnel Management reported to the Committee that it has worked with the Department of Justice to assign more than 26,000 observers to 22 States, over the last 40 years, with the greatest number of Federal observers having been assigned to Mississippi.[55] The National Commission on the Voting Rights Act further reported to the Committee that five of the six States originally cov-

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[53] *See* Protecting Minority Voters: The Voting Rights Act at Work 1982–2005, The National Commission on the Voting Rights Act, February 2006, at 57.

[54] *See* Laughlin McDonald, The Case For Extending and Amending the Voting Rights Act: Voting Rights Litigation, 1982–2006: A Report of the Voting Rights Project of the American Civil Liberties Union, March 2006, at 15.

[55] *See Oversight Hearing, The Voting Rights Act: Sections 6 and 8—The Federal Examiner and Observer Program, Subcommittee on the Constitution, Committee on the Judiciary,* 109th Cong. 1 (November 15, 2005) (statement of Nancy Randa, Deputy Associate Director for Talent Services, Human Resources, Products, and Services Division, Office of Personnel Management).

ered by the VRA (Louisiana, Georgia, Alabama, South Carolina, and Mississippi) accounted for approximately 66 percent of all the observer coverages since 1982.[56] Observers have played a critical role preventing and deterring 14th and 15th amendment violations by communicating to the Department of Justice any allegedly discriminatory conduct for further investigation.[57]

Bailout

The Committee also finds that the success and effectiveness of the VRA's temporary provisions were also reflected by those jurisdictions that successfully terminated their covered status. Since 1982, 11 counties from the covered State of Virginia have successfully bailed out from coverage under Section 4. In 1982, Congress amended the bailout provision to encourage jurisdictions to end their discriminatory practices and to integrate minority voters into the electoral process. The Committee was encouraged that the bailout requirements have been utilized by some jurisdictions, and believes that the success of those jurisdictions illustrates that: (1) covered status is neither permanent nor over-broad; and (2) covered status has been and continues to be within the control of the jurisdiction such that those jurisdictions that have a genuinely clean record and want to terminate coverage have the ability to do so.

COMMITTEE FINDINGS—SUBSTANTIAL DISCRIMINATION CONTINUES TO EXIST IN 2006

The progress made by minority voters and the covered jurisdictions that have terminated their coverage over the last 25 years reflects the effectiveness of the VRA's temporary provisions. The Committee finds, however, that instances of discrimination and efforts to discriminate against minority voters continue, thus justifying reauthorization of the VRA's temporary provisions. These efforts directly affect the ability of minority citizens to register to vote and cast meaningful ballots.

Disparities in Minority Voter Registration and Voter Turnout

The Committee received testimony demonstrating continued registration and turnout disparities between African-American and white citizens in Virginia and South Carolina. In Virginia, the percentage of African-Americans who were registered to vote in 2004 was 57.4 percent compared to the 68.2 percent for whites. The disparity in voter turnout was even greater. Forty-nine percent of African-Americans turned out to vote in 2004 compared to 63 percent of whites. In South Carolina, the disparity between the percentage of African-Americans and whites was narrower than in Virginia, with 64.3 percent of African-Americans registered to vote in 1996 compared to 69.7 percent of white citizens. However, white citizens in South Carolina had made substantially more progress in increasing the percentage of white citizens who were registered to vote (from 57.2 percent in 1980 to 69.7 percent in 1996) compared to the progress made by African-Americans whose registration

[56] *See* Protecting Minority Voters: The Voting Rights Act at Work 1982–2005, The National Commission on the Voting Rights Act, February 2006, at 61.

[57] *See Oversight Hearing, The Voting Rights Act: Sections 6 and 8—The Federal Examiner and Observer Program, Subcommittee on the Constitution, Committee on the Judiciary,* 109th Cong. 1 (November 15, 2005).

rates increased by less than 3 percent (from 61.4 percent in 1980 to 64.3 percent in 1996).

Chart F1: Reported Registration by Race in Virginia and Outside the South
1980–2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
VIRGINIA													
Black	49.7	53.6	62.1	66.5	63.8	58.1	64.5	51.1	64.0	53.6	58.0	47.5	57.4
White	65.4	60.8	63.7	63.3	68.5	61.9	67.2	63.6	68.4	63.5	67.6	64.1	68.2
NON–SOUTH													
Black	60.6	61.7	67.2	63.1	65.9	58.4	63.0	58.3	62.0	58.5	61.7	57.0	NA
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.9	65.9	63.0	NA

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

Chart F2: Reported Turnout by Race in Virginia and Outside the South
1980–2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
VIRGINIA													
Black	42.9	44.3	55.0	42.5	47.7	32.0	59.0	33.8	53.3	23.8	52.7	27.2	49.6
White	58.3	46.2	57.8	36.8	61.1	39.6	63.4	50.4	58.5	32.4	60.4	37.8	63.0
NON–SOUTH													
Black	52.8	48.5	58.9	44.2	55.6	38.4	53.8	40.2	51.4	40.4	53.1	39.3	NA
White	62.4	53.1	63.0	48.7	60.4	48.2	64.9	49.3	57.4	44.7	57.5	44.7	NA

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

Chart G: Reported Registration by Race in South Carolina and Outside the South
1980–2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
SOUTH CAROLINA													
Black	61.4	53.3	62.2	58.8	56.7	61.9	62.0	59.0	64.3	68.0	68.6	68.3	71.1
White	57.2	54.5	57.3	56.4	61.8	56.2	69.2	62.6	69.7	67.9	68.2	66.2	74.4
NON-SOUTH													
Black	60.6	61.7	67.2	63.1	65.9	58.4	63.0	58.3	62.0	58.5	61.7	57.0	NA
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.9	65.9	63.0	NA

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

With respect to language minority citizens, the disparities in registration and turnout rates compared to white citizens and voting were much greater. In Florida, 36.7 percent of Hispanic citizens were registered to vote in 1996 compared to 67.8 percent of white citizens. Turnout among Hispanics was also substantially lower in 1996 with 29 percent of Hispanic voters turning out to cast ballots compared to 52.7 percent of white voters. In fact, statistics revealed that turnout among Hispanics decreased between the years 1980 and 1996, with 29.3 percent of Hispanics turning out to vote in 1980 compared to the 29 percent of Hispanics who turned out to vote in 1996. In the State of Texas, 41.5 percent of Hispanic citizens were registered to vote in 2004 compared to 61.5 percent of white citizens.

Chart H1: Reported Registration by Race in Florida and Outside the South
1980–2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
FLORIDA													
Black	58.2	50.3	57.3	61.3	57.7	53.3	54.7	47.2	64.4	50.4	52.7	47.9	53.1
White	64.1	60.8	64.1	59.9	64.3	59.5	64.5	5.6	67.8	61.1	62.5	60.7	64.8
Latino	33.7	25.3	33.2	35.5	37.7	32.3	35.0	22.7	36.7	35.8	37.1	39.1	38.2
NON–SOUTH													
Black	60.6	61.7	67.2	63.1	65.9	58.4	63.0	58.3	62.0	58.5	61.7	57.0	NA
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.9	65.9	63.0	NA
Latino	35.5	33.9	39.0	33.2	32.4	30.4	32.9	29.1	33.8	31.9	32.7	30.6	NA

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

Chart H2: Reported Turnout by Race in Florida and Outside the South
1980–2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
FLORIDA													
Black	50.3	30.4	43.2	42.4	40.8	37.4	46.3	30.0	40.5	33.4	42.3	33.0	44.9
White	56.5	43.1	55.5	47.5	57.1	44.9	57.9	46.2	52.7	40.6	53.8	44.8	58.6
Latino	29.3	18.6	29.1	28.0	34.1	22.8	30.5	20.1	29.0	22.9	31.4	27.4	34.0
NON–SOUTH													
Black	52.8	48.5	58.9	44.2	55.6	38.4	53.8	40.2	51.4	40.4	53.1	39.3	NA
White	62.4	53.1	63.0	48.7	60.4	48.2	64.9	49.3	57.4	44.7	57.5	44.7	NA
Latino	29.8	25.8	32.8	23.8	26.8	20.5	27.4	20.8	26.3	21.4	26.8	18.2	NA

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

Chart B1: Reported Registration by Race in Texas and Outside the South
1980–2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
TEXAS													
Black	56.4	56.6	65.3	66.6	64.2	60.0	63.5	58.5	63.2	62.1	69.5	65.1	68.4
White	61.4	59.4	66.0	58.2	66.5	61.1	66.1	59.7	62.7	59.7	61.8	57.7	61.5
Latino	39.3	43.2	45.2	43.1	45.5	40.0	42.9	39.2	42.7	39.7	43.2	39.1	41.5
NON–SOUTH													
Black	60.6	61.7	67.2	63.1	65.9	58.4	63.0	58.3	62.0	58.5	61.7	57.0	NA
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.9	65.9	63.0	NA
Latino	35.5	33.9	39.0	33.2	32.4	30.4	32.9	29.1	33.8	31.9	32.7	30.6	NA

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

Continued Disparity Between the Number of White and African-American Elected Officials in Covered Jurisdictions

In addition to the continued disparities between the percentages of whites and African Americans registered to vote and casting ballots, the Committee finds that few African Americans have been elected to positions in State legislatures relative to the total African American population in certain areas.

The Supreme Court has found the extension of the VRA warranted when there were disproportionately small numbers of African American State legislators and disproportionately small numbers of African Americans elected statewide in covered jurisdictions, especially when the disparities exist in combination with continuing enforcement efforts and evidence of new methods of discrimination. In upholding the 1975 extension of the VRA, the Supreme Court noted that:

> The appellants contend in the alternative that, even if the Act and its preclearance requirement were appropriate means of enforcing the 15th amendment in 1965, they had outlived their usefulness by 1975, when Congress extended the Act for another 7 years. We decline this invitation to overrule Congress' judgment that the 1975 extension was warranted. In considering the 1975 extension, Congress acknowledged that largely as a result of the Act, Negro voter registration had improved dramatically since 1965. Congress determined, however, that "a bleaker side of the picture yet exists". . . . [T]hough the number of Negro elected officials had increased since 1965, most held only relatively minor positions, none held Statewide office, and their number in the State legislatures fell far short of being representative of the number of Negroes residing in the covered jurisdictions . . . Congress gave careful consideration to the propriety of readopting § 5's preclearance requirement. It first noted that "[i]n recent years the importance of this provision has become widely recognized as a means of promoting and preserving minority political gains in covered jurisdictions." After examining information on the number and types of submissions made by covered jurisdictions and the number and nature of objections interposed by the Attorney General, Congress not only determined that § 5 should be extended for another 7 years, it gave that provision this ringing endorsement: "The recent objections entered by the Attorney General . . . to Section 5 submissions clearly bespeak the continuing need for this preclearance mechanism. As registration and voting of minority citizens increases [sic], other measures may be resorted to which would dilute increasing minority voting strength. . . . The Committee is convinced that it is largely Section 5 which has contributed to the gains thus far achieved in minority political participation, and it is likewise Section [sic] 5 which serves to insure that progress not be destroyed through new procedures and techniques. Now is not the time to remove those preclearance protections from such limited and fragile success.[58]

[58] *City of Rome v. United States,* 446 U.S. 156, 180–81 (1980) (emphasis added) (citations omitted).

As in 1982, the number of African Americans elected to State legislatures failed to reflect the number of African Americans in the general population. For example, in States such as Alabama, Georgia, Louisiana, Mississippi, South Carolina, and North Carolina, where African Americans make up 35 percent of the population, African Americans made up only 20.7 percent of the total number of State legislators.

As of 2000, only 35 African Americans held a statewide elected office.[59] In certain circumstances, these officials were not elected to their position but were appointed. The National Commission on the Voting Rights Act confirmed that "often it is only after blacks have been first appointed to a vacancy that they are able to win statewide office as incumbents. Moreover, in order for a black to win statewide election, a prior appointment to fill a vacancy is not always sufficient."[60]

In certain covered States, such as Mississippi, Louisiana, and South Carolina, African Americans have yet to be elected to any Statewide office.[61] For example, in Louisiana, an African American has yet to be elected Governor and the likelihood that African American voters in the State would be able to elect African Americans to such Statewide positions in the near future was found to be minimal.[62] The Committee received evidence, from South Carolina, indicating that the Governor conveyed his belief, as recently as 2005, that he "did not expect to see such an election in the foreseeable future."[63] Similar concerns were expressed about the inability of African Americans to be elected to positions within Mississippi. The Committee received testimony that "for Statewide races, the higher up you go up the ballot, there's no integration."[64]

Evidence shows that the experiences and concerns of African Americans in Mississippi, Louisiana, and South Carolina are not isolated. It was reported that in North Carolina, as of 1989, "no candidate who was the choice of the black community had ever won election to a statewide non-judicial office since 1900."[65] And, "[e]very statewide election since 1988 where voters were presented with a biracial field of candidates has been marked by racially polarized voting."[66]

Lack of Support for Latino, Asian American, Native American, and Alaska Native Elected Officials

The Committee also finds that the number of language minority officials elected to office has failed to keep pace with population growth among the minority communities. Latinos occupied a mere

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[59] *See* Protecting Minority Voters: The Voting Rights Act at Work 1982–2005, The National Commission on the Voting Rights Act, February 2006, at 38 (citing David Bostis, Black Elected Officials: A Statistical Summary 2000 (Washington, D.C.: Joint Center for Political and Economic Studies 2002),21).

[60] *See* Protecting Minority Voters: The Voting Rights Act at Work 1982–2005, The National Commission on the Voting Rights Act, February 2006, at 38.

[61] Mississippi elected its first African American United States Representative in 1986.

[62] *See* Debo Adegbile, Voting Rights in Louisiana: 1982–2006, February 2006, at 9.

[63] *See* John C. Ruoff and Herbert E. Buhl III, Section 5 and the Voting Rights Act in South Carolina Since 1982, February 2006, at 1.

[64] *See* Protecting Minority Voters: The Voting Rights Act at Work 1982–2005, The National Commission on the Voting Rights Act, February 2006, at 37.

[65] *See Oversight Hearing, The Voting Rights Act: Section 5—History, Scope, and Purpose, Subcommittee on the Constitution, Committee on the Judiciary,* 109th Cong. 1 (October 25, 2005) (supplement to statement of Anita Earls, Director of Advocacy, UNC Center for Civil Rights, submitted on November 3, 2005).

[66] *Id.*

0.9 percent of the total number of elected offices in the country, despite being the largest minority group in the country with approximately more than 15 million citizens of Hispanic origin residing in the United States. The number of Asian American elected officials also has not kept pace with the population growth experienced by the Asian American community. For example, the number of Asian American elected officials has increased from 120 in 1978 to 346 in 2004. However, as of 2004, there were twelve million Asian Americans residing in the United States compared to the 1.2 million Asian Americans who resided in 1970. The candidacies of Asian Americans, Latinos, Native Americans, and Native Alaskans have rarely garnered the support of white voters, resulting in a disparity between the number of white elected officials and the number of language minority officials elected to office, including statewide offices.[67]

Racial and Language Minority Voters and Racially Polarized Voting

The Committee finds it significant that the ability of racial and language minority citizens to elect their candidates of choice is affected by racially polarized voting. Racially polarized voting occurs when voting blocs within the minority and white communities cast ballots along racial lines and is the clearest and strongest evidence the Committee has before it of the continued resistence within covered jurisdictions to fully accept minority citizens and their preferred candidates into the electoral process. Testimony presented indicated that "the degree of racially polarized voting in the South is increasing, not decreasing . . . [and is] in certain ways re-creating the segregated system of the Old South, albeit a de facto system with minimal violence rather than the de jure system of late."[68] Reports presented by national and State organizations further document that racially polarized voting shapes electoral competition in the covered jurisdictions. For minority voters, there is effectively an election ceiling. In elections characterized by racially polarized voting, minority voters alone are powerless to elect their candidates. Moreover, it is rare that white voters will cross over to elect minority preferred candidates. For example, in 2000, only 8 percent of African Americans were elected from majority white districts.[69] Language minority citizens fared much worse. As of 2000, neither Hispanics nor Native Americans candidates have been elected to office from a majority white district.[70] The only chance minority candidates have to be successful are in districts in which minority voters control the elections. The breadth of racially polarized voting and its impact on minority voters represent a serious concern to the Committee. Federal courts have recognized the scope of this problem, as highlighted by the following examples.

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[67] *See* Protecting Minority Voters: The Voting Rights Act at Work 1982–2005, The National Commission on the Voting Rights Act, February 2006, at 43; *see also* Natalie Landreth and Moira Smith, Voting Rights Act Reauthorization 2007: Alaska Report, March 2006.

[68] *See* Protecting Minority Voters: The Voting Rights Act at Work 1982–2005, The National Commission on the Voting Rights Act, February 2006, at 95 (citing David Bositis, "Impact of the 'Core' Voting Rights Act on Voting and Officeholding," in Richard M. Valelly (ed.), The Voting Rights Act: Securing the Ballot [Washington DC: CQ Press, 2006], 119.).

[69] *See* Protecting Minority Voters: The Voting Rights Act at Work 1982–2005, The National Commission on the Voting Rights Act, February 2006, at 38.

[70] *Id.* at 43–46.

Florida

"The parties agree that racially polarized voting exists throughout Florida to varying degrees. The results of Florida's legislative elections over the past 10 years established the presence of racially polarized voting." [71]

South Carolina

"In this case the parties have presented substantial evidence that this disturbing fact has seen little change in the last decade. Voting in South Carolina continues to be racially polarized to a very high degree, in all regions of the State and in both primary elections and general elections. Statewide, black citizens generally are a highly politically cohesive group and whites engage in significant white-bloc voting. Indeed, this fact is not seriously in dispute." [72]

Louisiana

"A consistently high degree of electoral polarization in Orleans Parish is proven through both statistical and anecdotal evidence. Particularly as enhanced by Louisiana's majority vote requirement, . . . racial bloc voting substantially impairs the ability of black voters in this parish to become fully involved in the democratic process." [73]

Texas

"This court recognizes that Plaintiffs have established racially polarized voting and a political, social, and economic legacy of past discrimination." [74]

South Dakota

"The court concludes that substantial evidence, both statistical and lay, demonstrates that voting in South Dakota is racially polarized among whites and Indians in Districts 26 and 27." [75]

Impact of Racially Polarized Voting

These examples confirm that the presence of racially polarized voting occurs with frequency and has a direct bearing upon the outcome of elections. The potential for discrimination in environments characterized by racially polarized voting is great, as demonstrated by the increased use of Section 5, the increased need for Federal observers, and the increased need for Section 2 litigation. The continued need and increased use of the temporary provisions demonstrate that efforts to discriminate are as real today as they were in 1965 and 1982.

Evidence of Discriminatory Conduct—Section 5

Congress designed Section 5 in such a way as to allow the Federal Government and courts to stay one step ahead of jurisdictions with a documented history of discrimination against its minority voters. Section 5 has accomplished this objective over the last 40

[71] *Id.* at 96 (citing *DeGrandy v. Wetherell,* 794 F.Supp. 1076 (N.D.Fla 1992), aff'd in part and rev'd in part on other grounds sub nom. *Johnson v. DeGrandy,* 512 U.S. 997, 1079 (1994)).
[72] *Id.* at 96 (citing *Colleton County Council,* 201 F. Supp. 2d at 641).
[73] *Id.* at 96 (citing *Major v. Treen,* 574 F. Supp. 325, 351–52 (E.D. La. (1983)).
[74] *Id.* at 96 (citing *Session v. Perry,* 298 F. Supp. 2d 451, 492(E.D.Tex. 2004), vacated and remanded on other grounds, *Jackson v. Perry,* 125 S. Ct. 351 (2004)).
[75] *Id.* at 96 (citing *Bone Shirt v. Hazletine,* 336 F. Supp. 2d 976, 1036 (D.S.D. 2004)).

years by requiring covered jurisdictions to "preclear" all voting changes with the United States District Court for the District of Columbia or the Department of Justice. In submitting voting changes, covered jurisdictions have the burden of proving that the voting changes are not discriminatory in purpose or effect. Voting changes that do not meet the non-discriminatory criteria cannot be precleared nor can they be enforced by covered jurisdictions.

Section 5's reach in preventing discrimination is broad. Its strength lies not only in the number of discriminatory voting changes it has thwarted, but can also be measured by the submissions that have been withdrawn from consideration, the submissions that have been altered by jurisdictions in order to comply with the VRA, or in the discriminatory voting changes that have never materialized. Indeed, the Supreme Court in the *City of Rome v. United States* found that "the recent objections entered by the Attorney General . . . to Section 5 submissions clearly bespeak the continuing need for this preclearance mechanism. As registration and voting of minority voting increases [sic], other measures may be resorted to which would dilute increasing minority voting strength . . . The Committee is convinced that it is largely Section 5 which has contributed to the gains thus far that achieved in minority political participation, and it is likewise Secton 5 [sic] which serves to insure that that progress not be destroyed through new procedures and techniques."[76] The increased number of objections, revised submissions, and withdrawals over the last 25 years are strong indices of continued efforts to discriminate.

Section 5 Objections

Since 1982, the Department of Justice received thousands of proposed voting changes annually from covered jurisdictions. Of the submissions, the Department found more than 700 to be discriminatory against minority voters. The Committee finds that voting changes devised by covered jurisdictions resemble those techniques and methods used in 1965, 1970, 1975, and 1982 including: enacting discriminatory redistricting plans; switching offices from elected to appointed positions; relocating polling places; enacting discriminatory annexations and deannexations; setting numbered posts; and changing elections from single member districts to at-large voting and implementing majority vote requirements. The Committee received testimony indicating that these changes were intentionally developed to keep minority voters and candidates from succeeding in the political process.[77] For example, in Kilmichael, Mississippi,

> [D]uring the local elections of 2001, an unprecedented number of African Americans [sic] candidates were running for office. Three weeks before the election, however, the town's mayor and the all white five-member Board of Alderman canceled the election. In objecting to this change under Section 5, the Justice Department found that the cancellation occurred after Census data revealed that African Americans had become a majority in the town. The town did not reschedule the election,

[76] 446 U.S. 156, 180–181 (1980)(emphasis added) (citations omitted).

[77] *See* Complete Listing of Objections Pursuant to Sections 3(c) and 5 of the Voting Rights Act, Department of Justice, Civil Rights Division, July 11, 2005, available at *http://www.usdoj.gov/crt/voting/sec—5/obj—activ.htm.*

> and DOJ forced it to hold one in 2003 where upon Kilmichael elected its first African American mayor, along with three African American aldermen.[78]

A breakdown of the objections to Statewide plans issued by the Department of Justice pursuant to Section 5 reveals that most objections, between 1982 and 2005, occurred specifically in "the Black Belt of most southern states, including majority-minority counties."[79] In its report, the National Commission on the Voting Rights Act noted that "in nine of the sixteen Section 5-covered states, more objections were interposed after 1982 than before."[80] The report emphasized that "all but two of the sixteen states covered entirely or partially by Section 5 are states with a large non-white population—Latino, black and others. . . . The close link between large non-white populations and objections is also strikingly visible within individual States. . . ."[81] (*See* Appendices A-J).

Testimony received by the Committee showed an increase in the number of objections issued by the Department of Justice since 1982, with most objections continuing to occur in areas heavily populated by minority voters. The Committee received testimony highlighting the necessity of Section 5 objections to protect minority voters from actions undertaken by local governments. For example, the Department of Justice has interposed 112 objections in Mississippi since 1982, with most occurring in county and local governments. Sixty-eight of the 91 objections interposed in Georgia since 1982 were to changes made at the county or municipal levels. Section 5's protections have been vital to ensuring that covered jurisdictions, including the localities, were not successful in their efforts to disenfranchise minority voters or dilute the weight of their vote.

Testimony from other Non-Governmental Organizations (NGO) revealed the impact that discriminatory tactics, such as the discriminatory redistricting plan administered in the City of Albany, Georgia, have had on minority voters and the necessity of Section 5 to prevent enforcement:

> Following the 2000 census, the City of Albany, Georgia, adopted a new redistricting plan for its mayor and commission to replace an existing malapportioned plan, but it was rejected by the Department of Justice under Section 5. The department noted that while the Black population had steadily increased in Ward 4 over the past two decades, subsequent redistricting had decreased the Black population "in order to forestall the creation of a majority black district." The letter of objection concluded it was "implicit" that "the proposed plan was designed with the purpose to limit and retrogress the increased black voting strength in Ward 4, as well as in the city as a whole." A subsequent court ordered plan remedied the vote dilution in Ward 4. But, in the absence of Section 5, elections would have gone forward under a plan in which purposeful dis-

[78] *See* Caroline Fredrickson and Deborah J. Vagins, Promises to Keep: The Impact of the Voting Rights Act, March 2006, at 12 (citing Melany Eversley, For a Mississippi Town, Voting Rights Act Made A Change, USA Today (Aug. 5, 2005) and Stuart Comstock-Gay, Executive Director, National Voting Rights Institute, Ballot Box Equality (Aug. 5, 2005), available at *http://www.tompaine.com/articles/2005/08/05/ballot—box—equality.php*.

[79] *See* Protecting Minority Voters: The Voting Rights Act at Work 1982–2005, The National Commission on the Voting Rights Act, February 2006, at 54.

[80] *Id.* at 53.

[81] *Id.* at 54.

> crimination was "implicit," and which could only have been challenged in time consuming vote dilution litigation under Section 2, in which minority plaintiffs would have borne the burden of proof and expense.[82]

Other examples of attempts to employ voting systems in a discriminatory manner were reported to the Committee, including:

Louisiana

"After the Washington Parish School Board finally added a second majority-African American district in 1993 (bringing the total to 2 out of 8, representing an African American population of 32 percent), it immediately created a new at-large seat to ensure that no white incumbent would lose his seat and to reduce the impact of the two African American members (to 2 out of 9). The DOJ objected."[83]

South Carolina

"In 1989, following a settlement of Section 2 claims in *NAACP v. City of Lancaster* (D.S.C. 1989), the city adopted a redistricting plan which changed a system of seven members, including the mayor, elected at large by plurality votes to a nine member council, six elected from single member districts and three, including the mayor, elected at large by plurality vote in staggered terms. In objecting to the two additional members, the Department noted that the additional districts appeared to have been added after it became clear that black citizens would have an opportunity to elect candidates of their choice in three of the six districts, creating a city council that mirrored the 41 percent African American population. Further, the Department observed that preserving seats for two white incumbents was a major consideration in the addition. In 2006, three African Americans serve on the seven member council."[84]

Virginia

"Pittsylvania County proposed a redistricting plan for its board of supervisors and school board members which would have reduced the African American population in the only majority-minority district in the county (Bannister district). The DOJ objected, finding the proposed reduction was retrogressive. In fact, according to the DOJ, even a minute reduction would have greatly impaired African American voters' ability to elect candidates of choice. Furthermore, the existence of alternative plans that actually ameliorated minority voters' ability to elect their choice candidates underscored the DOJ's objection."[85]

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[82] *See* Laughlin McDonald, The Case For Extending and Amending the Voting Rights Act: Voting Rights Litigation, 1982–2006: A Report of the Voting Rights Project of the American Civil Liberties Union, March 2006, at 5 (citing letter from J. Michael Wiggins, Acting Assistant Attorney General, to Al Greishaber, Jr., (September 23, 2002); *Wright v. City of Albany, Alabama,* 306 F.Supp.2d 1228 (M.D.GA. 2003)).

[83] *See* Debo Adegbile, Voting Rights in Louisiana: 1982–2006, February 2006, at 21 (citing Letter from James P. Turner, Assistant Attorney General, Civil Rights Division, U.S. DoJ, to Sherri Marcus Morris, Assistant Attorney General, State of Louisiana, and Jerald N. Jones, City of Shreveport (September 11, 1995)).

[84] *See* John C. Ruoff and Herbert E. Buhl III, Section 5 and the Voting Rights Act in South Carolina Since 1982, February 2006, at 21.

[85] *See* Anita Earls, Kara Millonzi, Oni Seliski, and Torrey Dixon, Voting Rights in Virginia, March 2006, at 11 (citing Letter from Ralph F. Boyd, Jr., Assistant Attorney General, Civil

Examples of repeated attempts by covered States, such as Mississippi, Virginia, and South Carolina, to preclear voting changes that have already been struck down as discriminatory or would have affected gains made by minority voters were also reported to the Committee. The deliberate repeated attempts demonstrate the continued importance of the VRA. For example:

Mississippi

In testimony presented to the Committee, the National Voting Rights Institute described its involvement, in 1995, in stopping Mississippi from resurrecting and enforcing its dual voter registration system, which was initially enacted in 1892 to disenfranchise Black voters. After being the last State in the country to maintain such a system, it was struck down in 1987 and the State ultimately administered a unitary registration system. However, under the guise of complying with the National Voter Registration Act of 1993 (NVRA), the State of Mississippi revived its dual registration system. Under one system, the State enabled citizens to register for Federal elections in compliance with the NVRA. At the same time, the State continued to maintain, under a separate system, its preexisting registration process, enabling voters to register for all local, State, and Federal elections. Knowing that maintenance of two registration systems had previously been struck down as discriminatory, the State refused to submit the change for preclearance under Section 5. It was only in response to an enforcement action filed under Section 5 that Mississippi submitted the change in registration system to the Department of Justice for preclearance. Even more striking was the fact that even after the Department denied preclearance, Mississippi failed to enact legislation to integrate the NVRA as part of the State's unitary registration system.[86]

South Carolina

"In 2003, South Carolina, enacted legislation adopting the identical method of elections for the board of trustees of the Charleston County School District that had earlier, in a case involving the county council, been found to dilute minority voting strength in violation of Section 2.[87] Under the preexisting system, school board elections were non-partisan, multi-seat contests decided by plurality vote, which allowed minority voters the opportunity to bullet vote, or concentrate their votes on one or two candidates and elect them to office. That possibility would have been effectively eliminated under the proposed new partisan plan system. In denying preclearance to the county's submission, DOJ concluded:

> '[t]he proposed change would significantly impair the present ability of minority voters to elect candidates of choice to the

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Rights Division, U.S. DoJ, to William Sleeper, County Administrator, and Fred M. Ingram, Chairperson, Board of Supervisors of Chatham, VA (Apr. 29, 2002)).

[86] *See* Robert McDuff, The Voting Rights in Mississippi: 1982–2006, April 2006; *see also Oversight Hearing on the Voting Rights Act: Section 5—Preclearance Standards, Subcommittee on the Constitution, Committee on the Judiciary,* 109th Cong. 1 (November 1, 2005)(statement of Brenda Wright, National Voting Rights Institute).

[87] *See* Laughlin McDonald, The Case For Extending and Amending the Voting Rights Act: Voting Rights Litigation, 1982–2006: A Report of the Voting Rights Project of the American Civil Liberties Union, p. 6 (March 2006)(citing *United States v. Charleston County and Moultrie v. Charleston County Council,* 316 F.Supp.2d 268 (D.S.C. 2003), aff'd 365 (4th Cir. 2004), cert. den'd, 125 S.Ct.606(2004)).

> school board and to participate fully in the political process.' The department further noted that: every black member of the Charleston County delegation voted against the proposed change, some specifically citing the retrogressive nature of the change. Our investigation also reveals that the retrogressive nature of this change is not only recognized by black members of the delegation, but is recognized by other citizens in Charleston County, both elected and unelected. Section 5 thus prevented the State from implementing a new and retrogressive voting practice, one which everyone understood was adopted to dilute black voting strength and insure white control of the school board." [88]

Virginia

"Northampton County proposed a change in the method of electing the board of supervisors by collapsing six districts into three larger districts in September 2001. The DOJ objected, finding that three of the six districts were majority-minority districts in which African American voters regularly elected their candidates of choice. The new plan would have diluted the minority-majorities and caused them to completely disappear in two of the three districts—clearly having retrogressive effects. Two years later, in 2003, the county provided a new six-district plan, which had the same retrogressive effects of the three-district plan. The DOJ objected and provided a model non-retrogressive, six-district plan, which has yet to be followed by the county." [89]

Section 5—More Information Request Letters

Efforts to discriminate over the past 25 years were not just demonstrated by objection letters issued under Section 5 but were also reflected by an administrative mechanism, known as a "more information request (MIR)." MIRs are used by the Department of Justice when insufficient information is submitted with a proposed voting change to enable the Department of Justice to make a determination whether a voting change has the "purpose or effect of denying or abridging the right to vote." [90] The use of MIRs force covered jurisdictions to take action when seeking to preclear voting changes that may be discriminatory, including deciding whether to: (1) submit additional information to prove a change is non-discriminatory; (2) withdraw a proposed change from consideration because it is discriminatory; (3) submit a new or amended non-discriminatory voting plan; or (4) make no change.[91] The actions taken by a jurisdiction are often illustrative of a jurisdiction's motives. For example, testimony presented to the Committee revealed that MIRs affected more than 800 additional voting changes that were submitted for preclearance, compelling covered jurisdictions to either

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[88] *Id.*(citing R. Alexander Acosta, Assistant Attorney General, to C. Havird Jones, Jr., February 26, 2004).

[89] *See* Anita Earls, Kara Millonzi, Oni Seliski, and Torrey Dixon, Voting Rights in Virginia (March 2006) at 11 (citing letter from Ralph F. Boyd, Jr., Assistant Attorney General, Civil Rights Division, U.S. DoJ, to Bruce Jones, County Attorney for Northampton County, VA (Sept. 28, 2001); letter from Ralph F. Boyd, Jr., Assistant Attorney General, Civil Rights Division, U.S. DoJ, to Bruce Jones, County Attorney for Northampton County, VA (May 19, 2003); and letter from J. Michael Wiggins, Acting Assistant Attorney General, Civil Rights Division, U.S. DoJ, to Bruce Jones, County Attorney for Northampton County, VA (Oct. 21, 2003)).

[90] *See* Section 5.

[91] *See* 28 C.F.R.51.37 and 51.40.

alter the proposal or withdraw it from consideration altogether.[92] The National Voting Rights Committee confirmed that since 1982, over 205 voting changes have been withdrawn as a result of Section 5's MIR tool.[93] The location of the withdrawn voting changes parallels the pattern of objections interposed by the Department of Justice, occurring primarily within the "Black Belt" of the Southern States.[94] For example, in North Carolina alone, it was reported that the State has withdrawn more than 10 submissions as a result of the MIRs since 1982, including five since 2000.[95] (*See* Appendix K).

The notable impact that Section 5 MIRs have had on protecting minority voters was presented to the Committee:

> In Monterey County, election officials decided to reduce the number of polling places for the special gubernatorial recall election held on October 7, 2003. According to county officials, the number of polling places utilized in the November 2002 general election was reduced from 190 to 86 for the special recall election. The Department of Justice ultimately approved the voting precinct only after Monterey County withdrew from Section 5 consideration five precinct and polling place consolidations. Absent Section 5 coverage there would not have been a withdrawal of these particular polling place consolidations. The only alternative would have been to file a Section 2 case and seek a preliminary injunction enjoining the consolidation of these polling places.[96]

The example highlights the fact that despite efforts to enact discriminatory changes. Section 5 has been instrumental in ensuring that only voting changes that are non-discriminatory in purpose and effect are enforceable by a covered jurisdiction.

Section 5—Enforcement and Non-Compliance

In addition to the increased number of objections interposed under Section 5, the continued need for additional information related to Section 5 submissions, and the increased number of submissions withdrawn from consideration under Section 5, the Committee finds that covered jurisdictions continue to resist submitting voting changes for preclearance, as required by Section 5. In fact, the Committee received testimony from the National Commission on the Voting Rights Act that the Department of Justice has no "systematic way to monitor all such jurisdictions to ensure that all changes are submitted for preclearance."[97] As a result, many defiant covered jurisdictions and State and local officials continue to enact and enforce changes to voting procedures without the Federal Government's knowledge. The Committee finds that Section 5's en-

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[92] *See* Juan Cartagena, Final Report on the State of Voting Rights in New York City, Including the Impact of Section 5 and Section 203 of the Voting Rights Act on Minority Empowerment, February 27, 2006, at 20–22.

[93] *See* Protecting Minority Voters: The Voting Rights Act at Work 1982–2005, The National Commission on the Voting Rights Act, February 2006, at 58.

[94] *Id.*

[95] *See* LeeAnne Quatrucci, Voting Rights Act in North Carolina 1982–2006, March 2006, at 2.

[96] *See* Statement of Joaquin G. Avila, The Continued for Federal Oversight of California's Electoral Process, to the Honorable Steve Chabot, Chairman, Subcommittee on the Constitution (November 2005).

[97] *See* Protecting Minority Voters: The Voting Rights Act at Work 1982–2005, The National Commission on the Voting Rights Act, February 2006, at 66.

forcement authority played a critical role, enabling the Department of Justice and private citizens to monitor covered jurisdictions to the fullest extent possible to ensure full compliance was achieved. The Committee further finds that much of the burden of enforcing Section 5 over the years has fallen to private citizens whose assistance has been critical to ensuring that discriminatory changes are stopped before they negatively affect minority voters.

South Dakota

Perhaps the most egregious example of non-compliance received by the Committee occurred in South Dakota. Beginning in 1975, former South Dakota Attorney General William Janklow described the preclearance requirement as a "facial absurdity" and advised against compliance, stating "I see no need to proceed with undue speed to subject our State laws to a 'one-man veto' by the United States Attorney General."[98] And, while the Department of Justice sued South Dakota in 1978 and 1979 to enforce Section 5's requirements, compliance efforts in subsequent years fell short.[99] As a result, between 1976 and 2002, South Dakota enacted more than 600 statutes and voting changes, seeking preclearance in less than five cases.[100]

The lack of enforcement enabled South Dakota to defy Federal oversight requirements and to continue enforcing changes which negatively impacted Native American citizens and their ability to vote. Over the last several decades, the State enacted voting changes that "authoriz[ed] municipalities to adopt numbered seat requirements . . . requir[ed] a majority vote for nomination in primary elections for United States Senate, congressman, and governor . . . and [enforced] redistricting plans . . . [that] packed Indians into certain districts."[101] In 2002, members of the "Oglala and Rosebud Sioux Tribes in Shannon and Todd counties sued the State of South Dakota, with the assistance of the ACLU, to enforce Section 5's requirements. These efforts resulted in a consent decree under which the State agreed to fulfill its preclearance obligations over a 3-year period."[102]

Other examples of non-compliance were presented to the Committee. In California, it was reported that "there is a significant problem relating to the enforcement of the Section 5 preclearance provisions,"[103] the significance of which was noted by the Supreme Court in *Lopez v. Monterey County.*[104] The *Lopez* Court highlighted the particular failure by Monterey County to comply with Section 5, finding that 'The County, although covered by Section 5 of the Act, failed to seek Federal preclearance for any of its six consolidation ordinances. Nor did the State preclear its 1979 law. . . ."[105]

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[98] 1977 S.D. Op. Atty. Gen.175: 1977 WL 36011 (S.D.AG.)

[99] *See http://www.usdoj.gov/crt/voting/sec—5/sd—obj2.htm.*

[100] *See http://www.usdoj.gov/crt/voting/sec—5/sd—obj2.htm.*

[101] *See* Laughlin McDonald, "The Need to Expand the Coverage of Section Five of the Voting Rights Act to Indian Country," *The Future of the Voting Rights Act* (Russell Sage Foundation, 2006) edited by Richard H. Pildes, Rodolfo de la Garza, David Epstein, and Sharyn O'Halloran at 27.

[102] *Id.* at 31.

[103] *See* Statement of Joaquin G. Avila, The Continued for Federal Oversight of California's Electoral Process, to the Honorable Steve Chabot, Chairman, Subcommittee on the Constitution (November 2005).

[104] *See Lopez v. Monterey County,* 525 U.S. 266 (1999).

[105] *Id.* at 273.

Testimony from many outside groups confirms the importance of Section 5's enforcement mechanisms, especially in protecting smaller, more rural communities within covered States, where Federal oversight has been limited and non-compliance extensive. For example, testimony from South Carolina revealed that in Lee County, the "County revised its redistricting plan and the revised plan was precleared in 1993. The County set an expedited special election schedule even though the new plan included substantial changes from the previous plan. The county held a primary in 1994 even though the [new] plan had not been precleared. . . . Both the Department of Justice and the NAACP filed in the District Court to enjoin the special general elections and to vacate the special primary. The court issued a temporary restraining order." [106] Later, a "three judge panel granted summary judgment motions by the plaintiffs vacating the April 19, 1994 special primary and enjoining further implementation of the special election procedure." [107]

Additional testimony indicates that "Louisiana's record of complying with Section 5 for local elections is even worse than its record for State elections, which is why Section 5 plays an important role in Louisiana in preventing voting discrimination for local offices." [108] For example, "[T]he Western District Court for Louisiana has enjoined multiple elections in jurisdictions that failed to preclear voting changes. In 1991, it enjoined the City of Monroe from holding elections in Ward 1, 2, and 4 until obtaining preclearance for elections to the City Court. In 1994, the same District Court enjoined elections under the Vernon Parish School Board's post 1990 reapportionment, since the School Board failed to submit its 1994 modified reapportionment resolution. The School Board's reapportionment also violated the one-person one-vote standard." [109]

The Committee was also made aware that unofficial changes to voting practices are routinely made by local elections officials. Local election officials and poll workers often make arbitrary decisions in polling locations that effectively change voting procedures. In some cases, these changes have been in effect for years without preclearance and are now considered standard practice. For example, in Mississippi, the outcome for a race for Superintendent in Hinds County was affected by a decision whether to count affidavit ballots that did not contain signatures on the ballot. The decision to accept ballots only with signatures was made by a local election official and the issue, on which the outcome of the race for Superintendent depended, was litigated to the Supreme Court. Despite a ruling from the Court that affidavit ballots do not need signatures, the county continued to count only those ballots with signatures.[110] Arbitrary decisions made in polling places out of the sight of Federal officials, and the impact that such changes have on mi-

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[106] *See* John C. Ruoff and Herbert E. Buhl III, Section 5 and the Voting Rights Act in South Carolina Since 1982, February 2006, at 27 (citing *N.A.A.C.P. v. Lee County Council,* C.A. No. 3:94–01575–17 (D.S.C., 1994; *United States v. Lee County,* C.A. No. 3:94–01582–17 (D.S.C., 1994)).

[107] *Id.*

[108] *See* Debo Adegbile, Voting Rights in Louisiana: 1982–2006, February 2006, at 31.

[109] *Id.*

[110] *See* Protecting Minority Voters: The Voting Rights Act at Work 1982–2005, The National Commission on the Voting Rights Act, February 2006,(Highlights of Hearings of the National Commission on the Voting Rights Act (2006)).

nority voters with no protection other than the temporary provisions of the VRA is of significant concern to the Committee.

Federal Examiners and Observers

The Committee finds that indicia of discrimination are reflected in the continued need for Federal observers to monitor polling places located in covered jurisdictions. The assignment of Federal officials to these jurisdictions demonstrates that the discriminatory conduct experienced by minority voters is not solely limited to tactics to dilute the voting strength of minorities but continues to include tactics to disenfranchise, such as harassment and intimidation inside polling locations. Under Section 8, observers are assigned to a polling location only when there is a reasonable belief that minority citizens are at risk of being disenfranchised. While observers are not authorized to take action against the perpetrators of discriminatory conduct, the Committee finds that they have served a critical oversight function, monitoring and reporting on the actions of voters and poll workers inside the polling locations.

Since 1965, more than 22,000 Federal observers have been assigned to protect minority voters in polling places. In the last 25 years, between 300 and 600 observers have been assigned annually to covered jurisdictions to protect minority voters. In 2004 alone, more than 1,400 observers were sent to 105 jurisdictions in 29 States to protect the rights of minority citizens.

According to the National Commission on the Voting Rights Act, "Louisiana, Mississippi, Alabama, Georgia, and South Carolina—five of the six States originally covered by Section 5—accounted for 66 percent of all the coverages since 1982. Mississippi alone, long considered the most resistant of all States to black voting rights, accounted for 40 percent [of the observers assigned since 1982]."[111] (*See* Appendix L.) In South Carolina, the Committee received testimony revealing that observers have been assigned 23 times since 1982 to observe 37 separate elections to ensure the rights of African Americans were protected. In Georgia, observers were present in 28 counties monitoring 57 elections within the State since 1982.

The Committee further finds that observers have played a critical role in law enforcement efforts to protect minority citizens. These observations often become the foundation of Department of Justice enforcement efforts. For example, the Committee received testimony demonstrating the importance of the observer report in *United States v. Conecuh County, Alabama* (Civil Action No. 83–1201 (S.D. Ala. June 12, 1984)). The personal accounts of observers were instrumental in enabling Federal prosecutors to proceed against County officials for discriminatory conduct against African Americans in polling locations.[112]

The Committee also finds it significant that Federal observers have become increasingly necessary to ensure that language assistance within jurisdictions covered by Section 203 are fulfilled. The Committee received testimony revealing that more than 800 Federal observers were assigned to covered counties in New York City

[111] *See* Protecting Minority Voters: The Voting Rights Act at Work 1982–2005, The National Commission on the Voting Rights Act, February 2006, at 61.

[112] *See Oversight Hearing, The Voting Rights Act: Sections 6 and 8—The Federal Examiner and Observer Program, Subcommittee on the Constitution, Committee on the Judiciary,* 109th Cong. 1 (November 15, 2005) (statement of Barry J. Weinberg, former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice).

from 1985 through 2004 to protect Asian American and Latino voters' full participation in the electoral process.[113] These observers were necessary to ensure that polling place workers translated documents and procedures for language minority citizens as required by Section 203. In other locations, observers were able to identify and report back to the Department of Justice instances in which language minority voters fell victim to the harassment and intimidation of polling officials. For example, observers were recently assigned to covered jurisdictions, such as in Georgia, Alabama, and Texas, to protect Latino and Asian American voters.

Language Minority Citizens and Sections 4(f) and 203

The Committee finds that Latinos, Asian Americans, Alaskan Natives, and Native Americans continue to suffer from discrimination in voting. According to some in California, Latinos continue to be victims of discriminatory tactics employed at the local level, such as on school boards and county governments, where fragmenting and packing tactics continue to prevent Hispanics from electing candidates of their choice.[114] The Committee received testimony disclosing efforts on the part of officials in the City of Seguin, Texas, to prevent Latinos from gaining a majority of seats on the city council by attempting to dismantle a fifth Latino district in its new redistricting plan. Similar testimony was received from language minority citizens in New York, Alaska, Arizona, California, Florida, and South Dakota, all of whom identified similar tactics used to keep Native Alaskans, Native Americans, Asian Americans and Latinos from registering and casting effective ballots. These tactics include providing ineffective language assistance and fragmenting and packing Hispanic and Asian Americans.

The Committee also received testimony revealing efforts by officials in the covered States of Alabama and Georgia to discriminate against language minority citizens. For example, local Officials in Long County, Georgia attempted to disenfranchise Hispanic voters by challenging their citizenship status solely on the basis of surname.[115] In Alabama, Asian American voters attempting to vote in an election with an Asian American candidate were harassed and threatened by supporters of an opposing candidate in polling locations in Bayou La Batre.[116] It was only with the assistance of the Department of Justice that Asian American and Hispanic voters in these jurisdictions were able to cast ballots without barriers.[117]

Moreover, in jurisdictions covered by Section 203, the Committee received information that Asian Americans, Native Americans, Hispanics, and Native Alaskans continue to experience hardships and barriers to voting and casting ballots because of their limited abili-

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[113] *See* Juan Cartagena, Final Report on the State of Voting Rights in New York City, Including the Impact of Section 5 and Section 203 of the Voting Rights Act on Minority Empowerment, February 27, 2006, at 22–23.

[114] *See* Statement of Joaquin G. Avila, The Continued for Federal Oversight of California's Electoral Process, to the Honorable Steve Chabot, Chairman, Subcommittee on the Constitution (November 2005).

[115] *See* Robert Kengle, Voting Rights in Georgia: 1982–2006 (March 2006) at 33.

[116] *See* Letter from Karen K. Narasaki, President and Executive Director, Asian American Justice Center to the Honorable Steve Chabot, Chairman, Subcommittee on the Constitution (November 22, 2005).

[117] *See Oversight Hearing, The Voting Rights Act: Section 203—Bilingual Assistance (Part I), Subcommittee on the Constitution, House Committee on the Judiciary,* 109th Cong. 1 (November 8, 2005) (statement of the Honorable Bradley J.Schlozman, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice).

ties to speak English and high illiteracy rates. In testimony presented to the Committee, it was reported that "40 percent of Asian Americans and Hispanics in California are limited English proficient, with more than a quarter living in linguistically isolated households."[118] The Committee received testimony revealing that 63 percent of Asian Americans in New York reside in limited English proficient homes. Hispanics are similarly situated, with more than 75 percent of Latinos nationwide reportedly speaking a language other than English in the home, and 23 percent of registered Latinos identifying Spanish as their primary language.[119] In testimony presented by the National Congress of American Indians, it was reported that many Native people speak English only as a second language, with many Native Alaskans and Native Americans continuing to speak in their native tongue, particularly among the elders—"many who speak English poorly"—and many tribal businesses that continue to conduct business exclusively or primarily in Native languages.[120]

Chart I: California LEP and LIH Rates

Group	Percentage of Population that is Limited English Proficient (LEP)	Percentage of Households That Are Linguistically Isolated (LIH)
Vietnamese	62%	44%
Cambodian	56%	32%
Korean	52%	41%
Chinese	48%	34%
Latino	43%	26%
Asian overall	39%	26%
Filipino	23%	11%
Japanese	22%	18%
California	20%	10%
White	3%	2%

Chart J1: San Francisco County LEP and LIH Rates

Group	Percentage of Population that is Limited English Proficient (LEP)	Percentage of Households That Are Linguistically Isolated (LIH)
Vietnamese	63%	43%
Chinese	58%	42%
Asian overall	50%	35%
Latino	42%	23%
Korean	41%	33%
Filipino	29%	14%
County	25%	13%
White	6%	4%

[118] *See* Letter from Stewart Kohl, President and Executive Director, The Asian Pacific American Legal Center of Southern California, to The Honorable Steve Chabot, Chairman, Subcommittee on the Constitution (November 16, 2005).

[119] *Id.; see also* Juan Cartagena, Final Report on the State of Voting Rights in New York City, Including the Impact of Section 5 and Section 203 of the Voting Rights Act on Minority Empowerment, February 27, 2006.

[120] *See Oversight Hearing, The Voting Rights Act: Section 203—Bilingual Assistance (Part II), Subcommittee on the Constitution, House Committee on the Judiciary,* 109th Cong. 1(November 9, 2005) (joint statement of the National Congress of American Indians and the Native American Rights Fund). *See also,* The Native Languages Protection Act of 1990.

Chart J2: San Mateo County LEP and LIH Rates

Group	Percentage of Population that is Limited English Proficient (LEP)	Percentage of Households That Are Linguistically Isolated (LIH)
Vietnamese	46%	29%
Latino	45%	24%
Korean	39%	26%
Chinese	37%	23%
Asian overall	29%	16%
Filipino	23%	9%
County	18%	8%
White	4%	2%

Chart J3: Alameda County LEP and LIH Rates

Group	Percentage of Population that is Limited English Proficient (LEP)	Percentage of Households That Are Linguistically Isolated (LIH)
Vietnamese	59%	44%
Chinese	50%	36%
Korean	44%	32%
Latino	40%	22%
Asian overall	38%	25%
Filipino	23%	10%
County	18%	9%
White	3%	2%

Chart J4: Santa Clara County LEP and LIH Rates

Group	Percentage of Population that is Limited English Proficient (LEP)	Percentage of Households That Are Linguistically Isolated (LIH)
Vietnamese	65%	45%
Korean	49%	36%
Chinese	44%	31%
Asian overall	40%	25%
Latino	38%	19%
Filipino	26%	10%
County	22%	10%
White	4%	2%

Chart J5: Los Angeles County LEP and LIH Rates

Group	Percentage of Population that is Limited English Proficient (LEP)	Percentage of Households That Are Linguistically Isolated (LIH)
Vietnamese	63%	45%
Korean	59%	47%
Cambodian	57%	33%
Chinese	54%	39%
Latino	48%	30%
Asian overall	43%	30%
County	29%	15%
Japanese	25%	22%
Filipino	23%	11%
White	7%	4%

Chart J6: Orange County LEP and LIH Rates

Group	Percentage of Population that is Limited English Proficient (LEP)	Percentage of Households That Are Linguistically Isolated (LIH)
Vietnamese	64%	46%
Korean	54%	39%
Latino	48%	27%
Asian overall	45%	29%
Chinese	40%	26%
County	22%	10%
Filipino	17%	7%
White	2%	1%

Chart J7: San Diego County LEP and LIH Rates

Group	Percentage of Population that is Limited English Proficient (LEP)	Percentage of Households That Are Linguistically Isolated (LIH)
Vietnamese	60%	45%
Korean	39%	31%
Latino	39%	23%
Chinese	35%	25%
Asian overall	32%	21%
Filipino	23%	11%
County	15%	7%
White	2%	1%

Chart J8: Sacramento County—LEP and LIH Rates

Group	Percentage of Population that is Limited English Proficient (LEP)	Percentage of Households That Are Linguistically Isolated (LIH)
Vietnamese	60%	47%
Chinese	43%	32%
Korean	38%	27%
Asian overall	38%	24%
Latino	27%	16%
Filipino	18%	9%
County	12%	6%
White	4%	2%

Chart K: Southern California Exit Poll Data—LEP Rates

Election	Percentage of APIA Voters Who Are Limited English Proficient
November 2004*	40%
November 2002	32%
November 2000	46%
March 2000	47%
November 1998	35%

*Represents preliminary findings. Subject to adjustment based on statistical weighting

Chart L: Southern California Exit Poll Data—More Likely to Vote if Assistance Received

Election	Percentage of APIA Voters More Likely to Vote if Assistance Received	Percentage of Latino Voters More Likely to Vote if Assistance Received
November 2000	54%	46%
March 2000	53%	42%
November 1998	43%	38%

Chart M1: San Francisco County—H.S. and Child LEP

Group	Less Than High School Degree	Child LEP Rate
Vietnamese	47%	37%
Chinese	39%	34%
Asian overall	32%	30%
County	19%	20%
Filipino	17%	13%
Korean	14%	21%
White	5%	5%

Chart M2: San Mateo County—H.S. and Child LEP

Group	Less Than High School Degree	Child LEP Rate
Vietnamese	22%	11%
County	15%	14%
Chinese	13%	15%
Asian overall	11%	13%
Filipino	10%	9%
White	7%	2%
Korean	5%	21%

Chart M3: Alameda County—H.S. and Child LEP

Group	Less Than High School Degree	Child LEP Rate
Vietnamese	35%	39%
Chinese	24%	29%
Asian overall	18%	22%
County	18%	14%
Korean	11%	22%
Filipino	11%	11%
White	8%	2%

Chart M4: Santa Clara County—H.S. and Child LEP

Group	Less Than High School Degree	Child LEP Rate
Vietnamese	32%	42%
County	17%	16%
Asian overall	15%	23%
Filipino	12%	11%
Chinese	11%	22%
Korean	10%	26%
White	7%	2%

Chart M5: Los Angeles County—H.S. and Child LEP

Group	Less Than High School Degree	Child LEP Rate
Vietnamese	39%	41%
County	30%	23%
Chinese	24%	30%
Asian overall	18%	24%
Korean	12%	30%
White	11%	4%
Filipino	10%	10%
Japanese	7%	12%

Chart M6: Orange County—H.S. and Child LEP

Group	Less Than High School Degree	Child LEP Rate
Vietnamese	34%	42%
County	21%	19%
Asian overall	19%	26%
Chinese	12%	19%
Korean	10%	27%
Filipino	8%	8%
White	7%	2%

Chart M7: San Diego County—H.S. and Child LEP

Group	Less Than High School Degree	Child LEP Rate
Vietnamese	40%	38%
Asian overall	18%	16%
County	17%	14%
Chinese	16%	14%
Filipino	14%	7%
Korean	10%	24%
White	8%	2%

Chart M8: Sacramento County—H.S. and Child LEP

Group	Less Than High School Degree	Child LEP Rate
Vietnamese	39%	34%
Chinese	29%	25%
Asian overall	27%	29%
Korean	20%	15%
County	17%	11%
Filipino	12%	4%
White	11%	5%

The Committee has received testimony highlighting instances where citizens who are unable to speak English proficiently have encountered degraded educational opportunities. Evidence of unequal educational opportunities can also be found in court decisions. For example, in the State of Alaska, testimony revealed that during "the 2003–2004 school year, the statewide graduation rate for all students was 62.9 percent compared to the 47.5 percent of

Alaska Native students who graduated."[121] Reports from the State of Alaska further highlight recent cases, such as *Kasayulie v. State of Alaska*, in which the Alaska Superior Court identified discrepancies in funding made available to Native and non-Native students.[122] In particular, the Court reiterated the "affirmative duty on the State to provide public education," and found the discrepancy in funding for school construction in urban and rural Alaska unconstitutionally discriminated against Alaska Natives.[123] Section 203 remains a vital tool to ensure that those who are unable to avail themselves of adequate educational assistance continue to be able to vote without discrimination.

Other examples of unequal educational opportunities received by the Committee reveals that Asian American and Hispanic children in California have lower rates of educational attainment than white students. In particular, the Committee found that "nineteen percent of Asian Americans have less than a high school degree, compared with 10 percent of the white population."[124] The Committee was informed that 1.6 million language minority students in California are considered to be English language learners, and that a significant portion of these students have trouble maintaining similar levels of academic achievement as their English proficient counterparts.[125] Moreover, testimony reveals that language minority students, and English learners in particular, were the first to be adversely affected by decisions made by States and local school boards. These decisions have forced English language learners to seek protection from Federal courts to prevent such disparate treatment.[126] Since 1975, 24 discrimination lawsuits have been filed on behalf of English language learners in 15 States, 14 of which have been filed in jurisdictions that are covered by the language assistance provisions.[127] Since 1992, ten lawsuits have been filed, with cases pending in three States that are covered statewide under Section 4(f)4 of the Act, Texas, Alaska, Arizona, and Florida and in other States with large language minority populations, including California and New York.[128]

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[121] *See* Landreth and Smith, Voting Rights Act Reauthorization 2007: Alaska Report, March 2006, at 27.

[122] *Id.*(citing No. 3AN–97–3782 CIV, Order granting plaintiffs' motion for partial summary judgment on facilities funding, Sept. 1, 1999.).

[123] *Id.*

[124] Letter from Stewart Kohl, President and Executive Director, The Asian Pacific American Legal Center of Southern California, to The Honorable Steve Chabot, Chairman, Subcommittee on the Constitution (November 16, 2005).

[125] *Id.*

[126] *Id.*

[127] *See Legislative Hearing on H.R. 9, Voting Rights Act Reauthorization and Amendments Act of 2006 (Part II), Subcommittee on the Constitution, Committee on the Judiciary,* 109th Cong. 2 (May 4, 2006)(statement of Dr. James Thomas Tucker, Voting Rights Consultant for the National Association of Latino Elected and appointed Officials (NALEO) Educational Fund).

[128] *Id.; see also Kasayulie v. State of Alaska,* Case No. 3AN–97–3782–CIV (Alaska Superior Ct. 1999); *Flores v. State of Arizona,* 405 F. Supp.2d 1112 (D. Ariz. 2005) (contempt order); *CHE v. Denver Public Schools,* a 1983 case resolved by consent decree after the United States Department of Justice intervened in 1999, 1999 WL 33300905; *League of United Latin American Citizens et al. v. Florida Board of Education,* Case No. 90–1913–Civ.–Scott (S.D. Fla. 1990) (consent decree) and Case No. 90–1913–Civ.–Moreno (S.D. Fla. 2003) (amending consent decree); *Bilingual Master Parents Advisory Council v. Boston School Committee,* 2002 WL 992541 (Mass. Super. Ct. May 15, 2002); *United States v. City of Yonkers,* 123 F. Supp.2d 694 (S.D.N.Y. 2000); *Y.S. v. School District of Philadelphia, Case* No. 85–6924 (E.D. Pa. 1986) (consent decree continued by stipulation in 2001). In addition, requests for relief are pending in other states where findings of educational discrimination have already been made, including Texas. *United States v. State of Texas,* 6:71–CV–5281 (E.D. Tex. 2006) (pending motion for further relief for alleged violations of consent decree).

The problems faced by citizens who are limited-English proficient, linguistically isolated, and who face limited educational opportunities, impairing their ability to understand the electoral process, are exacerbated by the failure of jurisdictions to comply with Section 203. The Committee received substantial testimony revealing that more than half of the 505 jurisdictions covered by Section 203 were not in full compliance, providing some form of written or oral assistance, but not both; in many instances there was no compliance at all. For example, the Committee received testimony from Latino and Hispanic organizations that "during the 2004 election in Pima County, Arizona, Latino LEP voters were denied equal access to voting due to the lack of sufficient bilingual ballots. Consequently, Latino voters were relegated to crowd around one translated, poster-sized board of more than a dozen initiatives that were on the ballot. At dusk, even this inadequate attempt to comply with Section 203 completely failed, given that the poster board was illegible due to the lack of lighting around it."[129] Similar examples were reported by language minority voters from covered jurisdictions across the country, including New Mexico, New Jersey, Massachusetts, New York, Alaska, Texas, California, and South Dakota. In some cases, the Committee was informed that jurisdictions covered by Section 203 reported not providing any assistance. The increased number of Section 203 enforcement actions undertaken by DOJ, have allowed a growing number of linguistically challenged minorities to participate in the voting process.

Relatedly, the Committee received testimony that the number of enforcement actions undertaken by the Department of Justice to ensure compliance has increased over the last several years. For example, the Department of Justice reported an increase in the number of Section 203 enforcement actions since 2000. Enforcement cases such as the action taken in Osceola County, Florida, where the Department of Justice filed suit to remedy the "widespread violation of minority voting rights, including poll workers making hostile remarks to Spanish-speaking voters to discourage them from voting, the failure of poll officials to communicate effectively with Spanish-speaking voters, failure to staff polling places with bilingual poll officials, and failure to translate ballots and other election materials in Spanish," have been critical to protecting language minority voters.[130]

Section 2 Litigation

While not the focus of its examination, the Committee notes the importance of Section 2 in protecting minority voters. Moreover, the Committee finds the continued need for Section 2 to protect the rights of racial and language minority groups in jurisdictions covered by the temporary provisions of the VRA, such as Georgia, Mississippi, South Carolina, Louisiana, and South Dakota, significant. In many of the jurisdictions covered by the Sections 4 through 9 of the Voting Rights Act, the initial gains made by minority voters were the result of Section 2 enforcement, as was the case in *Citi-*

[129] *See* Statement from Angela M. Arboleda, National Council of La Raza, to the Honorable Steve Chabot, Chairman, Subcommittee on the Constitution, (November 22, 2005).

[130] *See* JoNel Newman, Unfinished Business: The Case For Continuing Special Voting Rights Act Coverage in Florida (March 8, 2006) (citing Complaint, *United States v. Osceola County,* Civil Action No. 6:02–CV–738–ORL–22JGG (M.D. Fla. 2002)).

zens for a Better Gretna v. City of Gretna, which the Committee finds to be illustrative of the important role Section 2 plays.[131]

In *Gretna,* African American voters brought an action under the VRA challenging the city's at-large aldermanic elections. Plaintiffs presented evidence, which the court found "cogent[] and convincing[]," that African Americans were excluded from the Miller-White Ticket, and by extension meaningful participation in the political process in Gretna.

The city had an at-large voting system for its Board of Alderman, as well as a majority vote requirement. No African American had ever been elected to the board, despite the fact that African Americans constituted 28% of the city's population. The district court found the election system violated the VRA and the city appealed. The Fifth Circuit upheld the lower court decision, finding that at-large aldermanic elections violated Section 2 of the VRA. The court also observed that:

> [t]he history of black citizens' attempts, in Louisiana since Reconstruction, to participate effectively in the political process and the white majority's resistance to those efforts is one characterized by both de jure and de facto discrimination. Indeed, it would take a multi-volume[] treatise to properly describe the persistent, and often violent, intimidation visited by white citizens upon black efforts to participate in Louisiana's political process.[132]

In other reports presented to the Committee, it was shown that of all the successful litigation undertaken in the last 25 years pursuant to Section 2, more than half of the cases were filed in covered jurisdictions, which contain less than 39 percent of the country's total population.[133] It was further reported to the Committee that African American plaintiffs filed and won the largest number of suits under Section 2, with Latino citizens close behind.[134] The Committee finds that results achieved in Section 2 cases, such as in *Gretna* and other litigation, must be protected. Section 5, and the other temporary provisions have been and continue to be a shield that prevents backsliding from the gains previously won.

The Need to Extend the Temporary Provisions—Exceptional Conditions Continue to Exist in 2006

The Committee's findings of continued efforts to discriminate against minority citizens in voting demonstrate that despite substantial improvements, there is a demonstrated and continuing need to reauthorize the temporary provisions.[135] In reauthorizing the temporary provisions for an additional 25 years, the Committee is aware that it is again acting under its broadest power—to remedy continued discrimination.[136] However, the record reveals that without the remedies available from the VRA's temporary provisions, the injury to minority citizens and their right to the electoral franchise will be significant.

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[131] *See Citizens for a Better Gretna v. Gretna,* 636 F.Supp.1113, 1118 (E.D. La. 1986).
[132] *Id.*
[133] *See* Ellen Katz, Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982 (December 2005).
[134] *Id.*
[135] *See South Carolina v. Katzenbach,* 383 U.S. 301 (1966).
[136] *See* U.S. Const. amend. XIV, § 5 and amend. XV, § 2.

The Remedial Power of Congress

Congress acts pursuant to its broadest powers when remedying discrimination. When the Supreme Court first upheld the provisions of the VRA, the temporary provisions that will expire at the end of 2007, it stated that Congress has the power to address voting discrimination broadly. In *South Carolina v. Katzenbach,* 383 U.S. 301 (1966), the Court stated that "Congress assumed the power to prescribe these remedies from § 2 of the 15th amendment, which authorizes the National Legislature to effectuate by 'appropriate' measures the constitutional prohibition against racial discrimination in voting. We hold that the sections of the Act which are properly before us are an appropriate means for carrying out Congress' constitutional responsibilities and are consonant with all other provisions of the Constitution." [137]

In describing the expansiveness of Congress's power to address voting discrimination, the Supreme Court held that Congress's power extends to the outer-most limits of the Necessary and Proper Clause, stating:

> The basic test to be applied in a case involving § 2 of the 15th amendment is the same as in all cases concerning the express powers of Congress with relation to the reserved powers of the States. Chief Justice Marshall laid down the classic formulation, 50 years before the 15th amendment was ratified: "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional." The Court has subsequently echoed his language in describing each of the Civil War Amendments: "Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power.[138]

The Court stated that "The language and purpose of the Fifteenth Amendment, the prior decisions construing its several provisions, and the general doctrines of constitutional interpretation, all point to one fundamental principle. As against the reserved powers of the States, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting . . . § 2 of the Fifteenth Amendment expressly declares that 'Congress shall have power to enforce this article by appropriate legislation.' By adding this authorization, the Framers indicated that Congress was to be chiefly responsible for implementing the rights created in § 1. . . . Accordingly, in addition to the courts, Congress has full remedial powers to effectuate the constitutional prohibition against

[137] *See South Carolina v. Katzenbach,* 383 U.S. 301, 308 (1966) (holding that provisions of Voting Rights Act of 1965 pertaining to review of proposed alteration of voting qualifications and procedures were appropriate means for carrying out Congress' constitutional responsibilities under the 15th amendment and were consonant with all other provisions of the Constitution).

[138] *See South Carolina v. Katzenbach,* 383 U.S. 301, 326–27 (1966) (citations omitted).

racial discrimination in voting."[139] The Court added that "Legislation need not deal with all phases of a problem in the same way, so long as the distinctions drawn have some basis in practical experience."[140]

City of Boerne v. Flores

While a "congruence and proportionality" test was announced in *City of Boerne v. Flores,*[141] and applied to Congressional actions taken under the 14th amendment, the Court highlighted the broad authorization the 15th amendment confers upon Congress.[142] It stated in *Boerne* that "[L]egislation which deters or remedies constitutional violations can fall within the sweep of Congress' enforcement power even if in the process it prohibits conduct which is not itself unconstitutional and intrudes into legislative spheres of autonomy previously reserved to the States. For example, the Court upheld a suspension of literacy tests and similar voting requirements under Congress' parallel power to enforce the provisions of the 15th amendment as a measure to combat racial discrimination in voting despite the facial constitutionality of the tests . . ."[143] The Court in *Boerne* stated approvingly that "to ensure that the reach of the Voting Rights Act was limited to those cases in which constitutional violations were most likely (in order to reduce the possibility of over breadth), the coverage under the Act would terminate at the behest of States and political subdivisions in which the danger of substantial voting discrimination has not materialized during the preceding 5 years."[144] H.R. 9 preserves those same provisions that allow States and political subdivisions to escape coverage by showing the danger of substantial voting discrimination has not materialized during the preceding (now ten) years.

Subsequent cases have held that Congress's authority to address voting discrimination extends to the creation of remedies that prohibit not only purposeful discrimination, but also discriminatory effects,[145] and Congress's authority to do so will only be tested under a rational basis standard. In the *City of Rome v. United States,*[146] the Court held "that the Act's ban on electoral changes that are discriminatory in effect is an appropriate method of promoting the purposes of the Fifteenth Amendment, even if it is assumed that § 1 of the Amendment prohibits only intentional discrimination in voting. Congress could rationally have concluded that, because electoral changes by jurisdictions with a demonstrable history of intentional racial discrimination in voting create the risk of purposeful

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[139] *See Id. at 325–27 (emphasis added).*

[140] *See Id.* at 331 (emphasis added).

[141] 521 U.S. 507, 530 (1997) ("While preventive rules are sometimes appropriate remedial measures, there must be a congruence between the means used and the ends to be achieved.").

[142] *City of Boerne* (struck down the Religious Freedom Restoration Act as beyond Congress's power under the enforcement clause of the 14th amendment, it did so on the grounds that the Act, if enforced, would change the meaning of the Free Exercise Clause.). *Id. at 519.* Certainly any extension of the VRA could not reasonably be described as altering the meaning of the 15th amendment's prohibition on the denial of the right to vote on the basis of race. The Court also made clear in *Boerne* that it was not suggesting that "§ 5 legislation requires termination dates, geographic restrictions, or egregious predicates." *Id.* at 533.

[143] *Id.*

[144] *Id.* at 533 (quotations and citations omitted).

[145] *See City of Rome v. United States,* 446 U.S. 156, 173, 176 (1980). *See also Tennessee v. Lane,* 541 U.S. 509, 520 (2004) ("When Congress seeks to remedy or prevent unconstitutional discrimination, § 5 [of the Fourteenth Amendment] authorizes it to enact prophylactic legislation proscribing practices that are discriminatory in effect, if not in intent, to carry out the basic objectives of the Equal Protection Clause.")

[146] 466 U.S. 156, 177 (1980) (emphasis added).

discrimination, it was proper to prohibit changes that have a discriminatory impact."[147] In that case, the Court also stated "Congress passed the Act under the authority accorded it by the Fifteenth Amendment. We hold that, even if § 1 of the Amendment prohibits only purposeful discrimination, the prior decisions of this Court foreclose any argument that Congress may not, pursuant to § 2, outlaw voting practices that are discriminatory in effect . . . Congress may, under the authority of § 2 of the Fifteenth Amendment, prohibit state action that, though in itself not violative of § 1, perpetuates the effects of past discrimination."[148] In its first decision addressing the VRA after *City of Rome* and *City of Boerne,* the Supreme Court upheld Congress's authority to remedy racial discrimination in voting. In *Lopez v. Monterey County,* the Court reaffirmed "Congress's . . . constitutional authority to designate covered jurisdictions and to guard against changes that give rise to a discriminatory effect in those jurisdictions . . . Section 5, as we interpret it today, burdens State law only to the extent that the law affects voting in jurisdictions properly designated for coverage."[149]

Record of Continued Efforts to Discriminate in Covered Jurisdictions

The record before the Committee reveals that extending the VRA's temporary provisions is necessary to protect racial and language minority citizens located in covered jurisdictions from discrimination. As a result, the gains achieved by minority voters over the last 40 years are vulnerable without the protections afforded by the temporary provisions. It is in light of this reality that the Committee concludes that the temporary provisions of the VRA must be reauthorized, including Section 4(a)(8) and the provisions it triggers, as well as Section 203, for an additional 25 years.

Indeed, in reauthorizing the temporary provisions for an additional 25 years, the Committee looks to related Supreme Court decisions, such as *Tennessee v. Lane,* to address constitutional concerns about continued reauthorizations of the VRA. In *Tennessee v. Lane,* the Court noted that "The unequal treatment of disabled persons in the administration of judicial services has a long history, and has persisted despite several legislative efforts to remedy the problem of disability discrimination."[150] Similar circumstances are true of the VRA: despite previous reauthorizations, the problem of voting discrimination justified reauthorization. In light of the considerable record before it, the Committee has a duty to maintain the protections afforded by the temporary provisions by reauthorizing these vital provisions.

Reauthorizing Section 4(a)(8)

Forty years has been an insufficient amount of time to address the century during which racial minorities were denied the full rights of citizenship. While substantial strides have been made toward racial equality, the attitudes and actions of some States and political subdivisions continue to fall short. Progress has been made by minority voters, some of which has been significant. How-

[147] *Id.*
[148] *Id.* at 176.
[149] *See* 525 U.S.266, 283 (1999).
[150] *Tennessee v. Lane,* 541 U.S. 509, 531 (2004).

ever, the Committee's record demonstrates the importance of reauthorizing the VRA's vital provisions.

The Committee believes that if not for the temporary provisions of the VRA the gains made by minorities would not have been made. But as Congress found in 1982, the gains are fragile.[151] The Committee is not willing to jeopardize 40 years of progress made by minority citizens by allowing the temporary provisions to expire, especially in the face of the evidence of discrimination compiled in the record.

Indeed, the substantial volume of evidence warranting H.R. 9 compiled by the House Judiciary Committee's Subcommittee on the Constitution far exceeds the quantum of evidence found adequate in other contexts (in which Congress's power is less broad) to justify Congressional action to remedy discrimination. As characterized by the Supreme Court in *Tennessee v. Lane,* the Supreme Court in *Neveda Department of Resources v. Hibbs* relied on only the following sources in holding that Congress under the 14th amendment had the power to enact the Family and Medical Leave Act, which prophylactically sought to prevent gender discrimination in the provision of work leave:

> Specifically, we relied on (1) a Senate Report citation to a Bureau of Labor Statistics survey revealing disparities in private-sector provision of parenting leave to men and women; (2) submissions from two sources at a hearing on the Parental and Medical Leave Act of 1986, a predecessor bill to the FMLA, that public-sector parental leave polices "diffe[r] little" from private-sector policies; (3) evidence that 15 States provided women up to 1 year of extended maternity leave, while only 4 States provided for similarly extended paternity leave; and (4) a House Report's quotation of a study that found that failure to implement uniform standards for parenting leave would "leav[e] Federal employees open to discretionary and possibly unequal treatment."[152]

Indeed, the Committee believes that a failure to reauthorize the temporary provisions, given the record established, would leave minority citizens with the inadequate remedy of a Section 2 action. The Committee knows from history that case-by-case enforcement alone is not enough to combat the efforts of certain States and jurisdictions to discriminate against minority citizens in the electoral process. Moreover, the Committee finds that Section 2 would be ineffective to protect the rights of minority voters, especially in light of the increased activity under Sections 5 and 8 over the last 25 years. It is against this backdrop that the Committee finds it necessary to extend the temporary provisions for an additional 25 years.

In upholding the 1975 VRA extension, the Supreme Court noted that a 7-year extension was "plainly constitutional" in light of the 95-year period of pervasive discrimination it was attempting to

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[151] *See* H.R Rep. No. 97–227, at 7 (1982).

[152] *Tennessee v. Lane,* 541 U.S. 509, 529 n.17 (2004) (citing *Nevada Department of Human Resources v. Hibbs,* 538 U.S. 721, 728–33 (2003)) (holding that Congress under the 14th amendment had the power to enact the Family and Medical Leave Act, which prophylactically sought to prevent gender discrimination in the provision of work leave.).

remedy.[153] Thus, despite the fact that another 25 years will have passed in 2007 since the 1982 VRA extension, another 25 years of remedial measures (for a total of 67 years of remedial measures under the VRA until 2032) remains appropriate given the near century of discrimination the Act is designed to combat.

In 1982, Congress amended the bailout provision to encourage covered jurisdictions to work to end discriminatory conduct and to accept and include minority citizens into the electoral process. To date, 11 counties from the covered State of Virginia have utilized the bailout process. The Committee is disappointed that more States have not taken advantage of this liberalized process and finds it telling of the commitment by some of the covered jurisdictions to end discriminatory practices. The Committee reiterates that termination of covered status has been and continues to be within the reach of compliant covered jurisdictions and hopes that more covered States and political subdivisions will take advantage of the process.[154]

Reauthorizing Section 203

In reauthorizing Section 203 for an additional 25 years, the Committee finds that language minorities have made progress, but continue to experience barriers to and within the electoral process. The Committee specifically reaffirms the findings in Section 203(a), which provides:

> The Congress finds that, through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily related to the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation.

The Committee received a substantial record of documented discrimination in voting and education that supports maintaining the protections in Section 4(f) and Section 203 of the Voting Rights Act for the four covered language groups, Alaska Natives, Native Americans, Asian Americans, and citizens of Hispanic origin.

Congress found that there is a positive correlation between the bilingual assistance provisions and increased voter registration levels in jurisdictions fully complying with Section 203. At the same time, a significant number of jurisdictions have yet to fully comply with Section 203's obligations, which has had the effect of keeping

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[153] *City of Rome v. United States*, 446 U.S. 156, 182 (1980) ("In adopting the Voting Rights Act, Congress sought to remedy [the previous] century of obstruction by shifting 'the advantage of time and inertia from the perpetrators of the evil to its victims.' Ten years later, Congress found that a 7-year extension of the Act was necessary to preserve the 'limited and fragile' achievements of the Act and to promote further amelioration of voting discrimination. When viewed in this light, *Congress' considered determination that at least another 7 years of statutory remedies were necessary to counter the perpetuation of 95 years of pervasive voting discrimination is both unsurprising and unassailable.* The extension of the Act, then, was plainly a constitutional method of enforcing the Fifteenth Amendment.") (emphasis added) (citations omitted).

[154] *Voting Rights Act: An Examination of the Scope and Criteria for Coverage Under the Special Provision sof the Act Before the H. Comm. on the Judiciary.* 109th Cong. 104 (2005) (statement of Gerald Hebert, former Acting Chief, Civil Rights Division, United States Department of Justice, describing the bailout process since 1982 as "just the right stuff. They go exactly to the issues that Congress was concerned about when it enacted the Voting Rights Act in the first place . . . I think they're perfectly tailored to meet the nature and extent of the violation, which is exactly what the Supreme Court has said repeatedly in this area.")

citizens from experiencing full participation in the electoral process.

The Committee notes the desire of many to see our citizens with limited English skills speak and understand English proficiently. The Committee agrees that this should be a goal all citizens of the United States should aspire to achieve. The English language has been and continues to be a great unifying force. The Committee believes that all newly arrived citizens and those who are native born should strive to learn English in order to fully embrace all that this Nation has to offer. However, the Committee notes that significant population increases have occurred among language minority groups over the last several decades, such as citizens of Hispanic origin who now are the largest minority population in the country and Asian Americans, who have also witnessed large population increases. It has been these newly arrived citizens, as well as subsequent generations, who have suffered most from the inability to speak English and who have lacked the resources and support to learn English proficiently.

The continued need for bilingual support is reflected by: (1) the increased number of linguistically isolated households, particularly among Hispanic and Asian American communities; (2) the increased number of language minority students who are considered to be English language learners, such that students do not speak English well enough to understand the required curriculum and require supplemental classes; (3) the continued disparity in educational opportunities as demonstrated by the disparate impact that budget shortfalls have on language minority citizens, and the continued need for litigation to protect English language learners; and (4) the lack of available literacy centers and English as a Second Language programs. In reauthorizing Section 203, the Committee continues to believe in exercising the right to vote, language minority citizens should have the substantive right to understand the voting process and make informed decisions from start to finish, including how to register to vote, where to vote, and what issues and candidates are contained on the ballot. However, language assistance that facilitates equal participation in the voting process so language minority citizens are able to cast effective ballots does not require private citizens to make privately prepared and distributed materials available in the covered languages. In recognizing the exclusion of petitions that are initiated and distributed by private citizens from Section 203's requirements, the Committee restates its position that Section 203 is intended to remedy the "denial of the right to vote of such minority group citizens . . . [that is] directly related to the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation." [155] To impose Section 203's requirements on private citizens whose actions are outside governmentally administered voting systems would have the effect of penalizing private citizens for injuries caused by States. Section 203's assistance is a remedy for the past and present failures of States and jurisdictions to remedy educational disparities, putting language minority citizens on an equal footing in exercising the right to vote.

[155] *See* Section 203 (a).

As early as 1923, the Supreme Court found, in *Meyers v. Nebraska*, that:

> Certain fundamental rights [are guaranteed] to all those who speak other languages as well as to those born with English on the tongue. Perhaps it would be advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means.[156]

In 1966, the Supreme Court upheld Section 4(e) of the VRA, finding that Congress was within its authority to "question whether denial of a right so precious and fundamental in our society [the right to vote] was a necessary and or appropriate means of encouraging persons to learn English or of furthering the goal of an intelligent exercise of the franchise."[157] In 1969, the Supreme Court further confirmed the impact that literacy tests had on citizens who were subjected to inferior educational opportunities, finding "that it is only reasonable to infer that among black children compelled to endure a segregated and inferior education, fewer will achieve any given degree of literacy than will their better-educated white contemporaries."[158]

It was on these bases that, in 1975, Congress expanded the protections of the VRA to ensure that all citizens have the opportunity to participate in the electoral process. In authorizing Sections 4(f) and 203, Congress did not want language to be a barrier to exercising the most fundamental right in our system of government, a right which had been historically compromised by the deliberate barriers erected by the administration of English-only elections, barriers that were exacerbated by the unequal educational opportunities that existed and continue to exist.

Thirty years later, the Committee finds that our Nation's educational system has improved. However, disparities in education continue to exist, resulting in the disparate treatment of language minority citizens and students. The evidence reveals that English language learner students must rely almost exclusively on the judicial system to protect their rights to equal educational opportunities. Since 1992, at least 10 successful cases have been filed, with litigation and consent decrees pending in the three States that are covered statewide under Section 4(f)4 of the Act, Texas, Alaska, Arizona, and Florida and in other States with large language minority populations, including California and New York.

Testimony also revealed that adult citizens are impacted in their ability to learn English by the lack of literacy centers and lack of funding devoted to increasing the number of centers to accommodate the demonstrated need. The lack of funding to expand the number of ESL centers around the country leaves minority citizens unable to enroll in classes for several years, increasing the need for assistance while they wait.[159] The Committee also notes the time it takes for citizens to learn English. Native English speaking citi-

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[156] *See* H.R. Rep. No. 97–227 (1982) (citing, *Meyers v. Nebraska,* 262 U.S.390, 401 (1923)).

[157] *See Katzenbach v. Morgan,* 384 U.S. 641, 654 (1966).

[158] *See Gaston County, North Carolina v. United States,* 395 U.S. 285, 295 (1969).

[159] *See Legislative Hearing on H.R. 9, Voting Rights Act Reauthorization and Amendments Act of 2006 (Part II), Subcommittee on the Constitution, Committee on the Judiciary,* 109th Cong. 2 (May 4, 2006)(statement of Dr. James Thomas Tucker, Voting Rights Consultant for the National Association of Latino Elected and appointed Officials (NALEO) Educational Fund).

zens have an advantage over naturalized citizens. For non-Native English speakers, learning English takes several years to even obtain a fundamental understanding of the English language—certainly not enough to understand complex ballots that native English speaking citizens often do not understand. Citizens should not be penalized for trying to learn English and exercising their right to vote. Section 4(f) and 203 level the playing field for language minority citizens, ensuring that the most fundamental right of all citizens is preserved regardless of one's ability to speak English well.

The Committee notes the concerns of many that the Department of Justice's enforcement of Section 203's requirements is inconsistent with the spirit of Section 203. The Committee is concerned about the Department's disproportionate reliance on sur-name analyses. These actions are not consistent with the spirit and intent of Section 203. The Committee cautions the Department in reliance on such analyses and encourages the Department to work more closely with the minority community to determine the level of assistance necessary rather than making assumptions based on last name alone. The Committee intends to monitor the Department closely in its administration and enforcement of Section 203 to ensure that the Department is not imposing requirements on jurisdictions not mandated by Section 203.

The Need to Update and Clarify Certain Temporary and Permanent Provisions to Strengthen Protections and Enforcement Mechanisms (Section 3(a), 4, 5, 6, 7, 8, 13, 14, and 203)

In reauthorizing the temporary provisions for an additional 25 years, the Committee recognizes that the electoral environment has evolved since 1965. Certain barriers to voting that were pervasive in 1965 no longer exist. However, those barriers to voting have been replaced with new ones, such that other temporary provisions continue to be necessary. The record reveals that over the last 40 years, and in the last 25 years in particular, Section 5's preclearance requirement and Section 8's Federal observer program have been vital tools to protecting minority voters. Bailout, available through Section 4(a), while for the most part has gone unused until recently, has proven to be achievable to those jurisdictions that can demonstrate an end to their discriminatory histories. At the same time, the record reveals that Section 6, the Federal examiner program, has not been used in twenty years, suggesting to the Committee that examiners have successfully served their purpose. Recognizing these realities, the Committee amended and eliminated certain provisions to ensure that the VRA remains a relevant and an effective remedy to the continued problems of discrimination in the 21st century.

Sections 6, 7, and 9

In weighing whether to reauthorize the Federal examiner program, the Committee looked to voting rights experts, and representatives from the Department of Justice and the Office of Personnel Management who have worked with and supported the Federal examiner program over the last several decades. Testimony received by the Committee revealed that the Federal examiner provisions were "cumbersome" and "archaic," and their functions were

considered to be "outdated."[160] In essence, it was reported that Federal examiners were "not needed anymore."[161] H.R. 9 reflects the lack of necessity and contains language to address this shift.

In authorizing the Federal examiner provision, Congress sought to remedy the immediate barriers faced by minority citizens, mainly barriers to registration. Federal examiners were charged with ensuring that those citizens who were eligible to vote and who wanted to vote were able to register. To facilitate the process, Congress specifically authorized the procedures that examiners were to follow when listing a voter on Federal registration rolls. Moreover, Congress authorized a process under which those citizens who wanted to challenge the eligibility of a listed voter could do so. The positive impact that Sections 6, 7, and 9 have had on minority voters is reflected in the more than 100,000 citizens who were registered through Section 6.

However, over the years, the need for Federal examiners to register eligible voters has declined. The decreased need for examiners can be attributed to the success of the other temporary provisions, as well as to the enactment of more recent Federal laws encouraging and supporting voter registration. In 1993, Congress enacted the National Voter Registration Act of 1993 (NVRA) to make voter registration more accessible to citizens who wanted to vote. Under the NVRA, States are required to make registration materials available at all driver's license offices, public benefits offices, and other social service agencies. States are also required to maintain voter registration lists for Federal elections in accordance with standards set out by the NVRA. In addition to the NVRA, Congress enacted the Help America Vote Act of 2002 (HAVA), which serves to assist States in improving the administration of elections. HAVA provides States with funding to improve voting technology and also requires States to meet minimum standards with regard to updating voting equipment, administering provisional balloting, and maintaining one centrally located Statewide voter registration list. The success of these laws is reflected in the increased number of minority citizens who are registered to vote. The fact that examiners have not contributed to these increases in the last 20 years suggests to the Committee that examiners have outlived their usefulness.

Section 8

Notwithstanding the elimination of the Federal examiner program, the Committee found a substantial need to continue the program assigning Federal observers on election day. As the only Federal officials authorized to enter polling locations, Federal observers continue to serve a vital enforcement function. The Committee found that the mere presence of Federal officials has worked to deter discriminatory conduct. In other cases, observations and reports of observers that most often provide the factual basis on which the Department of Justice proceeds to prosecute acts of harassment, intimidation, and discrimination engaged in by election

[160] *See Oversight Hearing, The Voting Rights Act: Sections 6 and 8—The Federal Examiner and Observer Program, Subcommittee on the Constitution, Committee on the Judiciary,* 109th Cong. 1 (November 15, 2005) (statement of Barry J. Weinberg, former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice).

[161] *Id.*

officials. In reauthorizing the Federal observer program, the Committee is aware that, historically, observers have been assigned to covered jurisdictions only after a jurisdiction has been certified by the Attorney General, or a Federal court, for the use of examiners. However, since examiners have gone unused over the last twenty years, the Committee believes that minority voters will be better served by authorizing the Attorney General to directly certify jurisdictions for the use of Federal observers. In amending Section 8, the Committee authorizes the Attorney General to continue to coordinate with the Office of Personnel Management (OPM) to send observers to a covered jurisdiction once the Attorney General determines that there is a reasonable belief that a violation of the 14th or 15th amendment has occurred or will occur. The Committee also amended Section 8 by rendering the assignment of Federal observers by OPM mandatory upon request by the Attorney General following the required certification. In authorizing the Attorney General to certify jurisdictions for the use of Federal observers in the future, it is not the intent of this Committee to affect jurisdictions that have already been certified for examiners. Federal observers should continue to be assigned to these jurisdictions when there is a reasonable belief that voting violations will occur. The traditional functions of the Federal observers remain unchanged by the Committee. Federal observers shall continue to observe whether persons who are entitled to vote are permitted to do so and whether such votes cast are properly tabulated. Because of the elimination of examiners, observers shall report their observations directly to the Attorney General or, if assigned pursuant to Section 3(a), to the court.

Section 13

The Committee will continue to make the same termination process available to those jurisdictions currently certified for the assignment of Federal examiners to those that will be certified for Federal observers in the future under Section 8. In assessing whether to terminate Federal examiner or observer certification, the Attorney General or the court shall continue to have the authority to make such determinations upon petitions by the covered jurisdiction.

Section 3(a), Section 4(a) and (b)

In striking Section 6, the Committee was required to make several conforming changes. Those changes are reflected in Section 3(a), in which the Committee replaced the authority of the Federal courts to assign Federal examiners with the authority to assign Federal observers pursuant to Section 8. In Section 4(a), the Committee added the requirement that "no observers have been assigned to a jurisdiction" to the existing criteria that a jurisdiction must establish when applying for bailout. Section 4(b) was amended to reflect that determinations by the Attorney General with respect to Section 8 are not reviewable by a Federal court, as has been the case for decisions related to Federal examiners.

Section 203

In reauthorizing Section 203, the Committee was made aware that the United States Census Bureau has changed its data collec-

tion methods, eliminating the use of the long form questionnaire. The long form questionnaire was the detailed document used by the Census Bureau every decade to gather demographic, housing, and social information and upon which determinations with respect to Section 203 were made. In its place, the Census Bureau has been issuing the American Community Survey (ACS). The ACS is a detailed survey conducted by the Census Bureau that will be updated on a rolling basis annually. While issued to a smaller universe of households more frequently, the survey is designed to reach a greater number of individuals per decade (because it is issued more frequently), providing a more detailed look at communities on a more timely basis. In comparing the relevant questions from the long form questionnaire with the questions provided on the ACS, the Committee finds no substantive difference between the two documents and expects that the ACS will be a suitable substitute for the outdated long form questionnaire. In addition to identifying the ACS as the basis upon which the Director of the Census is required to make Section 203 determinations, the Committee also finds a benefit to reliance on survey results published on a more timely basis, as it better reflects our country's rapidly changing makeup, as opposed to a reliance on results published only every decade. To reflect this need, Section 203 was also amended to require the Director of the United States Census to make determinations every 5 years based on a rolling 5 year average.

Section 14

In amending Section 14 of the VRA to explicitly include the recovery of expert costs as part of attorneys fees, the Committee seeks to update the Voting Rights Act of 1965 to comport with other Federal civil rights laws. Early in 1991, the Supreme Court held in *West Virginia Hospitals, Inc. v. Casey* that "Fees for services rendered by experts in civil rights litigation may not be shifted to the losing party as part of 'a reasonable attorneys fee' under § 1988."[162] Later that same year, Congress "amended the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws," including providing for the recovery of expert fees as part of attorneys fees.[163] In amending the Civil Rights Act of 1964, Congress specifically "recognized that evidence from one or more expert witnesses is critical to trying an employment discrimination case."[164] The Committee finds the same to be true in the context of voting discrimination cases pursued under the relevant provisions of the VRA. The Committee received substantial testimony indicating that much of the burden associated with either proving or defending a Section 2 vote dilution claim is established by information that only an expert can prepare.[165] In harmonizing the Voting Rights Act of 1965 with other Federal civil rights laws, the Committee also seeks to ensure that those minority voters who

[162] *See* 499 U.S. 83 (1991).
[163] *See* Pub. L. No. 102–166 (1991).
[164] *See* H.R. Rep. No. 102–40, at 30 (1991).
[165] *See Oversight Hearing on the Voting Rights Act: Judicial Evolution of the Retrogression Standard, Subcommittee on the Constitution, Committee on the Judiciary,* 109th Cong. 1 (November 9, 2005).

have been victimized by continued acts of discrimination are made whole.

Congressional Intent with Regard to Section 5 and Supreme Court Decisions (South Carolina, Beer, Bossier II, and Georgia v. Ashcroft)

In addition to updating the temporary provisions of the VRA, the Committee found that a series of Supreme Court decisions, beginning in 2000, have significantly weakened Section 5's effectiveness as a tool to protect minority voters. These developments sharply conflict with the intent of Congress. Beginning with the case *Reno v. Bossier Parish (II),* which was followed 3 years later by the decision in *Georgia v. Ashcroft,* the Supreme Court has interpreted Section 5 to allow preclearance of voting changes that would have previously drawn objections. As a matter of statutory construction, the Committee finds that Congress did not intend for the burden of proof to be placed on covered jurisdictions to be weakened in the way that the Supreme Court rulings in these cases permit.[166] The decisions have left covered jurisdictions with discretion under Section 5 to enact and enforce voting changes that may harm minority voters and limit their ability to elect their preferred candidates of choice in a manner never intended by Congress. To ensure that Section 5 remains the vital, prophylactic tool that Congress intends, certain amendments are necessary to: (1) restore the original purpose to Section 5 with respect to intentionally discriminatory voting changes; and (2) clarify the types of conduct that Section 5 was intended to prevent, including those techniques that diminish the ability of the minority group to elect their preferred candidates of choice.

Section 5

Section 5 has been and continues to be one of the VRA's most effective tools. Its strength lies, in part, in its burden-shifting remedy that requires covered jurisdictions to prove to the Federal Government or United States District Court for the District of Columbia that a voting change "does not have the purpose and will not have the effect of denying or abridging the right to vote"[167] before such voting change can be enforced. The two-pronged shield afforded by Section 5 has enabled the Federal Government and court to stay one step ahead of covered jurisdictions that have a documented history of denying minorities the protections guaranteed by the Constitution. By requiring covered jurisdictions to establish that neither a discriminatory purpose nor effect exists with respect to a proposed voting change, Section 5 has prevented those voting changes that have a measurable negative impact on minorities, as well as voting changes that are enacted with a racial animus, from being enforced.[168] The impact of Section 5's two-pronged requirement is reflected in the gains minorities have achieved and sustained, despite the efforts of State and local Officials determined to see otherwise.

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[166] *See* 528 U.S. 320 (2000) and 539 U.S. 462 (2003), respectively.

[167] *See* Section 5.

[168] By striking "does not have the purpose and will not have the effect" and inserting in its place, "neither has the purpose nor will have the effect," Section 5 of H.R. 9 makes clear that both prongs must be satisfied before a voting change may be precleared.

Indeed, by reauthorizing Section 5 unamended on three separate occasions, Congress recognized the need to preserve the burdens of proof placed on covered jurisdictions. For example, the Committee, in 1970, was "convinced that Section 5 procedures are an integral part of the rights afforded by the 1965 Act" and that "[f]ailure to continue this provision of the Act would jettison a vital element of the enforcement machinery. It would reverse the burden of proof and restore time consuming litigation as the principal means of assuring the equal right to vote."[169] In 1975, Congress reiterated that Section 5 was needed to ensure that States do not undo or defeat the rights recently won,"[170] and that rights were not "destroyed through new procedures and techniques."[171] Congress similarly extended Section 5 for 25 years in 1982. The Committee finds that the need for the protections of Section 5 in the present covered jurisdictions continues today.

Discriminatory Purpose

In 2000, the Supreme Court severely limited the reach of Section 5's "purpose" requirement, announcing that "Section 5 prevents nothing but backsliding," such that a jurisdiction must prove only that its purpose in enacting a voting change is not retrogressive.[172] Determining that a redistricting plan enacted with a discriminatory but non-retrogressive purpose can be precleared under Section 5, the Court held that to find otherwise would "exacerbate the 'substantial' federalism costs that the preclearance procedure already exacts, perhaps to the extent of raising concerns about Section 5's constitutionality."[173]

To be sure, Congress intended Section 5 to impinge on traditional State functions in certain States and jurisdictions, for a reason. Some of the States and jurisdictions covered by the temporary provisions of the VRA have a long and documented history of discriminating against certain citizens and preventing their exercise of the most fundamental right in our system of government. Indeed, in upholding the extraordinary remedy contained in Section 5, the Supreme Court in *South Carolina v. Katzenbach* recognized the long history of discrimination in certain areas of the country and reiterated its position that "When a State exercises power wholly within the domain of a State interest, it is insulated from Federal review but such insulation is not carried over when State power is used as an instrument for circumventing a Federally protected right."[174] In remedying this documented problem, Congress sought to make Section 5's hurdles significant, requiring of covered jurisdictions that any and all voting changes discriminated neither in purpose nor effect if they are to be precleared.

Through the "purpose" requirement, Congress sought to prevent covered jurisdictions from enacting and enforcing voting changes made with a clear racial animus, regardless of the measurable impact of such discriminatory changes. The Committee heard testimony revealing that for more than 30 years, the purpose standard has been unbroken, barring those plans that were motivated by a

[169] *See* H.R. Rep. No. 91–397 (1970).
[170] *See Id.*
[171] *See* S. Rep. No. 94–295 (1975).
[172] *See Reno v. Bossier Parish,* 528 U.S. 320 (2000).
[173] *Id.* at 336 (citing *Lopez v. Monterey County,* 525 U.S. 266, 282 (1999)).
[174] *See* 383 U.S. at 325, citing (*Gomillion v. Lightfoot,* 364 U.S. at 347).

discriminatory intent.[175] The effectiveness of the "discriminatory" purpose requirement in barring discriminatory voting changes is reflected in the 83 objections that were interposed during the 1980's and in the 151 objections interposed in the 1990's solely on the basis of discriminatory purpose. Such objections accounted for 25 percent and 43 percent of all objections interposed, respectively.[176]

Had the *Bossier II* standard been in effect in 1982, the District of Columbia court would have been required to preclear Georgia's congressional redistricting plan, which was found by the court to be the product of purposeful discrimination. In that instance, the State had increased the African American population in the Fifth District over the benchmark plan, but kept it as a district with a majority of white registered voters. The remaining nine congressional districts were all solidly majority white. As Joe Mack Wilson, the chief architect of redistricting in the house told his colleagues on numerous occasions, "I don't want to draw nigger districts." (*Busbee v. Smith,* 549 F.Supp. 495, 501 (D.D.C. 1982)). Since the redrawn Fifth District did not make African American voters worse off than they had been under the preexisting plan, and even though it was the product of intentional discrimination, the purpose was not technically retrogressive and so, under *Bossier II,* the plan would have been unobjectionable. Such a result is inconsistent with the clear purposes of the Voting Rights Act.

Since *Bossier II,* the Committee finds that less than 1 percent of the objections that have been interposed have been on the basis of the purpose prong alone, supporting the perception that only an "incompetent retrogressor" can be caught and denied preclearance under Section 5.[177] Moreover, the Committee heard testimony that if the *Bossier II* standard is left unaddressed "all of the places where [we] did not have Black representation where the number of seats, members on the commission or county school board or city council were increased, we would stand to lose representation, all of those governing bodies, if the *Bossier II* standard is applied."[178] Similar testimony was submitted to the Committee emphasizing the impact that the *Bossier II* standard would have had on voting changes precleared prior to the Bossier decision (had the decision been in place), particularly on the creation of districts currently held by African American elected officials.[179] Outcomes such as these were not contemplated by Congress when enacting and reauthorizing Section 5. Section 5 was intended to foster and protect minority participation in the electoral process, particularly to facilitate the ability of minority groups to elect their preferred can-

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[175] *See Oversight Hearing on the Voting Rights Act: Section 5—Preclearance Standards, Subcommittee on the Constitution, Committee on the Judiciary,* 109th Cong. 1 (November 1, 2005). *See also, City of Richmond v. United States,* 422 U.S. 358 (1975); *Texas v. United States,* 802 F. Supp.481 (1992) (stating "in order to grant preclearance . . . [the] court must make two findings: plan must not be retrogressive in terms of minority voting rights when compared to a plan that would be in effect were plan in question not approved, and discriminatory purpose may not be a motivating factor in selection of plan"); *State of Mississippi v. United States,* 490 F. Supp. 569 (1979) (stating "For a state to meet its burden of proof in an action for declaratory relief under the Voting Rights Act, it must demonstrate that a racially discriminatory purpose was not among the factors that motivated it in devising its reapportionment plan.").

[176] *See* McCrary, Seaman, Valelly, "The End of Preclearance As We Knew It: How the Supreme Court Transformed Section 5 of the Voting Rights Act (Feb. 2006) at 37–38.

[177] *See Oversight Hearing on the Voting Rights Act: Section 5—Preclearance Standards, Subcommittee on the Constitution, Committee on the Judiciary,* 109th Cong. 1 (November 1, 2005).

[178] *Id.*

[179] *Id.*

didates of choice. Voting changes that "purposefully" keep minority groups "in their place" have no role in our electoral process and are precisely the types of changes Section 5 is intended to bar. To allow otherwise would be contrary to the protections afforded by the 14th and 15th amendment and the VRA.

Thus, by clarifying that any voting change motivated by any discriminatory purpose is prohibited under Section 5, the Committee seeks to ensure that the "purpose" prong remains a vital element to ensuring that Section 5 remains effective. In amending the purpose prong to bar "any discriminatory purpose," the Committee is aware of concerns by some that such a prohibition is "standardless" and unadministerable.[180] However, the Committee finds these concern to be unfounded. H.R. 9 is intended to restore the "discriminatory purpose" standard that was in place and administered until 2000. Moreover, the Committee concludes that the factors set out in *Village of Arlington Heights et al. v. Metropolitan Housing Development Corporation et. al.* provide an adequate framework for determining whether voting changes submitted for preclearance were motivated by a discriminatory purpose, including determining whether a disproportionate impact exists; examining the historical background of the challenged decision; looking at the specific antecedent events; determining whether such change departs from the normal procedures; and examining contemporary statements of the decision-maker, if any.[181] In weighing each of these factors, the Committee believes that a proper and fair determination may be made as to whether a voting change was motivated by a discriminatory intent.

Retrogressive Effect—The Ability to Elect

In 2003, the Supreme Court, in the case of *Georgia v. Ashcroft,* construed Section 5 to narrow its reach, significantly restricting the scope of the "effect" prong and weakening Section 5's protection of minority groups from voting changes that diminish their ability to elect their preferred candidates of choice.

In a 5–4 decision, the *Georgia* Court held that "any assessment of the retrogression of a minority group's effective exercise of the electoral franchise depends on an examination of all the relevant circumstances, such as the ability to elect candidates of choice, the extent of the minority groups' opportunity to participate in the political process, and the feasibility of creating a non-retrogressive plan."[182] In particular, the majority found that "In assessing the totality of the circumstances, a court should not focus solely on the comparative ability of a minority group to elect a candidate of its choice. While this factor is an important one in the Section 5 retrogression inquiry, it cannot be dispositive."[183] Indeed, the Court

[180] *Id.*

[181] *See* 429 U.S. 252 (1976).

[182] *See Georgia v. Ashcroft,* 539 U.S. 461, 479 (2003).

[183] *Id.* at 480 (emphasis added). This vague and open-ended "totality of the circumstances" test opened the door to allow all manner of raw political considerations to trump the minority's true and genuine choice of candidates. As one commentator has pointed out, "the majority [in *Georgia v. Ashcroft*] went further than the principle required to resolve Georgia itself and embraced a more expansive, still ill-defined conception of other modes of 'political influence' that might be attributed to minority voters. These more nebulous modes of influence might also substitute, the Court held, for safe minority-controlled election districts. The dissent was right to raise questions, both in principle and in practice, about whether this further flexibility in the VRA is appropriate." Richard H. Pildes, "The Constitutionalization of Democratic Politics," 118 Harv. L. Rev. 28, 95 (2004). The dissent in *Georgia v. Ashcroft* case correctly pointed out that a "totality

deemed other factors, such as whether minority voters could influence an elected representative (to the extent that a representative would be willing to take the minority interest into account) relevant to the retrogression analysis. The Court further held that—the State's choice ultimately may rest on a political choice of whether substantive or descriptive representation is preferable."[184] Under its "new" analysis, the Supreme Court would allow the minority community's own choice of preferred candidates to be trumped by political deals struck by State legislators purporting to give "influence" to the minority community while removing that community's ability to elect candidates.

Permitting these trade-offs is inconsistent with the original and current purpose of Section 5. The majority opinion in *Georgia* turns Section 5 on its head. The provision was and continues to be an extraordinary remedy to address a long and continued history of discrimination in certain States and jurisdictions. Its purpose is to require the scrutinizing of changes to voting procedures made by jurisdictions to ensure that minority voters are not discriminated against and that gains made by minority voters over the course of decades are not eroded. The preclearance provisions in Section 5 were and are intended to put the burden of proof on covered jurisdictions to demonstrate they are not enacting voting changes that diminish the ability of minorities to elect their preferred candidates of choice.[185] Directly contrary to that proposition, *Georgia v. Ashcroft* appears to hold that courts should defer to the political decisions of States rather than the genuine choice of minority voters regarding who is or is not their candidate of choice.

Over the last 30 years, Section 5's "effect" prong has served to protect the minority communities' ability to elect candidates of choice in covered jurisdictions. In particular, the Committee heard testimony describing the "judicial development of the retrogression standard"[186] and the importance of the standard in protecting minority voters and their ability to elect candidates of their choice. Since the Supreme Court's decision in *Beer v. United States,*[187] it was accepted that if "the ability of minority group's ability to elect candidates of choice to office is diminished, Section 5 requires the denial of preclearance."[188]

Indeed, the benefits to the minority community under the *Beer* standard were significant over the last several decades. The Committee heard testimony describing the positive impact that minority-preferred representatives have had on minority communities by fully "representing their interests."[189] In particular, the Committee heard testimony confirming that minority-preferred elected officials

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of the circumstances" under Section 5 is hopelessly unadministrable by the Department of Justice because such a concept does not retain "the anchoring reference to electing a candidate of choice." *Georgia v. Ashcroft,* 539 U.S. 461, 493 (Souter, J., dissenting).

[184] *Id.* at 483.

[185] *See* H.R. Rep. No. 94–196 (1975) and *Beer v. United States*, 425 U.S. 130 (1976).

[186] *See Oversight Hearing on the Voting Rights Act: The Judicial Evolution of the Retrogression Standard, Subcommittee on the Constitution, Committee on the Judiciary,* 109th Cong. 1 (November 9, 2005).

[187] 425 U.S. 130 (1976).

[188] *See Oversight Hearing on the Voting Rights Act: The Judicial Evolution of the Retrogression Standard, Subcommittee on the Constitution, Committee on the Judiciary,* 109th Cong. 1 (November 9, 2005).

[189] *Id.*

fight for issues that are of importance to minority communities,[190] and received evidence that "[o]fficials elected because of the equal voting opportunities afforded minority citizens were more attuned to the needs of the minority communities."[191] These "tangible benefits were the direct result of the success of the Voting Rights Act."[192] The Committee finds these results to be the types of successes that Congress sought to achieve through Section 5. These outcomes are achieved most often when a geographically compact minority group is able to control the outcome of an election, such that minority-preferred candidates are elected to office—on terms similar to other communities.

The Committee believes that the gains made by minority communities in districts represented by elected officials of the minority communities' choice would be jeopardized if the retrogression standard, as altered by the Supreme Court in *Georgia,* remains uncorrected by Congress. Indeed, the Committee was persuaded by testimony revealing that the current interpretation "permits a jurisdiction to choose among different theories of representation, introduces a substantial uncertainty for minority communities into a statute that was specifically intended to block persistent and shifting efforts to limit the effectiveness of minority political participation."[193] Moreover, the Committee is concerned by testimony indicating that "[m]inority influence is nothing more than a guise for diluting minority voting strength."[194] Accordingly, leaving the *Georgia* standard in place would encourage States to spread minority voters under the guise of "influence" and would effectively shut minority voters out of the political process. In essence, the Committee heard that Section 5, if left uncorrected, would now allow "States to turn black and other minority voters into second class voters who can influence elections of white candidates, but who cannot elect their preferred candidates, including candidates of their own race."[195] This is *clearly not* the outcome that Congress intended the Voting Rights Act and Section 5 to have on minority voters.

Testimony presented to the Committee further suggested that, if left unaddressed, the *Georgia* standard threatens "the Nation's commitment to representative democracy. . . ."[196] The Committee agrees. Section 5 was intended to prevent covered jurisdictions from making decisions that shut minority voters out of the political process. The Committee is convinced that Congress should not allow covered jurisdictions the discretion to make decisions on behalf of minority voters on the record it has before it. To leave the present retrogression standard enunciated in *Georgia* uncorrected would effectively diminish the significance of Section 5's remedy and would make Federal scrutiny a wasteful formality.

Thus, in amending Section 5 to add a new subsection (b), the Committee makes clear that in making preclearance determina-

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[190] *See* Frederickson and Vagins, Promises to Keep: The Impact of the Voting Rights Act in 2006, March 2006, at 25.
[191] *Id.*
[192] *Id.*
[193] *See Oversight Hearing on the Voting Rights Act: The Judicial Evolution of the Retrogression Standard, Subcommittee on the Constitution, Committee on the Judiciary,* 109th Cong. 1 (November 9, 2005).
[194] *Id.*
[195] *Id.*
[196] *Id.*

tions under Section 5, the comparative "ability [of the minority community] to elect preferred candidates of choice" is the relevant factor to be evaluated when determining whether a voting change has a retrogressive effect. This change is intended to restore Section 5 and the effect prong to the standard of analysis set forth by this Committee during its examination of Section 5 in 1975, such that a change should be denied preclearance under Section 5 if it diminishes the ability of minority groups to elect their candidates of choice.[197] Such was the standard of analysis articulated by the Supreme Court in *Beer v. United States,* the retrogression standard of analysis on which the Court, the Department of Justice, and minority voters relied for 30 years, and the standard the Committee seeks to restore.[198] Voting changes that leave a minority group less able to elect a preferred candidate of choice, either directly or when coalesced with other voters, cannot be precleared under Section 5. Furthermore, by adding the adjective "preferred" before "candidate," the Committee makes clear that the purpose of Section 5 is to protect the electoral power of minority groups to elect candidates that the minority community desires to be their elected representative.

In preserving the ability of minority groups to determine who their elected representatives should be, the Committee makes clear that decisions or influence by States or partisan legislatures as to whom candidates of the minority community "should be" have no place in the comparative analysis. The comparative analysis under Section 5 is intended to be specifically focused on whether the electoral power of the minority community is more, less, or just as able to elect a preferred candidate of choice after a voting change as before.

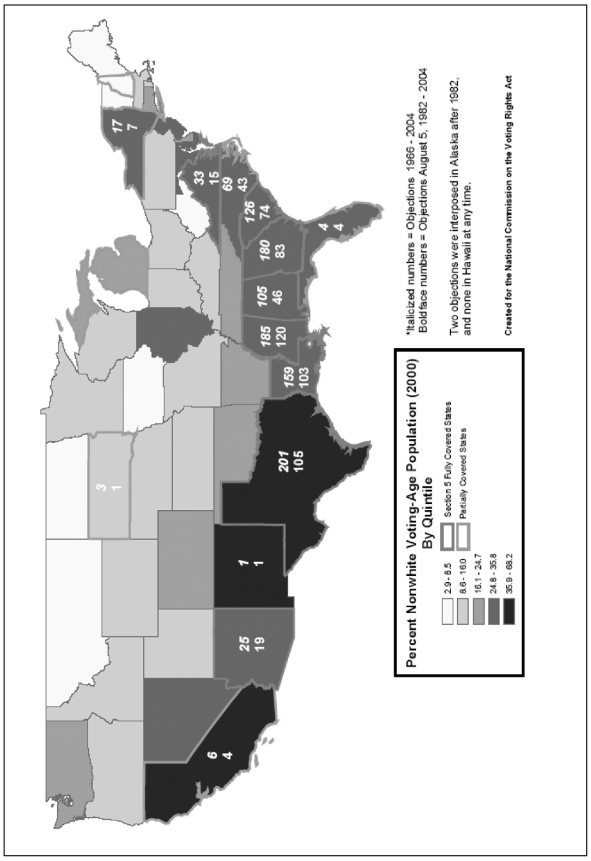
In adding subsection (d), the Committee makes clear that Congress explicitly *rejects* all that logically follows from Justice O'Connor's statement that "In assessing the totality of the circumstances, a court should not focus solely on the comparative ability of a minority group to elect a candidate of its choice. While this factor is an important one in the Section 5 retrogression inquiry, it cannot be dispositive."[199] The language in subsection (d) makes clear that it is the intent of Congress that the relevant analysis in determining whether a voting change violates subsection (b) is a comparison between the minority community's ability to elect their genuinely preferred candidate of choice before and after a voting change, consistent with the standard established by the *Beer* Court and the precedent that followed. To be clear, in adding Subsections (b) and (d), the Committee intends only to clarify its intent with regard to Section 5 and does not intend to disturb Section 2 or the settled jurisprudence established by the Supreme Court in *Thornburg v. G. Jingles,* [200] *Growe v. Emison,*[201] and *Voinovich v. Quilter.*[202] Sections 2 and 5 serve two different purposes under the VRA. The Committee change to Section 5 is intended to ensure that Sec-

[197] *See* H.R. Rep. No. 94–196, at 60 (1975) (stating "the standard can only be satisfied by determining . . . whether the ability of minority group's . . . to elect candidates of their choice to office is . . . diminished").
[198] *See Beer v United States,* 425 U.S.130 (1976).
[199] *Id.* at 480 (emphasis added).
[200] *See* 478 U.S. 30 (1986).
[201] *See* 507 U.S. 25 (1993).
[202] *See* 507 U.S. 146 (1993).

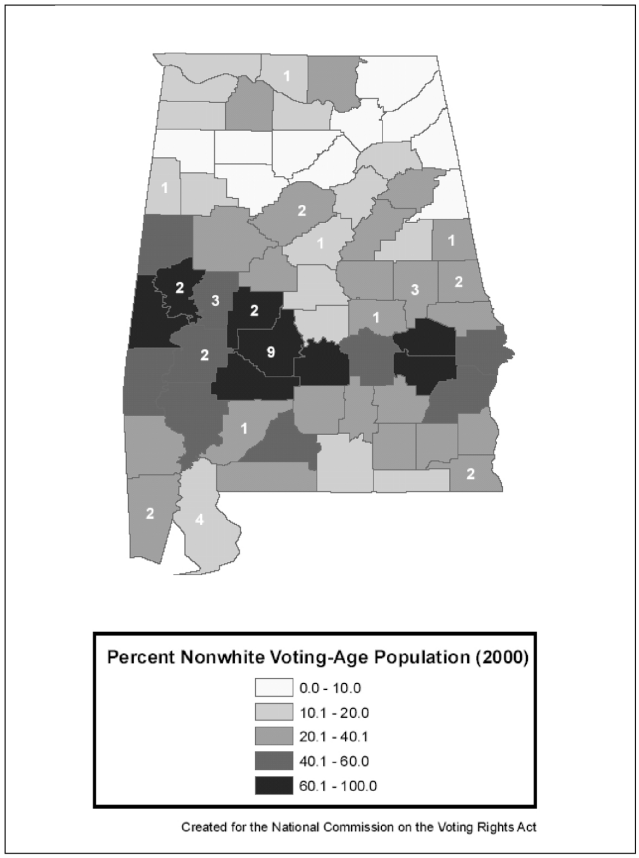
tion 5 remains effective in its purpose such that Sections 2 and 5 can continue to work together to protect minority voters.

APPENDICES

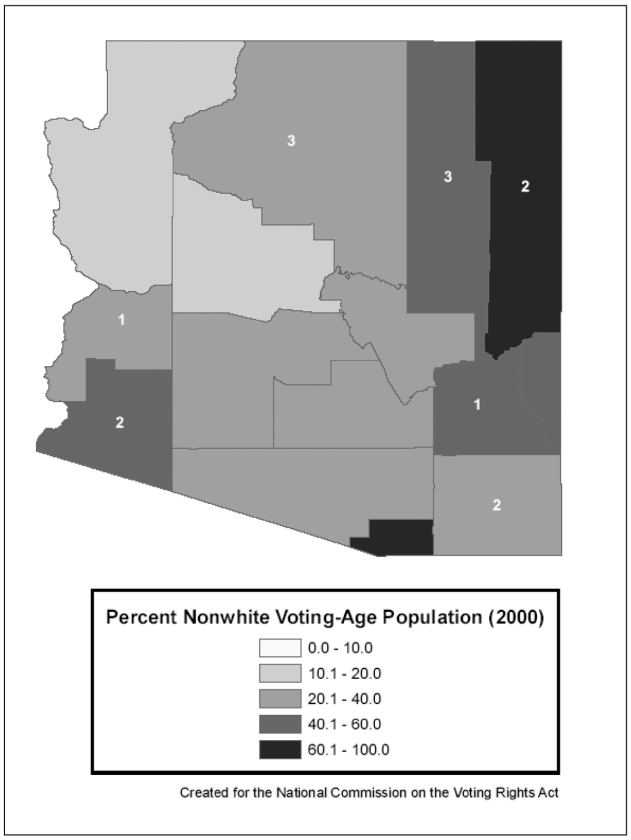
MAP A
Objections
(1966 – 2004 and August 5, 1982 – 2004)*



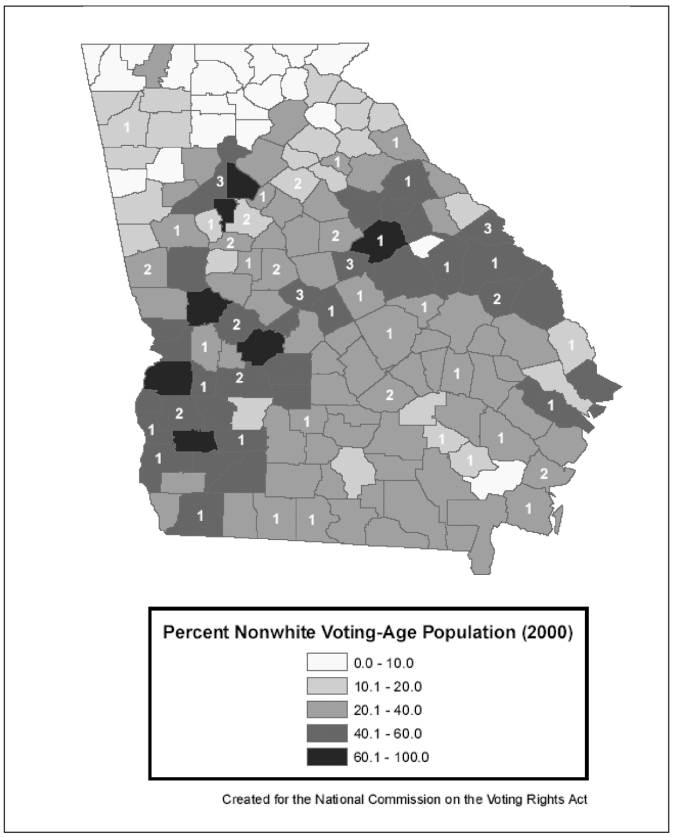
MAP B
Objections by County: Alabama
(August 5, 1982 – 2004)



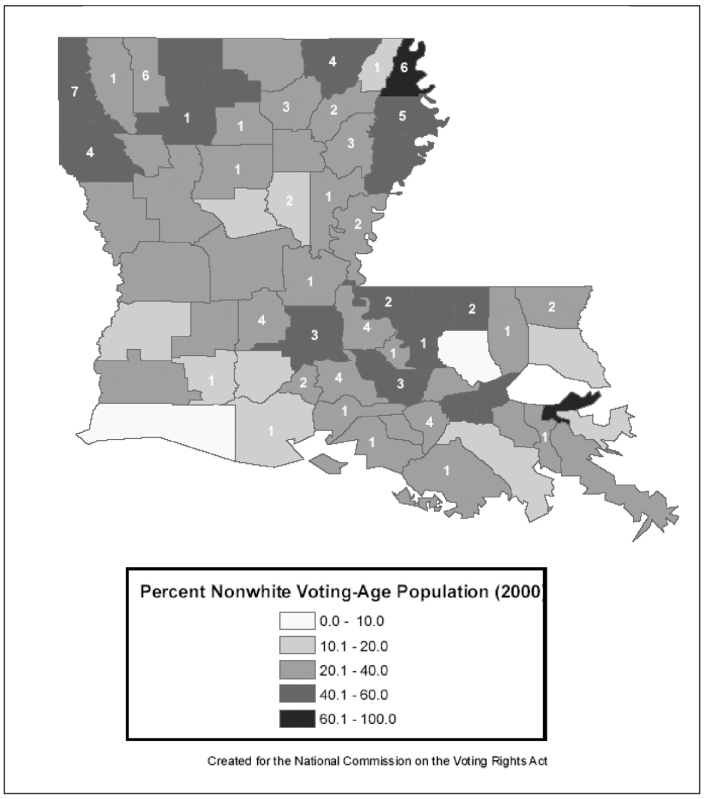
MAP C
Objections by County: Arizona
(August 5, 1982 – 2004)



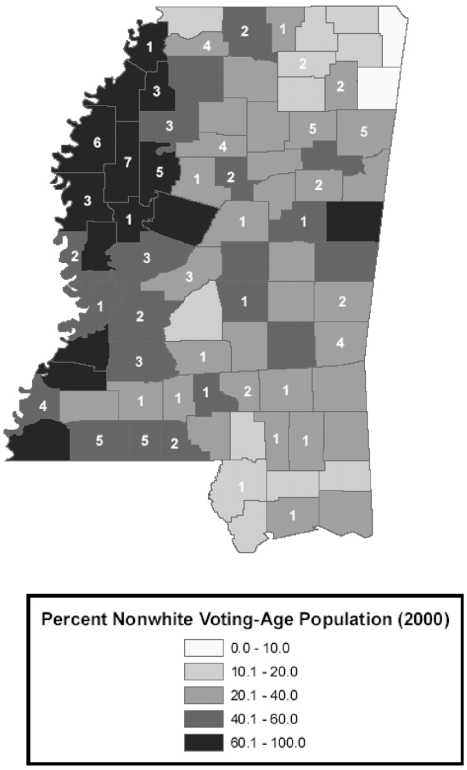
MAP D
Objections by County: Georgia
(August 5, 1982 – 2004)



MAP E
Objections by Parish: Louisiana
(August 5, 1982 – 2004)

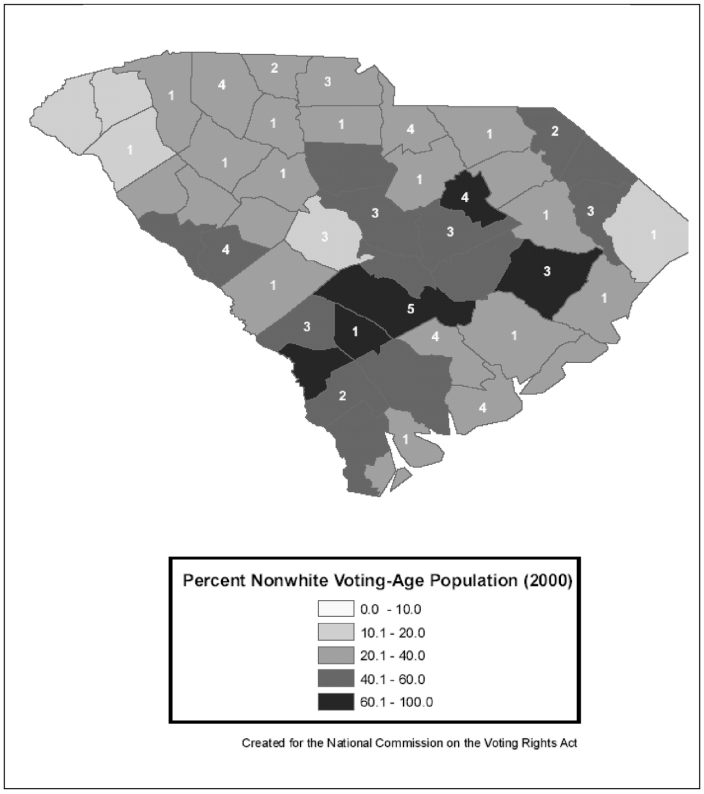


MAP F
Objections by County: Mississippi
(August 5, 1982 – 2004)

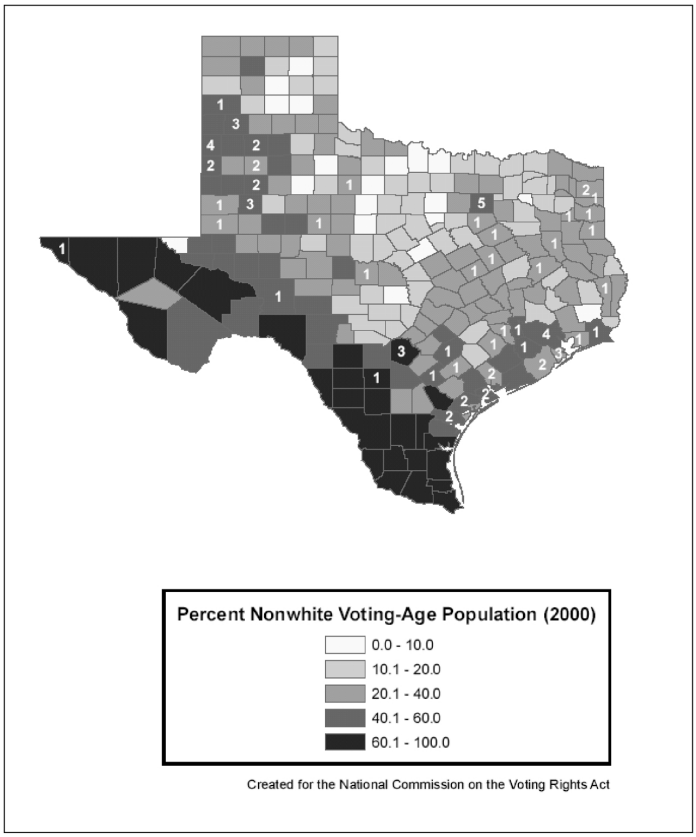


Created for the National Commission on the Voting Rights Act

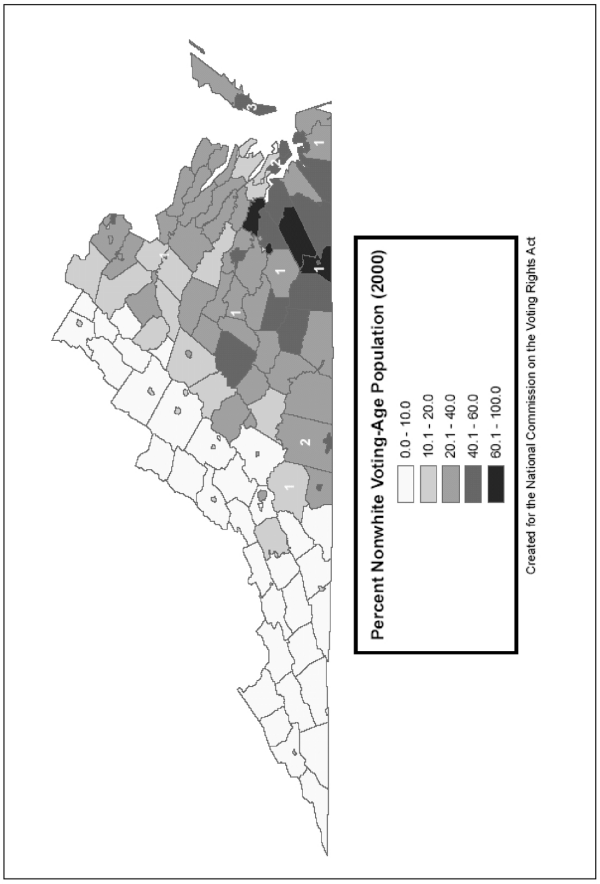
MAP G
Objections by County: South Carolina
(August 5, 1982 – 2004)



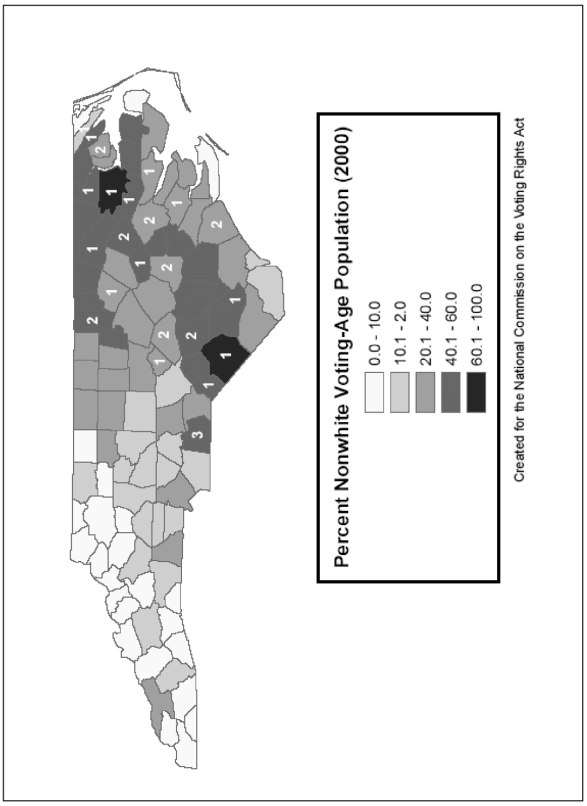
MAP H
Objections by County: Texas
(August 5, 1982 – 2004)



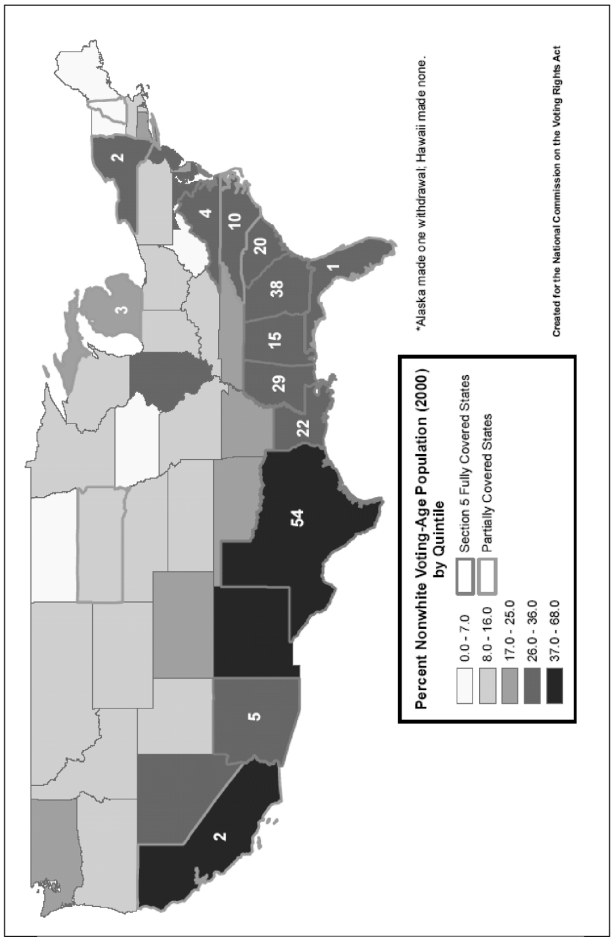
MAP I
Objections by County: Virginia
(August 5, 1982 – 2004)



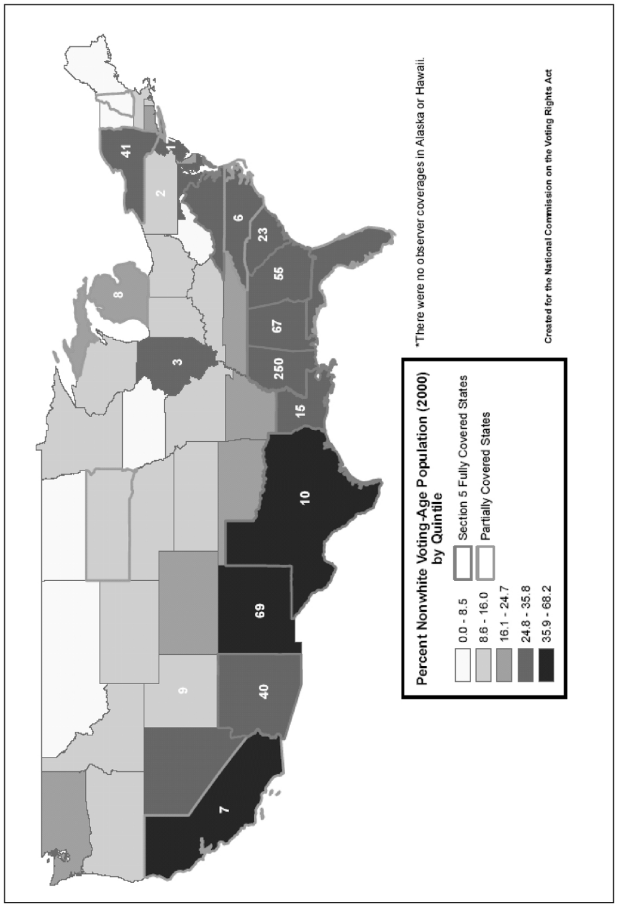
MAP J
Objections by County: North Carolina
(August 5, 1982 – 2004)



MAP K
Submission Withdrawals
(August 5, 1982 – 2004)*



MAP L
Observer Coverages: All States
(August 5, 1982 – 2004)*



HEARINGS

The House Committee on the Judiciary's Subcommittee on the Constitution held 1 day of hearings on H.R. 9 on May 4, 2006. Testimony was received from the following witnesses: J. Gerald Hebert, Former Acting Chief, Civil Rights Division, Department of Justice; Roger Clegg, President and General Counsel, Center for Equal Opportunity; Debo Adegbile, Associate Director, NAACP Legal Defense and Education Fund; Rena Comisa, Principal Deputy Assistant Attorney General, Civil Rights Division, Department of Justice; The Honorable Chris Norby, Supervisor, Fourth District, Orange County Board of Supervisor; Karen Narasaki, President and Executive Director, Asian American Justice Center; and Dr. James Thomas Tucker, Voting Rights Consultant, NALEO Educational Fund and Adjunct Professor, Barrett Honors College, Arizona State University, with additional material submitted by individuals and organizations.

COMMITTEE CONSIDERATION

On May 10, 2006, the Committee met in open session and ordered favorably reported the bill H.R. 9 with an amendment by a recorded vote of 33 to 1, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee notes that the following rollcall votes occurred during the Committee's consideration of H.R. 9.

1. An amendment was offered by Mr. King that would have struck the provisions of the bill that reauthorized Section 203 of the Voting Rights Act for another 25 years. By a rollcall vote of 9 yeas to 26 nays, the amendment was defeated.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble	X		
Mr. Smith (Texas)	X		
Mr. Gallegly	X		
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Bachus			
Mr. Inglis			
Mr. Hostettler	X		
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King	X		
Mr. Feeney		X	
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Conyers		X	

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt		X	
Mr. Wexler		X	
Mr. Weiner		X	
Mr. Schiff		X	
Ms. Sánchez		X	
Mr. Van Hollen		X	
Ms. Wasserman Schultz		X	
Mr. Sensenbrenner, Chairman		X	
Total	9	26	

2. An amendment was offered by Mr. King that would have limited to 6 years the provisions of the bill that reauthorized Section 203 of the Voting Rights Act for 25 years. The amendment also would have precluded the use American Community Survey data in 5-year increments. By a rollcall vote of 10 yeas to 24 nays, the amendment was defeated.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble	X		
Mr. Smith (Texas)	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot		X	
Mr. Lungren	X		
Mr. Jenkins	X		
Mr. Cannon		X	
Mr. Bachus			
Mr. Inglis	X		
Mr. Hostettler	X		
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake			
Mr. Pence		X	
Mr. Forbes		X	
Mr. King	X		
Mr. Feeney		X	
Mr. Franks	X		
Mr. Gohmert			
Mr. Conyers		X	
Mr. Berman		X	
Mr. Boucher		X	
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Meehan			

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Delahunt		X	
Mr. Wexler		X	
Mr. Weiner		X	
Mr. Schiff		X	
Ms. Sánchez		X	
Mr. Van Hollen		X	
Ms. Wasserman Schultz		X	
Mr. Sensenbrenner, Chairman		X	
Total	10	24	

3. Final Passage. The motion to report favorably the bill H.R. 9, as amended, was agreed to by a rollcall vote of 33 yeas to 1 nays.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble	X		
Mr. Smith (Texas)	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Bachus			
Mr. Inglis	X		
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Flake			
Mr. Pence	X		
Mr. Forbes	X		
Mr. King		X	
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert			
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt	X		
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman	X		
Total	33	1	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of Rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 9, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 17, 2006.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 9, the "Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts is Matthew Pickford, who can be reached at 226–2860.

Sincerely,

DONALD B. MARRON,
ACTING DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 9—Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006.

SUMMARY

H.R. 9 would reauthorize and amend the Voting Rights Act of 1965. Major provisions of the legislation would extend certain expiring provisions of the act for 25 years, expand the use of federal observers at polling sites, and authorize the use of the American Community Survey to identify areas that may need bilingual voting assistance. In addition, H.R. 9 would require the Government Accountability Office (GAO) to report to the Congress on the implementation of a provision of the Voting Rights Act regarding the re-

quirement for election materials in both English and an alternative language.

CBO estimates that implementing H.R. 9 would cost $1 million in fiscal year 2007 and $15 million over the 2007–2011 period, subject to the availability of appropriated funds. Enacting the bill would have no impact on direct spending or revenues.

Section 4 of the Unfunded Mandates Reform Act (UMRA) excludes from the application of the act any legislative provisions that enforce constitutional rights of individuals. CBO has determined that H.R. 9 would fall within that exclusion because it would protect the voting rights of minorities and those with limited proficiency in English. Therefore, CBO has not reviewed the bill for mandates.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 9 is shown in the following table. The costs of this legislation fall within budget function 800 (general government).

By Fiscal Year, in Millions of Dollars

	2007	2008	2009	2010	2011
SPENDING SUBJECT TO APPROPRIATION					
OPM Spending Under Current Law for Voting Rights Program					
Estimated Authorization Level	2	0	0	0	0
Estimated Outlays	2	0	0	0	0
Proposed Changes					
Estimated Authorization Level	1	4	3	3	3
Estimated Outlays	1	4	3	3	3
OPM Spending Under H.R. 9 for Voting Rights Program					
Estimated Authorization Level	3	4	3	3	3
Estimated Outlays	3	4	3	3	3

BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 9 will be enacted near the end of fiscal year 2006, that the necessary amounts will be appropriated over the 2007–2011 period, and that spending will follow historical spending patterns for the Office of Personnel Management (OPM).

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

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

that the Voting Rights Program would spend about $4 million in general election years and about $3 million in other years.

H.R. 9 also would require the GAO to report to the Congress, within one year, on the implementation of a section of the Voting Rights Act of 1965 regarding the provision of voting materials in alternative languages (in addition to materials in English). Based on similar reports, CBO estimates that preparing and distributing the report would cost less than $500,000.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

Section 4 of UMRA excludes from the application of the act any legislative provisions that enforce constitutional rights of individuals. CBO has determined that H.R. 9 would fall within that exclusion because it would protect the voting rights of minorities and those with limited proficiency in English. Therefore, CBO has not reviewed the bill for mandates.

ESTIMATE PREPARED BY:

Federal Costs: Matthew Pickford (226–2860)
Impact on State, Local, and Tribal Governments: Sarah Puro (225–3220)
Impact on the Private-Sector: Craig Cammarata (226–2940)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, H.R. 9 will: (1) extend for another 25 years Section 4(a)(8) and Section 203(b)(1), the temporary provisions of the Voting Rights Act of 1965 currently set to expire on August 6, 2007; and (2) amend Section 3(a), Section (4), Section 5, Section 6, Section 7, Section 8, Section 9, Section 14, and Section 203 to update certain provisions of the Voting Rights Act of 1965 to reflect the current voting environment and to restore the original intent of Congress in enacting the temporary provisions of the Act.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation under amend. XIV, § 5 and amend. XV, § 2.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short Title.

This section provides that the Act may be cited as the "Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006" (the "VRARA").

Sec. 2. Congressional Purpose and Findings.

This section sets out the Congressional findings and purposes supporting the VRARA.

Sec. 3. Changes Relating to Use of Examiners and Observers.

This section contains five subsections.

- *Sec. 3(a). Use of Observers.* Current Section 8 of the VRA (42 U.S.C. § 1973f) authorizes the Attorney General to request that the Office of Personnel Management (OPM) assign Federal observers to jurisdictions where examiners are located to observe whether citizens who are eligible to vote are able to exercise the right to vote. Federal observers are the only Federal officials who are authorized to enter polls and places where votes are tabulated. (Under current law, observers can only be assigned after a jurisdiction has been certified for Federal examiner coverage.) Section 3(a) of the VRARA authorizes the Attorney General or court under Section 3(a) of the VRA to directly assign Federal observers upon a finding that there is a reasonable belief that a violation of the 14th or 15th amendment has occurred or will occur, without having to first certify the use of Federal examiners. (Federal examiners would be eliminated under Section 3(c) of the VRARA because examiners have not been appointed to jurisdictions certified for coverage in some twenty years.)
- *Sec. 3(b). Modification of Section 13.* Section 13 of the VRA (42 U.S.C. § 1973k) enables those covered jurisdictions certified for Federal examiners, and subject to the listing procedures set forth in Section 7 of the VRA, the opportunity to apply to the Attorney General or to the Federal court, if applicable, to terminate the certification of such examiners. Section 3(b) of the VRARA would eliminate these provisions as applied to examiners (which would be eliminated under Section 3(c) of the VRARA) and simply transfer those termination procedures to allow for the termination of observers.
- *Sec. 3(c). Repeal of Sections Relating to Examiners.* This section would strike Sections 6, 7, and 9 of the VRA. Section 6 of the VRA (42 U.S.C. 1973d) authorizes the court or the Attorney General to direct the OPM to send Federal examiners either to covered jurisdictions, or where the court believes it necessary to protect citizens' 14th and 15th amendment rights. Section 3(c) of the VRARA would strike the authority of the Attorney General, or the court, to appoint Federal examiners.[203] Section 7 of the VRA (42 U.S.C. § 1973e) sets

[203] Testimony received by the Subcommittee on the Constitution revealed that Federal statutes, such as the National Voter Registration Act of 1993 (NVRA) and the Help American Vote Act of 2002 (HAVA), have been integral in increasing voter registration applications and voter turnout, and such statutes are now the primary means by which the integrity of voting rolls is secured at the Federal level. (The NVRA requires States to make voter registration opportunities available to individuals at all agencies that provide public assistance, including driver's license offices, public benefit offices, and social service agencies. Under the NVRA, states are required to update their registration list to reflect recently deceased voters or voters who have moved. In addition, the NVRA prohibits States from removing registered voters from a registration list solely because they have not voted in an election. HAVA requires states to update voting equipment, maintain a centrally located computerized registration list accessible by every election official, and make other changes related to voter registration. Both statutes are enforced by the Department of Justice.)

forth the process that Federal examiners are required to follow when listing those individuals who meet the voter qualifications set forth by a State. Section 3(c) of the VRARA would eliminate the listing procedures in accordance with the elimination of Federal examiners. Section 9 of the VRA (42 U.S.C. § 1973g) sets forth the process for individuals to challenge the eligibility of a voter listed by a Federal examiner. Section 3(c) of the VRARA would eliminate this process along with the rest of the Federal examiner provisions.

- *Sec.3(d). Substitution of References to "Observers" for References to "Examiners."* This section makes technical changes to several sections of the VRA that are necessary to replace the role of Federal examiners with those of Federal observers. Section 3(a) of the VRA (42 U.S.C. 1973a) currently authorizes Federal courts, in proceedings under any statutes enforcing the 14th and 15th amendments' voting guarantees, to use Federal election examiners and observers to monitor the actions of covered jurisdictions. Section 3(d) of the VRARA amends Section 3(a) of the VRA by replacing the court's authority to assign Federal examiners with the authority to assign Federal observers only.[204]
- *Sec. 3(e). Conforming Changes Relating to Section References.* This section makes technical changes to section references in the VRA to reflect the changes made by the VRARA.

Sec. 4. Reconsideration of Section 4 by Congress.

This section makes technical changes to the VRA to reflect the title of the VRARA, namely the "Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006." Section 4 of the VRA (42 U.S.C. § 1973b) identifies by formula those jurisdictions subject to the Federal oversight provisions contained in Sections 5 through 8 of the VRA and sets out the requirements covered jurisdictions must meet to "bailout" (that is, to be removed from coverage under the Voting Rights Act). Section 4 of the VRARA would extend these expiring provisions for an additional 25 years. In addition, and in accordance with the proposed replacement of Federal examiners with Federal observers in Section 3(c) of VRARA, the changes made by Section 4 of the VRARA to Section 4 of the VRA would specify that the Attorney General's decision to certify Federal observers in a covered jurisdiction is not reviewable (as is currently the law regarding the Attorney General's determination to certify Federal examiners under the VRA).

Sec. 5. Criteria for Declaratory Judgment.

Section 5 of the VRA (42 U.S.C. § 1973c) requires covered jurisdictions to preclear all voting changes with either the Department of Justice or the U.S. District Court for the District of Columbia. (The need to renew Section 5 is evidenced in part by the fact that Section 5 was used more often between 1982 and 2005 than it was between 1965 and 1982, resulting in the retraction of more voting

[204] Again, this change is in response to testimony received by the Subcommittee on the Constitution showing that Federal examiners have not been used to list individuals for voting in the last twenty years. Federal observers, on the other hand, have been the most frequently used Federal oversight tools in the last 20 years.

rules changes that would have adversely affected minorities.) The expiring provisions of the Voting Rights Act only apply to jurisdictions that have the most extensive histories of discrimination and segregation. And even within those covered jurisdictions, the expiring provisions of the Voting Rights Act only require that voting rule changes first be "precleared" by the Justice Department or the D.C. Federal court before they go into effect. The Supreme Court has held that Congress has the clear authority to enact provisions that simply prevent certain states from "backsliding" in their protection of minority voting rights.[205] (The expiring provisions of the Voting Rights Act allow any covered jurisdiction to *remove itself from coverage* if it can demonstrate a "clean record"[206] on discrimination over the previous 10 years. In fact, 11 counties in Virginia have successfully removed themselves from coverage under the Voting Rights Act.)

Two Supreme Court decisions *(Reno v. Bossier Parish ("Bossier II")* and *Georgia v. Ashcroft)* have significantly narrowed Section 5's effectiveness. The changes Section 5 of the VRARA makes to Section 5 of the VRA will:

- make clear that Congress rejects the Supreme Court's holding in *Reno v. Bossier Parish,*[207] by making clear that, contrary to that decision, "retrogression"[208] is not the only violation of voting rights the preclearance procedures protect against, and that a voting rule change motivated by any discriminatory purpose also cannot be precleared. The VRARA does this by creating new subsections (b) and (c) to Section 5 that state:

  > (b) Any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), to elect their preferred

[205] The Supreme Court has stated that "The language and purpose of the Fifteenth Amendment [which prohibits racial discrimination in voting], the prior decisions construing its several provisions, and the general doctrines of constitutional interpretation, all point to one fundamental principle. As against the reserved powers of the States, Congress may use *any rational means* to effectuate the constitutional prohibition of racial discrimination in voting . . . §2 of the Fifteenth Amendment expressly declares that 'Congress shall have power to enforce this article by appropriate legislation.' By adding this authorization, the Framers indicated that *Congress was to be chiefly responsible* for implementing the rights created in §1 . . . Accordingly, in addition to the courts, Congress has *full remedial powers* to effectuate the constitutional prohibition against racial discrimination in voting." *South Carolina v. Katzenbach,* 383 U.S. 301, 325–27 (1966) (emphasis added). In *City of Boerne v. Flores,* 521 U.S. 507, 518 (1997) (emphasis added), the Court stated "Legislation which deters or remedies constitutional violations can fall within the sweep of Congress' enforcement power *even if in the process it prohibits conduct which is not itself unconstitutional and intrudes into legislative spheres of autonomy previously reserved to the States. For example, the Court upheld a suspension of literacy tests and similar voting requirements under Congress' parallel power to enforce the provisions of the Fifteenth Amendment as a measure to combat racial discrimination in voting despite the facial constitutionality of the tests . . .*" In *City of Rome v. United States,* the Court stated *"Congress may, under the authority of §2 of the Fifteenth Amendment, prohibit state action that, though in itself not violative of §1, perpetuates the effects of past discrimination." City of Rome v. United States,* 446 U.S. 156, 173, 176 (1980) (emphasis added).

[206] To be removed from coverage under Section 5, a jurisdiction need only show that it has not administered literacy tests within the preceding 10 years; has complied with all Federal preclearance requirements; has not been the subject of litigation or consent decrees relating to voting discrimination; and has taken steps to include minorities in the electoral process.

[207] 528 U.S. 320 (2000).

[208] "Retrogression" means a process by which voting changes put the minority community in a worse position to elect a candidate of their choice compared to such minorities' position prior to the administration of a new voting provision.

candidates of choice denies or abridges the right to vote within the meaning of subsection (a) of this section.

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

- make clear that Congress partly rejects the Supreme Court's decision in *Georgia v. Ashcroft.* Before the Supreme Court's decision in *Georgia v. Ashcroft,*[209] it was clear that the Voting Rights Act served to protect the minority community's ability to elect their preferred candidates of choice. However, Justice O'Connor, writing for a 5–4 majority, held in *Georgia v. Ashcroft* that "In assessing the totality of the circumstances, a court should not focus solely on the comparative ability of a minority group to elect a candidate of its choice."[210] This vague and open-ended "totality of the circumstances" test opened the door to allow all manner of undefined considerations to trump the minority's choice of candidate, and the dissent in the *Georgia v. Ashcroft* case correctly pointed out that a "totality of the circumstances" under Section 5 is hopelessly unadministerable by the Department of Justice because such a concept does not retain "the anchoring reference to electing a candidate of choice."[211] VRARA restores the standard articulated in *Beer v. United States.* To restore the original meaning of Section 5 of the Voting Rights Act, the VRARA makes clear, in a new subsection (d), that:

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

Sec. 6. Expert Fees and Other Reasonable Costs of Litigation.

Section 14 of the VRA (42 U.S.C. § 1973l) currently authorizes prevailing parties (other than the United States) to recover attorney fees. Section 6 of the VRARA updates this provision by authorizing the prevailing party to also recover expert costs as part of the attorney fees, as is already provided for in the vast majority of civil rights legislation.

Sec. 7. Extension of Language Assistance Requirements.

Section 7 of the VRARA extends Section 203 of the VRA's requirements (the bilingual election materials requirements) for a period of 25 years. Sections 203 and 4(f) of the VRA require that bilingual election assistance be given to language minority citizens in certain States and political subdivisions. Under Sections 203 and 4(f), covered jurisdictions are required to provide voting materials such as notices, forms, instructions, ballots, and other materials in the applicable covered language (Spanish, Asian-American, Native American, and Native Alaskan). Section 203 of the Voting Rights Act only requires that non-English voting materials be made available in jurisdictions (1) in which 5 percent of the voting age population consists of a single language, limited English proficient minority and in which there is a literacy rate below the national aver-

[209] *Georgia v. Ashcroft,* 539 U.S. 461 (2003).
[210] *Georgia v. Ashcroft,* 539 U.S. 461, 480 (2003) (emphasis added).
[211] *Georgia v. Ashcroft,* 539 U.S. 461, 493 (Souter, J., dissenting).

age; or (2) in which more than 10,000 citizens who meet those criteria reside. A jurisdiction can get out from under coverage under Section 203 if it shows the D.C. Federal court that the applicable language minority population's literacy rate is at the national average or above. Section 203 protects citizens, not illegal immigrants. Citizens in the process of learning to read should not be denied assistance in voting, and such citizens should not be denied aid for lack of educational opportunities.

Sec. 8. Use of American Community Survey Census Data.

Section 8 of the VRARA updates Section 203 of the VRA to reflect the fact that the long form census, which had been used in coverage determinations, will no longer be used by the Census Bureau after 2010. The American Community Survey has replaced the long form and will be administered by the Census Bureau annually. Determinations for coverage under Section 203 will be made by the Director of the Census based upon information compiled by the ACS on a rolling 5-year average.

Section 9. Study and Report.

Section 9 of the VRARA authorizes the Comptroller General to conduct a study on the implementation, effectiveness, and efficiency of Section 203, the bilingual language assistance provision. In conducting the study, the Comptroller General is required to identify alternatives to the current administrative process under Section 203. The study is to be completed within a year of the effective date of the VRARA.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

VOTING RIGHTS ACT OF 1965

TITLE I—VOTING RIGHTS

* * * * * * *

SEC. 3. (a) Whenever the Attorney General or an aggrieved person institutes a proceeding under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal [examiners] *observers* by the United States Civil Service Commission in accordance with section 6 to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the voting guarantees of the fourteenth or fifteenth amendment (1) as part of any interlocutory order if the court determines that the appointment of such [examiners] *observers* is necessary to enforce such voting guarantees or (2) as part of any final judgment if the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief

have occurred in such State or subdivision: That the court need not authorize the appointment of [examiners] *observers* if any incidents of denial or abridgement of the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

* * * * * * *

SEC. 4. (a)(1) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit, or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. A declaratory judgment under this section shall issue only if such court determines that during the ten years preceding the filing of the action, and during the pendency of such action—

(A) * * *

* * * * * * *

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

* * * * * * *

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

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

* * * * * * *

(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous sentence, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968. On and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous two sentences, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972.

A determination or certification of the Attorney General or of the Director of the Census under this section or under [section 6] *section 8* or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

SEC. 5. *(a)* Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the first sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the second sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the third sentence of section 4(b) are in effect shall enact or seek to administer any voting qualifications or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure [does not have the purpose and will not have the effect] *neither has the purpose nor will have the effect* of denying or abridging the right to vote on account of race or color, or in

contravention of the guarantees set forth in section 4(f)(2), and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.

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

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

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

[SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), or (b), unless a declaratory judgment has been rendered under section 4(a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fourteenth or fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fourteenth or fifteenth amendment), the appointment of

examiners is otherwise necessary to enforce the guarantees of the fourteenth or fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 9(a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except the provisions of subchapter III of chapter 73 of title 5, United States Code, relating to political activities: That the Commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oaths.

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

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

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

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

[SEC. 8. Whenever an examiner is serving under this Act in any political subdivision, the Civil Service Commission may assign, at the request of the Attorney General, one or more persons, who may be officers of the United States, (1) to enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote, and (2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated. Such persons so assigned shall report to an examiner appointed for such political subdivision, to the Attorney General, and if the appointment of examiners has been authorized pursuant to section 3(a), to the court.

[SEC. 9. (a) Any challenge to a listing on an eligibility list prepared by an examiner shall be heard and determined by a hearing officer appointed by and responsible to the Civil Service Commission and under such rules as the Commission shall by regulation prescribe. Such challenge shall be entertained only if filed at such office within the State as the Civil Service Commission shall by regulation designate, and within ten days after the listing of the challenged person is made available for public inspection, and if supported by (1) the affidavits of at least two persons having personal knowledge of the facts constituting grounds for the challenge, and (2) a certification that a copy of the challenge and affidavits have been served by mail or in person upon the person challenged at his place of residence set out in the application. Such challenge shall be determined within fifteen days after it has been filed. A petition for review of the decision of the hearing officer may be filed in the United States court of appeals for the circuit in which the person challenged resides within fifteen days after service of such decision by mail on the person petitioning for review but no decision or a hearing officer shall be reversed unless clearly erroneous. Any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court.

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

[(c) Upon the request of the applicant or the challenger or on its own motion the Civil Service Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter pending before it under the authority of this section. In case of contumacy or refusal to obey a subpoena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service or process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order re-

quiring such person to appear before the Commission or a hearing officer, there to produce pertinent, relevant, and nonprivileged documentary evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.]

SEC. 8. (a) Whenever—

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

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

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

(B) in the Attorney General's judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to the Attorney General to be reasonably attributable to violations of the 14th or 15th amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the 14th or 15th amendment), the assignment of observers is otherwise necessary to enforce the guarantees of the 14th or 15th amendment;

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

(b) Except as provided in subsection (c), such observers shall be assigned, compensated, and separated without regard to the provisions of any statute administered by the Director of the Office of Personnel Management, and their service under this Act shall not be considered employment for the purposes of any statute administered by the Director of the Office of Personnel Management, except the provisions of section 7324 of title 5, United States Code, prohibiting partisan political activity.

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

(d) Observers shall be authorized to—

(1) enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote; and

(2) enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated.

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

* * * * * * *

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

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

(c) Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section 2, 3, 4, 5, [7,] 10, or 11(a) shall be fined not more than $5,000, or imprisoned not more than five years, or both.

* * * * * * *

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

* * * * * * *

[SEC. 13. Listing procedures shall be terminated in any political subdivision of any State (a) with respect to examiners appointed pursuant to clause (b) of section 6 whenever the Attorney General notifies the Civil Service Commission, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision with respect to which the Director of the Census has determined that more than 50 per centum of the nonwhite persons of voting age residing therein are registered to vote, (1) that all persons listed by an examiner for such subdivision have been placed on the appropriate voting registration roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) in such subdivision, and

(b), with respect to examiners appointed pursuant to section 3(a), upon order of the authorizing court. A political subdivision may petition the Attorney General for the termination of listing procedures under clause (a) of this section, and may petition the Attorney General to request the Director of the Census to take such survey or census as may be appropriate for the making of the determination provided for in this section. The District Court for the District of Columbia shall have jurisdiction to require such survey or census to be made by the Director of the Census and it shall require him to do so if it deems the Attorney General's refusal to request such survey or census to be arbitrary or unreasonable.**]**

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

(1) with respect to observers appointed pursuant to section 8 or with respect to examiners certified under this Act before the date of the enactment of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, whenever the Attorney General notifies the Director of the Office of Personnel Management, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision described in subsection (b), that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) in such subdivision; and

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

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

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

SEC. 14. (a) * * *

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

* * * * * * *

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

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TITLE II—SUPPLEMENTAL PROVISIONS

* * * * * * *

BILINGUAL ELECTION REQUIREMENTS

SEC. 203. (a) * * *

(b) BILINGUAL VOTING MATERIALS REQUIREMENT.—

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

(2) COVERED STATES AND POLITICAL SUBDIVISIONS.—

(A) GENERALLY.—A State or political subdivision is a covered State or political subdivision for the purposes of this subsection if the Director of the Census determines, based on [census data] *the 2010 American Community Survey census data and subsequent American Community Survey data in 5-year increments, or comparable census data*, that—

(i) * * *

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MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, MAY 10, 2006

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:08 a.m., in Room 2141, Rayburn House Office Building, the Honorable F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present. Pursuant to notice I now call up the bill H.R. 9, the "Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006" for purposes of markup and move its favorable recommendation to the House. Without objection, the bill is considered as read and open for amendment at any point, and the Chair recognizes himself for 5 minutes to explain the bill.

[The bill, H.R. 9 follows:]

I

109TH CONGRESS
2D SESSION

H. R. 9

To amend the Voting Rights Act of 1965.

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 2006

Mr. SENSENBRENNER (for himself, Mr. HASTERT, Ms. PELOSI, Mr. CONYERS, Mr. CHABOT, Mr. NADLER, Mr. WATT, Mr. LEWIS of Georgia, Mr. TOWNS, Mr. SCOTT of Georgia, Mrs. CHRISTENSEN, Mr. OWENS, Mr. CLYBURN, Ms. LEE, Mr. SCOTT of Virginia, Ms. LINDA T. SÁNCHEZ of California, Mr. JACKSON of Illinois, Mr. JEFFERSON, Ms. NORTON, Ms. KILPATRICK of Michigan, Mr. FATTAH, Ms. JACKSON-LEE of Texas, Ms. WATERS, Mr. HONDA, Mr. GONZALEZ, and Mrs. NAPOLITANO) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend the Voting Rights Act of 1965.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006''.

SEC. 2. CONGRESSIONAL PURPOSE AND FINDINGS.

(a) PURPOSE.—The purpose of this Act is to ensure that the right of all citizens to vote, including the right to register to vote and cast meaningful votes, is preserved and protected as guaranteed by the Constitution.

(b) FINDINGS.—The Congress finds the following:

(1) Significant progress has been made in eliminating first generation barriers experienced by minority voters, including increased numbers of registered minority voters, minority voter turnout, and minority representation in Congress, State legislatures, and local elected offices. This progress is the direct result of the Voting Rights Act of 1965.

(2) However, vestiges of discrimination in voting continue to exist as demonstrated by second generation barriers constructed to prevent minority voters from fully participating in the electoral process.

(3) The continued evidence of racially polarized voting in each of the jurisdictions covered by the expiring provisions of the Voting Rights Act of 1965 demonstrates that racial and language minorities remain politically vulnerable, warranting the continued protection of the Voting Rights Act of 1965.

(4) Evidence of continued discrimination includes—

(A) the hundreds of objections interposed, requests for more information submitted followed by voting changes withdrawn from consideration by jurisdictions covered by the Voting Rights Act of 1965, and section 5 enforcement actions undertaken by the Department of Justice in covered jurisdictions since 1982 that prevented election practices, such as annexation, at-large voting, and the use of multimember districts, from being enacted to dilute minority voting strength;

(B) the number of requests for declaratory judgments denied by the United States District Court for the District of Columbia;

(C) the continued filing of section 2 cases that originated in covered jurisdictions; and

(D) the litigation pursued by the Department of Justice since 1982 to enforce sections 4(e), 4(f)(4), and 203 of such Act to ensure that all language minority citizens have full access to the political process.

(5) The evidence clearly shows the continued need for Federal oversight in jurisdictions covered by the Voting Rights Act of 1965 since 1982, as demonstrated in the counties certified by the Attor-

ney General for Federal examiner and observer coverage and the tens of thousands of Federal observers that have been dispatched to observe elections in covered jurisdictions.

(6) The effectiveness of the Voting Rights Act of 1965 has been significantly weakened by the United States Supreme Court decisions in Reno v. Bossier Parish II and Georgia v. Ashcroft, which have misconstrued Congress' original intent in enacting the Voting Rights Act of 1965 and narrowed the protections afforded by section 5 of such Act.

(7) Despite the progress made by minorities under the Voting Rights Act of 1965, the evidence before Congress reveals that 40 years has not been a sufficient amount of time to eliminate the vestiges of discrimination following nearly 100 years of disregard for the dictates of the 15th amendment and to ensure that the right of all citizens to vote is protected as guaranteed by the Constitution.

(8) Present day discrimination experienced by racial and language minority voters is contained in evidence, including the objections interposed by the Department of Justice in covered jurisdictions; the section 2 litigation filed to prevent dilutive techniques from adversely affecting minority voters; the

enforcement actions filed to protect language minorities; and the tens of thousands of Federal observers dispatched to monitor polls in jurisdictions covered by the Voting Rights Act of 1965.

(9) The record compiled by Congress demonstrates that, without the continuation of the Voting Rights Act of 1965 protections, racial and language minority citizens will be deprived of the opportunity to exercise their right to vote, or will have their votes diluted, undermining the significant gains made by minorities in the last 40 years.

SEC. 3. CHANGES RELATING TO USE OF EXAMINERS AND OBSERVERS.

(a) USE OF OBSERVERS.—Section 8 of the Voting Rights Act of 1965 (42 U.S.C. 1973f) is amended to read as follows:

"SEC. 8. (a) Whenever—

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

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

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

"(B) in the Attorney General's judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to the Attorney General to be reasonably attributable to violations of the 14th or 15th amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the 14th or 15th amendment), the assignment of observers is otherwise necessary to enforce the guarantees of the 14th or 15th amendment;

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

"(b) Except as provided in subsection (c), such observers shall be assigned, compensated, and separated

without regard to the provisions of any statute administered by the Director of the Office of Personnel Management, and their service under this Act shall not be considered employment for the purposes of any statute administered by the Director of the Office of Personnel Management, except the provisions of section 7324 of title 5, United States Code, prohibiting partisan political activity.

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

''(d) Observers shall be authorized to—

''(1) enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote; and

''(2) enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated.

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

(b) MODIFICATION OF SECTION 13.—Section 13 of the Voting Rights Act of 1965 (42 U.S.C. 1973k) is amended to read as follows:

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

"(1) with respect to observers appointed pursuant to section 8 or with respect to examiners certified under this Act before the date of the enactment of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, whenever the Attorney General notifies the Director of the Office of Personnel Management, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision described in subsection (b), that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) in such subdivision; and

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

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

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

(c) REPEAL OF SECTIONS RELATING TO EXAMINERS.—Sections 6, 7, and 9 of the Voting Rights Act of 1965 (42 U.S.C. 1973d, 1973e and 1973g) are repealed.

(d) SUBSTITUTION OF REFERENCES TO "OBSERVERS" FOR REFERENCES TO "EXAMINERS".—

(1) Section 3(a) of the Voting Rights Act of 1965 (42 U.S.C. 1973a(a)) is amended by striking "examiners" each place it appears and inserting "observers".

(2) Section 4(a)(1)(C) of the Voting Rights Act of 1965 (42 U.S.C. 1973b(a)(1)(C)) is amended by inserting "or observers" after "examiners".

(3) Section 12(b) of the Voting Rights Act of 1965 (42 U.S.C. 1973j(b)) is amended by striking "an examiner has been appointed" and inserting "an observer has been assigned".

(4) Section 12(e) of the Voting Rights Act of 1965 (42 U.S.C. 1973j(e)) is amended—

(A) by striking ''examiners'' and inserting ''observers''; and

(B) by striking ''examiner'' each place it appears and inserting ''observer''.

(e) CONFORMING CHANGES RELATING TO SECTION REFERENCES.—

(1) Section 4(b) of the Voting Rights Act of 1965 (42 U.S.C. 1973b(b)) is amended by striking ''section 6'' and inserting ''section 8''.

(2) Subsections (a) and (c) of section 12 of the Voting Rights Act of 1965 (42 U.S.C. 1973j(a) and 1973j(c)) are each amended by striking ''7,''.

(3) Section 14(b) of the Voting Rights Act of 1965 (42 U.S.C. 1973l(b)) is amended by striking ''or a court of appeals in any proceeding under section 9''.

SEC. 4. RECONSIDERATION OF SECTION 4 BY CONGRESS.

Paragraphs (7) and (8) of section 4(a) of the Voting Rights Act of 1965 (42 U.S.C. 1973b(a)) are each amended by striking ''Voting Rights Act Amendments of 1982'' and inserting ''Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006''.

SEC. 5. CRITERIA FOR DECLARATORY JUDGMENT.

Section 5 of the Voting Rights Act of 1965 (42 U.S.C. 1973c) is amended—

(1) by inserting ''(a)'' before ''Whenever'';

(2) by striking ''does not have the purpose and will not have the effect'' and inserting ''neither has the purpose nor will have the effect''; and

(3) by adding at the end the following:

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

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

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

SEC. 6. EXPERT FEES AND OTHER REASONABLE COSTS OF LITIGATION.

Section 14(e) of the Voting Rights Act of 1965 (42 U.S.C. 1973l(e)) is amended by inserting '', reasonable ex-

pert fees, and other reasonable litigation expenses'' after ''reasonable attorney's fee''.

SEC. 7. EXTENSION OF BILINGUAL ELECTION REQUIREMENTS.

Section 203(b)(1) of the Voting Rights Act of 1965 (42 U.S.C. 1973aa–1a(b)(1)) is amended by striking ''2007'' and inserting ''2032''.

SEC. 8. USE OF AMERICAN COMMUNITY SURVEY CENSUS DATA.

Section 203(b)(2)(A) of the Voting Rights Act of 1965 (42 U.S.C. 1973aa–1a(b)(2)(A)) is amended by striking ''census data'' and inserting ''the 2010 American Community Survey census data and subsequent American Community Survey data in 5-year increments, or comparable census data''.

○

Chairman SENSENBRENNER. H.R. 9 reauthorizes for an additional 25 years and amends provisions of the Voting Rights Act set to expire on August 6, 2007. The Voting Rights Act was enacted in 1965 and reauthorized in 1970, 1975 and 1982, each time with strong bipartisan support. Like the preceding reauthorization efforts, this bill has strong support from Republicans and Democrats alike.

On August 6th, 2005, our Nation celebrated the 40th anniversary of the VRA, which has been one of the most important pieces of civil rights legislation ever enacted. The enactment of the VRA resulted from the efforts of many who fought to eliminate our country's sad legacy of racial discrimination and insure that the rights guaranteed by the constitution were protected for all Americans.

There is no more fundamental right than the right to vote because in a democracy, only the right to vote can protect all the other rights. This right is so central to our system of Government that it is protected by five separate amendments to our Constitution, including the 14th, 15th, 19th, 24th and 26th amendments.

History reveals, however, that States and localities have not always been faithful to the rights and protections offered by our Constitution. Sadly, some have tried to disenfranchise African American and other minority voters through means ranging from violence and intimidation to subtle changes in voting rules. As a result, many minorities were unable to fully participate in the political process for nearly a century.

The VRA changed this and successfully transformed our Nation's electoral process and the makeup of our local, State and Federal Governments. Since its enactment, the VRA has been instrumental in remedying past injustice by restructuring the relationship between States with a history of discrimination and the Federal Government.

Section 5 prohibits States with a history of discrimination from changing electoral practices and processes without first submitting the changes to the Department of Justice, or to the district court for the District of Columbia. Section 5 helped ensure minority citizens have an equal opportunity to participate in our country's political process, and with other provisions of the VRA has helped increase minority participation in elections as well as the number of minorities serving in elected positions.

Last summer, I, along with Ranking Member Conyers and Congressional Black Caucus Chairman Watt, pledged to have the VRA's temporary provisions authorized for another 25 years. Since last fall, the Subcommittee on the Constitution has been examining the VRA in great detail, focusing on the provisions set to expire in 2007. During these hearings, the Subcommittee examined the impact two separate Supreme Court decisions Bossier II and Georgia versus Ashcroft have had on section 5's ability to protect minorities from discriminatory voting changes, particularly in State and congressional redistricting initiatives.

As a result, the bill includes language that makes it clear that a voting rule change motivated by any discriminatory purpose cannot be precleared, and clarifies that the purpose of the preclearance requirements is to protect the ability of minority citizens to elect their preferred candidates of choice.

The Committee record shows that while the VRA has been successful, our work is not yet complete. Discrimination in the elec-

toral process continues to exist and threatens to undermine the progress that has been made over the last 40 years. By extending the VRA for an additional 25 years, H.R. 9 extending that the gains made by minorities are not jeopardized. As previously noted, this legislation has strong bipartisan support, including that of Speaker Hastert and Minority Leader Pelosi.

The bill is also supported by many religious and civil rights organizations, including the leadership conference on civil rights, the ACLU, MALDEF, the NAACP, the National Association of Latino Elected and Appointed Officials Education Fund.

I ask unanimous consent to include in the record a letter dated May 3rd, sent by the leadership Congress on Civil Rights and cosigned by an extensive list of civil rights and religious organizations, and without objection the letter will be placed in the record at this point.

[The information referred to follows:]

Leadership Conference on Civil Rights

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Fax: 202-466-3435
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Judith L. Lichtman
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Asian American Justice Center
William L. Taylor
Citizens' Commission on Civil Rights
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AARP
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Lawyers' Committee for Civil Rights Under Law
Robert W. Edgar
National Council of Churches
Christine Fredrickson
American Civil Liberties Union
Kim Gandy
National Organization for Women
Ron Gettelfinger
International Union, United Automobile Workers of America
Bruce S. Gordon
NAACP
Marcia Greenberger
National Women's Law Center
Andrew J. Imparato
American Association of People with Disabilities
Jacqueline Johnson
National Congress of American Indians
Kay Maxwell
League of Women Voters of the United States
Edward J. McElroy
American Federation of Teachers, AFL-CIO
Floyd Mori
Japanese American Citizens League
Marc H. Morial
National Urban League
Janet Murguia
National Council of La Raza
Ralph G. Neas
People for the American Way
Debra Ness
National Partnership for Women and Families
Anthony D. Romero
American Civil Liberties Union
David Saperstein
Union for Reform Judaism
Ruth Sweetser
American Association of University Women
Theodore M. Shaw
NAACP Legal Defense & Educational Fund, Inc.
Shanna L. Smith
National Fair Housing Alliance
Joe Solmonese
Human Rights Campaign
Andrew L. Stern
Service Employees International Union
John Trasviña
Mexican American Legal Defense and Educational Fund
Reg Weaver
National Education Association
Richard Womack
AFL-CIO
Patrisha Wright
Disability Rights Education and Defense Fund, Inc.
COMPLIANCE/ENFORCEMENT COMMITTEE CHAIRPERSON
Karen K. Narasaki
Asian American Justice Center
EXECUTIVE DIRECTOR
Wade J. Henderson
(*Deceased)

May 3, 2006

The Honorable F. James Sensenbrenner, Jr., Chairman
Committee on the Judiciary
U.S. House of Representatives
2449 Rayburn House Office Building
Washington, DC 20515-4905

Dear Chairman Sensenbrenner,

On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, we write to express our strong support for H.R. 9, The Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006. LCCR deeply appreciates your leadership and the leadership of Representatives John Conyers (D-MI) and Mel Watt (D-NC) in sponsoring this important legislation. H.R. 9 is critical to ensuring the continued protection of the right to vote for all Americans.

The Voting Rights Act (VRA) is considered by many to be our nation's most effective civil rights law. Congress enacted the VRA in direct response to evidence of significant and pervasive discrimination taking place across the country, including the use of literacy tests, poll taxes, intimidation, threats, and violence. By outlawing the tests and devices that prevented minorities from voting, the VRA put teeth into the 15th Amendment's guarantee that no citizen can be denied the right to vote because of the color of his or her skin. The VRA was initially passed in 1965 and has been renewed four times by bipartisan majorities in the U.S. House, and signed into law by both Republican and Democratic presidents. In the 41 years since its initial passage, the VRA has enfranchised millions of racial, ethnic, and language minority citizens by eliminating discriminatory practices and removing other barriers to their political participation. In doing so, the VRA has empowered minority voters and has helped to desegregate legislative bodies at all levels of government.

Throughout the 109th Congress, during ten oversight hearings that considered the ongoing need for the VRA, the House Judiciary Subcommittee on the Constitution found significant evidence that barriers to equal minority voter participation remain. The oversight hearings examined three of the VRA's key provisions that are set to expire in August of 2007: Section 5, which requires that certain jurisdictions with a history of discrimination in voting obtain federal approval prior to making any changes affecting voting, thus preventing the implementation of discriminatory practices; Section 203, which requires certain jurisdictions to provide language assistance to citizens who are limited-English proficient; and Sections 6 through 9, which authorize the federal government to send observers to monitor elections for compliance with the VRA.

The evidence gathered by the subcommittee revealed continuing and persistent discrimination in jurisdictions covered by Section 5 and Section 203 of the VRA. The oversight hearings found that a second generation of discrimination has emerged that serves to abridge or deny minorities their equal voting rights. Jurisdictions continue to attempt to implement discriminatory electoral procedures on matters such as methods of election, annexations, and polling place changes, as well as through redistricting conducted with the purpose or the effect of denying minorities equal access to the political process. Likewise, the oversight hearings demonstrated that citizens are often denied access to VRA-mandated language assistance and, as a result, the opportunity to cast an informed ballot.

H.R. 9 is a direct response to the evidence of discrimination that was gathered by the subcommittee. It addresses this compelling record by renewing the VRA's temporary provisions for 25 years. The bill reauthorizes and restores Section 5 to its original congressional intent, which has been undermined by the Supreme Court in *Reno v. Bossier Parish II* and *Georgia v. Ashcroft*. The *Bossier* fix restores the ability of the Attorney General, under Section 5 of the Act, to block implementation of voting changes motivated by a discriminatory purpose. The *Georgia* fix clarifies that Section 5 is intended to protect the ability of minority citizens to elect their candidates of choice. Section 203 is being renewed to continue to provide language-minority citizens with equal access to voting, using more frequently-updated coverage determinations based on the American Community Survey Census data. The bill also keeps the federal observer provisions in place, and authorizes recovery of expert witness fees in lawsuits brought to enforce the VRA.

The right to vote is the foundation of our democracy and the VRA provides the legal basis to protect this right for all Americans. We know that you are committed to timely Congressional action to renew and restore this vital law and we commend you for your leadership in introducing and sponsoring The Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006. If you or your staff has any further questions, please feel free to contact Nancy Zirkin, LCCR Deputy Director, or Julie Fernandes, LCCR Senior Counsel, at (202) 466-3311.

Sincerely,

Leadership Conference on Civil Rights

A. Phillip Randolph Institute
AARP
Advancement Project
American Association of People with Disabilities
American Association of University Women
American Civil Liberties Union (ACLU)
American Federation of Government Employees
American Federation of Labor and Congress of Industrial Organizations
American Federation of State, County and Municipal Employees

American Foundation for the Blind
American Jewish Committee
American-Arab Anti-Discrimination Committee
Americans for Democratic Action
Anti-Defamation League
Asian American Justice Center
Asian American Legal Defense and Education Fund
Asian and Pacific Islander American Vote (APIAVote)
Asian Pacific American Labor Alliance
Asian Pacific American Legal Center
Center for Civic Participation
Common Cause
Community Service Society
Dēmos: A Network of Ideas and Action
Disability Rights Education and Defense Fund
FairVote
Federally Employed Women
Feminist Majority
Friends Committee on National Legislation
Gamaliel National Clergy Caucus
Hadassah, the Women's Zionist Organization of America
Hispanic Association of Colleges and Universities
Human Rights Campaign
International Association of Official Human Rights Agencies
Japanese American Citizens League
Jewish Council for Public Affairs
Jewish Labor Committee
Korean American Resource and Cultural Center (KRCC)
Korean Resource Center (KRC)
Lawyers' Committee for Civil Rights Under Law
League of United Latin American Citizens
League of Women Voters of the United States
Legal Momentum
Mexican American Legal Defense and Educational Fund
NAACP Legal Defense and Educational Fund, Inc
National Alliance of Postal and Federal Employees
National Asian Pacific American Bar Association (NAPABA)
National Association for the Advancement of Colored People
National Association of Human Rights Workers
National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund
National Association of Neighborhoods
National Association of Social Workers
National Community Reinvestment Coalition
National Congress of American Indians
National Congress of Black Women
National Council of Churches of Christ in the USA

National Council of Jewish Women
National Council of La Raza
National Council of Negro Women, Inc.
National Education Association
National Fair Housing Alliance
National Federation of Filipino American Associations
National Gay and Lesbian Taskforce
National Institute for Latino Policy
National Korean American Service and Education Consortium (NAKASEC)
National Low Income Housing Coalition
National Organization for Women (NOW)
National Partnership for Women & Families
National Puerto Rican Coalition
National Urban League
National Voting Rights Institute
National Women's Law Center
Native American Rights Fund
NETWORK: A Catholic Social Justice Lobby
Organization of Chinese Americans
Parents, Families and Friends of Lesbians and Gays (PFLAG) National
People For the American Way
Poverty & Race Research Action Council
Presbyterian Church (USA)
Project Equality
Protestants for the Common Good
Puerto Rican Legal Defense and Education Fund
RainbowPUSH
Service Employees International Union
Sikh American Legal Defense and Education Fund
Southeast Asia Resource Action Center (SEARAC)
Southwest Voter Registration Education Project
The Interfaith Alliance
The Massachusetts Latino Political Organization
The Workmen's Circle/Arbeter Ring
Unitarian Universalist Association of Congregations
United Auto Workers
United Methodist Church, General Board of Church and Society
United Steelworkers
William C. Velasquez Institute
YKASEC - Empowering the Korean American Community
YWCA USA

Chairman SENSENBRENNER. The majority leader's office has indicated that H.R. 9 will be considered on the House floor next week. I strongly urge my colleagues to support this legislation.

I will now recognize the Ranking Member from Michigan, Mr. Conyers, for 5 minutes.

Mr. CONYERS. Mr. Chairman and Members of the Judiciary Committee, this is a historic moment for me because I came to the Congress in 1965 and was able to participate not only in the three extensions of the act in 1970, 1975 and 1982, but I was there at the beginning of it, and so I come with a lot of memories and a lot of reflections, and I am proud to support this reauthorization that has been the result of incredible amounts of work from nearly every Member of the Committee, but in particular, the Chairman, Jim Sensenbrenner, whose strong commitment to the act, which was equally evident in the 1982 reauthorization. His leadership has been critical to the legislative success of the act and a testament to the fact that civil rights is not a partisan issue, indeed, it is a bipartisan issue.

I also note that one of the people that have worked with Mel Watt, who is a Member of this Committee and chairman of the Congressional Black Caucus, is with us, and his name is Wade Henderson of the leadership conference on civil rights, who has worked with dozens and dozens of groups until we could finally get this thing together, and then worked with our Republican colleagues, the leadership, and here we are today after having had a bipartisan, bicameral agreement on the east front of the steps of the United States Capitol, that this was, in fact, as important a matter as has been said. We haven't reached a point, but we made incredible, incredible progress.

Section 5, of course the trigger is the heart of the extension. Then we move to section 203, where we are trying to get the language minorities, who, in some places, remain victims of discriminatory voting continued in that for those who still need language assistance to cast an effective ballot.

May I say, where could we show democracy working more finely than helping those new citizens get through this most important responsibility that they now bear. So through a series of 10 hearings, the Committees compiled a record, the Chairman and I went to the Senate before Chairman Specter of Judiciary, and they incorporated into their record our entire hearings. It was, I think, a very, very important event indeed.

We have a couple of Supreme Court cases that we untangled, Georgia and Ashcroft and the Bossier decision earlier.

And so what I close with is this, the Voting Rights Act is one of our Nation's most important civil rights victories. It memorializes the struggles and the marches and the understanding that, thanks to John Lewis of Georgia, have come to understand that this is something that the world is watching to see how we respond to our own democratic institution, the one of voting. And so we know that we must continue our efforts to protect the rights of all voters, and the reauthorization and restoration of this crown jewel, the Voting Rights Act must be continued, and I am hoping that we can do it collectively in a collegial manner, as friendly even as we can to extend this act at full strength and send it to the other body. I am fully committed to doing it, just as I was in of 1965.

Thank you, Mr. Chairman. I return my time.

Chairman SENSENBRENNER. The gentleman's time is expired. Without objection all Members may include opening statements in the record at this point.

Are there amendments. The gentleman from California, for what purpose do you seek recognition?

Mr. ISSA. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 9, offered by Mr. Issa of California. Add at the end, the following. Section, study and report. The comptroller general shall study the implementation, effectiveness and efficiency of the current section 203 of the Voting Rights Act of 1965 and alternatives to the current implementations consistent——

Chairman SENSENBRENNER. Without objection the amendment is consider as read. The gentleman from California is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO H.R. 9

OFFERED BY MR. ISSA OF CALIFORNIA

Add at the end the following:

SEC. ___. STUDY AND REPORT.

The Comptroller General shall study the implementation, effectiveness, and efficiency of the current section 203 of the Voting Rights Act of 1965 and alternatives to the current implementation consistent with that section. The Comptroller General shall report the results of that study to Congress not later than 1 year after the date of the enactment of this Act.

Mr. ISSA. Thank you, Mr. Chairman. I offer this, I believe, noncontroversial amendment first and foremost, because I support the Voting Rights Act reauthorization. I believe that it is an important continuing American legacy trying to reach as many people as possible so they can exercise their right to vote.

But I also believe that in the 21st century the technologies and the ability to do a better job, perhaps more efficiently and effectively, at the same time exists. Just as the blind early on—just as the blind early on——

Mr. CONYERS. Would the gentleman from California yield to me just briefly?

Mr. ISSA. Yes.

Mr. CONYERS. I wanted to indicate that we didn't know if there were going to be amendments or not, but this amendment has been reviewed, and I can report to you that it is accepted on our side. I commend you for it, as a matter of fact.

Mr. ISSA. Thank you.

Chairman SENSENBRENNER. Would the gentleman yield to me?

Mr. ISSA. Yes, I will, Mr. Chairman.

Chairman SENSENBRENNER. I reviewed it as well and I agree with Mr. Conyers.

Mr. ISSA. Then I will quickly take yes for an answer and simply say that I believe that we will find ways to do even a better job of what we have been doing and trying to do since 1965. With that, I yield back.

Mr. WATT. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from North Carolina.

Mr. WATT. I wanted to inquire.

Chairman SENSENBRENNER. Recognized for 5 minutes.

Mr. WATT. I want to inquire between now and the floor we might look at whether the 1-year period is the right time. I think there is a lot of information about the effectiveness of 203 going back, but we have got an election this year and a big presidential election in 2008.

Chairman SENSENBRENNER. Will the gentleman yield.

Mr. WATT. Yes.

Chairman SENSENBRENNER. How long does the gentleman suggest that we have this study go out for?

Mr. WATT. Well, I am not sure. I want to leave open the possibility that——

Chairman SENSENBRENNER. I was going to ask unanimous consent to strike 1 year from line 7 and insert another figure. Do you have a good idea what the figure should be?

Mr. WATT. I think it ought to be right after the 2008 presidential election, because we will have a better body of information to analyze.

Mr. ISSA. Would the gentleman yield? My intention with this was, in fact, that we would supplement after an initial 1-year report, that we would expect to go back out with an additional study that, in fact, I don't expect they will have all the answers, but this body will begin looking at the future of ways to do what the Voting Rights Act insists that we do, and do it better.

Mr. WATT. With that understanding and that record, I think it would be fine, Mr. Chairman. The challenge, I think we face addi-

tionally, is to convince the Senate to put this in their bill, because we are trying to keep this bill.

Chairman SENSENBRENNER. Will the gentleman yield back?

Mr. WATT. I yield back.

Chairman SENSENBRENNER. For what purpose does the gentleman from New York seek recognition?

Mr. NADLER. Mr. Chairman, I have no objections to Mr. Issa's amendments. I was looking forward to hearing from him what new technological developments he thinks affects this.

Mr. ISSA. If the gentleman would yield.

Mr. NADLER. Yes, I would.

Mr. ISSA. A good example are the Internet-based universal translation devices that could, in fact, be certified. So instead of having an argument over whether there are sufficient Laotians in some area, that we may be able to have a national database for translation. In addition, the ability to convert text to voice in multiple languages, particularly for the blind and those who do not have reading skills in any language.

Mr. NADLER. Reclaiming my time. It is very interesting. I ask if the gentlemen would yield for a further question. It is your thought that if some of this technology works out, that maybe we would instead of requiring multiple languages on the ballot, require that this technology be at the polling places?

Mr. ISSA. I think, if the gentleman would yield, I believe that what would begin to happen is we would begin to empower and probably fund with Federal funds these technologies being made available, certified, overseen and then they would become still a States issue, but I think a lot of States would quickly adopt.

Mr. NADLER. I thank the gentleman. I yield back.

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentleman from California, Mr. Issa. Those in favor will say aye. Opposed, no. Ayes appear to have it. The ayes have it. The amendment is agreed to. Are there further amendments?

Ms. JACKSON LEE. Mr. Chairman, I have an amendment at the desk, 248.

Chairman SENSENBRENNER. The Clerk will report amendment 248.

The CLERK. Amendment to H.R. 9, offered by Ms. Jackson Lee of Texas. Add at the end the following: Sec. 9. additional violation of right to vote. Section 2 of Voting Rights Act of 1965 is amended by adding at the end the following. Subsection C, a per se violation of subsection A shall be established where a jurisdiction covered by section 5 of this Act redistricts its legislative or congressional districts in mid decade, provided that such redistricting take place after legislative or——

Chairman SENSENBRENNER. Without objection the amendment is considered as read and the gentlewoman from Texas is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO H.R. 9

OFFERED BY MS. JACKSON-LEE OF TEXAS

Add at the end the following:

SEC. 9. ADDITIONAL VIOLATION OF RIGHT TO VOTE.

Section 2 of the Voting Rights Act of 1965 (42 U.S.C. 1973) is amended by adding at the end the following:

''(c) A per se violation of subsection (a) shall be established where a jurisdiction covered by section 5 of this Act redistricts its legislative or congressional districts in mid-decade, provided that such redistricting takes places after a legislative or congressional redistricting plan has previously in the decade been enacted or approved by a final order of a federal court of competent jurisdiction.''.

Ms. JACKSON LEE. I thank the distinguished Chairman and the Ranking Member. I appreciate this opportunity to explain my amendment, and my amendment makes it an automatic or per se violation of the Voting Rights Act for a covered jurisdiction like my home State of Texas to redistrict its legislative or congressional districts in the mid decade. After those——

Chairman SENSENBRENNER. The Committee will be in order. The gentlewoman from Texas.

Ms. JACKSON LEE. I did want to mention to my colleagues that I have several amendments at the desk, but I will be listening keenly to my other colleagues as well.

Let me just say that like my home State of Texas, to redistrict its legislative or congressional districts in the mid decade after those districts had already been redrawn in that decade and either enacted into State law or approved by a Federal court, and might I say that Texas is a Voting Rights Act State.

Before I explain my amendment, let me express my sincere appreciation to the Chairman and Ranking Member for the generally bipartisan cooperation in shepherding this historic and vital legislation to this point. Let me thank the many organizations and particularly the leadership of Wade Henderson and a number of other very instructive groups. Let me thank my colleague, Representative Mel Watt and the Members of this Judiciary Committee.

This hits home very hard and very pointedly and the enormous impact of the mid districting of our congressional districts in the State of Texas symbolizing what could happen across the Nation brought the acts of democracy and the Voting Rights Act in the State of Texas to its knees.

The Voting Rights Act of 1965 is no ordinary piece of legislation. For millions of Americans and many on this Committee the Voting Rights Act act of 1965 is a sacred treasure earned by the sweat and toil and tears and blood of ordinary Americans who showed the world it wasn't impossible to accomplish extraordinary things. I think that it is particularly of note that the Honorable Barbara Jordan who sat in this Committee was one of the Members who modified along with the Judiciary Committee to add the language provision. This is how important this language and this Voting Rights Act is to all of us.

The Voting Rights Act of 1965 as amended which we will vote to reauthorize today was enacted to remedy a history of discrimination in certain areas of the country. Presented with a record of systemic and systematic defiance by certain States and jurisdictions that could not be overcome by litigation, this Congress led by President Lyndon Johnson from my own home State of Texas took the steps necessary to stop it.

It is instructive to recall the words of President Johnson when he proposed the Voting Rights Act of 1965. Rarely are we met with a challenge to the values and the purposes and the meaning of our beloved Nation. The issue of equal rights for American Negroes is such an issue. The command of the constitution is plain. It is wrong, deadly wrong to deny any of your fellow Americans the right to vote in this country. We are gratified that it has been expanded to include many other Americans. The Voting Rights Act of 1965 represents our country and this Congress at its best. It matches our words to deeds, our actions to our values, and, as is

usually the case, when American acts consistent with its highest values, success follows.

Without exaggeration, the Voting Rights Act has been one of the most effective civil rights laws passed by the Congress. In 1964, there were approximately only 300 African Americans in public office, including just three in Congress; few, if any, black officials were elected anywhere in the south, and you can find the enormous impact on Hispanic-elected officials and voters.

Today, there are more than 9,100 black elected officials, including 43 Members of Congress, the largest number ever. The act has opened the political process for many of the approximately 6,000 Latino public officials that have been elected and appointed Nationwide, including 263 at the State level, 27 of whom serve in Congress; Native Americans, Asians and others who have been historically impacted by these harsh barriers.

Mr. Chairman, I hail from the State of Texas, the Lone Star State and a State that sadly had one of the most egregious records of voting discrimination against racial and language minorities. Texas is one of the Voting Rights Act's covered jurisdictions. And then, of course, we experienced this, if you will, heinous act of redistricting that impacted, if you will, the impact of African American and Hispanic Congresspersons. I am only one of three African American women from Texas that serve in the Congress of the United States, and one of only two to sit on this Committee. But we hold this seat with the idea of the Voting Rights Act. And I sit here as the heir of the Civil Rights Movement, a beneficiary of the Voting Rights Act, and my faith——

Chairman SENSENBRENNER. The time of the gentlewoman has expired.

Ms. JACKSON LEE. My amendment simply, Mr. Chairman, if I might just finish this sentence, my amendment is simply it is obviously the right thing to do. It declares that it is an automatic per se violation of the Voting Rights Act for a covered jurisdiction to redistrict its legislative or Congressional district in the mid decade after those districts had already been redrawn in that decade and either enacted into State law or approved by a Federal court. This, I believe, is in compliance with the Voting Rights Act that we now have before us, and I would ask that we have the ability to make it more secure by adding this amendment.

Chairman SENSENBRENNER. The gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I am extremely reluctant after all of the great comments passed by the gentlelady from Texas to preserve any support for this amendment. I oppose it because Texas redistricting litigation is before the courts right now, and I think to write this into a 25-year bill would be totally inadequate and I reluctantly have to oppose the amendment.

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. CONYERS. Yes, I do yield back.

Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes in opposition to the amendment.

This bill is the subject of lengthy negotiations and it is an agreed upon bill, and this amendment is a deal breaker, and I will be very blunt in saying that. If you look at the litigation history of the Voting Rights Act following its 1965 enactment and its 1972 and 1982 extensions, the court repeatedly stated that for Congress to over-

ride the prerogatives of States in the election, there has to be an extensive legislative record and findings drawn from that record to show that there is discrimination.

As a result, both the three times in the past when the Voting Rights Act was passed and reauthorized, as well as this time, there has been that extensive legislative record. There has not been a record that has been created on this subject. And to put this into section 5 of the Voting Rights Act, in my opinion, would end up jeopardizing the constitutionality of it because Congress has made no findings.

I would also point out that the record or the amendment that has been offered by the gentlewoman from Texas is probably erroneously drafted because what it does do is it locks in the current Texas redistricting, if it should be enacted prior to the time a court should decide the case, if the court decides the case in favor of the plaintiffs and against the State of Texas.

So for all of these reasons I would think it is not an amendment that should be agreed to.

I yield to the gentleman from Texas.

Mr. GOHMERT. I would also like the record to note the current Texas redistricting plan added one African American, minority district that was not there, and to say that per se it violated the Voting Rights Act would actually be quite a snub. It would seem to African American Democrat Judge Al Green, who I think is a great addition to our Congress, and I would hate to say per se he is a bad thing for the African American community.

I yield back, Chairman.

Chairman SENSENBRENNER. You are going to yield back the balance of my time.

The question is on—the gentleman from North Carolina Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Mr. Chairman, I recognize throughout the discussions leading to the introduction of this bipartisan and bicameral bill that there would be people both on the Committee and outside the Committee who have individual State interests, local interests, and national interests that would go beyond the scope of this bill, some of them possibly more appropriately addressed in the Help America Vote Act, some addressed in other contexts.

I think we have reached a bill that is a very delicate balance, and in the interest of maintaining that balance I am going to ask Ms. Jackson Lee, if she might consider withdrawing this amendment so that we can keep the balance that has been neglected and maintained, avoid the possibility of ending up with a divisive fight with the Senate, avoid the possibility of prolonging the processing of this important extension bill by possibly having to go to conference, and I am going to ask not only Ms. Jackson Lee, but all of our Members to understand that the magnitude of the national interest here far exceeds what may be going on in any particular State or jurisdiction.

We need to send a resounding message to America that the importance of the vote to every citizen in this country is important

and is to be protected. And in that spirit I would ask the gentlelady if she might consider withdrawing her amendment at this point and I would be happy to yield to the gentlelady for the response.

Ms. JACKSON LEE. I thank the gentlemen very much. If I might just briefly say I think it is well known of the devastating impact to the voters of Texas that generated out of mid-term redistricting, even to the extent that we saw the staff of the Justice Department's position obliterated by political appointees.

Let me just say this; that in that State we saw the diminishing of African American vote and the loss of impact of the Latino and Hispanic vote, if you will. So it is of enormous importance to us. Frankly, if we can draw upon the good graces of our colleagues on both sides of the aisle, frankly, to wait on these interests, your inquiry, Mr. Watt is one that I will consider.

I will close by saying this; that we remember the African proverb when the bull and elephants fight, the ground gets trampled on. I believe that when we had this redistricting mid-term, we were trampled on, and that is the rights of African Americans, Hispanic, other racial minorities and language minorities.

But because of the intent to move forward and the consensus that has been established and my desire for this voters right act and my constituents' desire for it to be reauthorized without the baggage of amendments, without compromises, then at this time, as Mr. Conyers has said, I will pursue the legal remedies in the courts, and I will look to write legislation on this specific mid-term redistricting and encourage the civil rights organizations to support me in this effort and with that I ask unanimous consent to withdraw this amendment.

Chairman SENSENBRENNER. The amendment is withdrawn. The gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman. I have an amendment at the desk, 109.

Chairman SENSENBRENNER. The Clerk will report the amendment.

The CLERK. Amendment to H.R. 9, offered by Mr. King of Iowa, strike section 7 and 8.

Chairman SENSENBRENNER. The gentleman from Iowa is recognized for 5 minutes.

[The amendment follows:]

Amendment to H.R. 9

Offered by Mr. King of Iowa

Strike sections 7 and 8.

Mr. KING. Thank you, Mr. Chairman. My amendment 109, and it is in conjunction with the King-Inglis amendment, it simply allows the sunset of sections 203 and 4(f)(4). So it strikes section 7 and 8 of the bill, the Voting Rights Act reauthorization, and allow them to automatically expire in 2007. It would not prohibit voters who need assistance from having help to vote. Current law states, and I will quote: Any voter who requires assistance to vote by reason of blindness, disability or inability to read or write may be given assistance by a person of the voter's choice. This allows people, including limited English-proficient persons, who are not able to read an English language ballot, to have assistance in the voting booth. This approach is preferable to the requirements in section 203 and 4(f)(4), because it puts the burden to understand English ballots on U.S. citizens exercising their right to vote, not on the taxpayers of America. It also allows the voters to choose who will help him or her in the voting groups. My amendment ends the significant growing unfunded mandated on counties an localities. The number of counties required to provide election materials in foreign languages has increased dramatically.

In 1975, only a relatively handful of counties in a few States were covered under sections 203 and 4(f)(4). Today, nearly 300 counties and municipalities in 30 States across the country to hire bilingual poll workers and produce election materials in foreign languages. This number will only increase after the 2010, 2020 and the 2030 censuses, because the reauthorization extends them for 25 more years.

Reauthorizing the multilingual voting mandate for 25 years contradicts our immigration law, because knowledge of English is a condition for naturalization. Since 1907, Congress has required candidates for naturalization to demonstrate an understanding of the English language, including an ability to read, write and speak English in the ordinary usage of the English language.

In order to vote, a person must be a U.S. citizen. Our naturalization standard was intended to ensure that immigrants are able to fully participate in our democratic process when they naturalize. The multilingual voting requirements were always intended to be temporary. The multilingual election requirements in 203 and 4(f)(4) of the current Voting Rights Act were not part of the original VRA, and were always intended to be a temporary measure. They were only added by the VRA in 1975, 10 years after the original act became law, and they are designed for a specific purpose to automatically expire in 2007.

That is what my amendment does, allows them to expire in 2007. My amendment fixes an historic aberration. For most of our Nation's history, we have expected all Americans including new immigrants to vote in English. This encouraged new immigrants to learn English to assimilate in order to have full access to full freedom and economic opportunity available in America.

At a time when the U.S. is experiencing record immigration, it is essential that we return to this tradition of encouraging assimilation.

The King-Inglis amendment also reduces the likelihood of errors. During the 2000 general election, six polling places with significant Chinese immigrant population in Queens, New York, had Democratic translated in Chinese to Republican and Republican to

Democratic on their ballots, causing confusion and one would presume voter error.

Smaller populations of limited English proficient voters do not get bilingual ballots. They should be provided constitutional equal protection under the 14th amendment by allowing ballots only in one language, because that is the only way we can guarantee equal protection, is one single standard, the standard of English. The next leader of the free world may be chosen by non-English speakers.

For these reasons and many more, I encourage the Members to support the King-Inglis amendment, which would allow for the sunset of bilingual ballots and return us back to the assimilation standard that this country has so historically stood by for these centuries. Thank you, Mr. Chairman, and I would yield back.

Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes in opposition to the amendment.

The Chair thanks the gentleman from Iowa for bringing this issue up before the Committee, and let me say, I don't think the time has come to get rid of bilingual ballots, for a couple of reasons. First of all, and probably most importantly, there are a number of United States citizens who are born here, and particularly those who have been residents of Puerto Rico where Spanish is the language that is used, and should they move to the mainland U.S., they are just as much U.S. citizens as everybody else. And even though they are not functional in English because of where they were raised, they are entitled to vote in their State or their locality of residence. And I believe that they should have access to bilingual ballots, if there is a concentration of them.

The second point that I would like to make is that here we are not dealing with illegal immigrants, we are dealing with United States citizens, and they are people who have either attained citizenship by reason of birth in the United States, and that includes places like Puerto Rico and Guam, or have been naturalized.

Now I think that probably the need for continuation of bilingual ballots is perhaps an indictment as to the lack of effectiveness of bilingual education. English is the language of commerce in this country, whether we pass a law saying that that is the case or not, and no one can really achieve the American dream unless they are able to function in English.

Should we close the door to understanding a ballot because of a failure of our educational system or because of the fact that people have moved to a place where English is commonly used in the United States from a place in the United States where English is not commonly used? I would answer that question no, and for that reason, I think that the bilingual ballot provisions that are contained in the compromise in section 203 should not be stricken, as the gentleman from Iowa's amendment proposes, and consequently I would urge its defeat.

Mr. CONYERS. Could the Chairman yield to me?

Chairman SENSENBRENNER. I yield.

Mr. CONYERS. I won't need the time. But I agree and come to the same conclusion as the Chairman, but with this reasoning: The numbers of eligible Latino voting is still way behind their African American and white counterparts, and we also have an extremely low number of Latino elected officials. So bilingual assistance is

still viable and necessary. The other reason, ladies and gentlemen, is that the Asian American populations are experiencing the same problem.

I conclude by merely pointing out that the costs are very modest, if there are any costs at all. When we hire a bilingual poll worker, they are paid the same as other poll workers. And so it seems to me that from a cost basis and from a need basis, we don't need this amendment; we need to continue on with section 203 in its presents form.

Ms. LOFGREN. Would the gentleman yield?

Mr. CONYERS. I would like to speak briefly in support of the proposition just outlined by the Ranking Member and note that in my congressional district, there is the largest percentage of Americans of Vietnamese descent of any congressional district in the country, and these are patriotic Americans. But especially for the older people, English has been learned to become naturalized, but in California, we have these very complicated initiatives, and it is really very, very helpful for people to be able to read it in their first language instead of their second language.

I thank the gentleman for yielding.

Chairman SENSENBRENNER. The Chair yields back whatever time he has left.

The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, I want to thank you and Chairman Chabot and the Ranking Members for holding extensive hearings on this issue because we have a hearing record and the record is clear, if you provide the assistance, the voter participation will go up. If you remove the assistance, the voter participation will go down. There is no evidence presented to contradict that finding, nor is there any evidence that I remember of mistakes being made. That is new information.

But as the gentleman from Michigan has indicated, there is virtually no cost to providing this assistance. You have got to hire a poll worker anyway. If you have a significant number of people who speak another language, it makes sense to hire somebody who speaks both languages.

Mr. Chairman, this only applies when there is a critical mass of voters in that district. Five percent, or 10,000 voters are enough to affect an election and enough where encouraging or discouraging voter turnout might reasonably affect the outcome. Those in power, we don't want to give those in power the ability to jury-rig the election by virtue of the fact they can discourage certain workers.

A lot has been said about the need for people to learn English. The hearing record reflects that there is a long waiting list for people who are trying to learn to become for fluent in English. If we are going to apply for resources to get rid of these waiting lists, that is a political decision. The way people affect that decisions by voting. If you are denying them the right to vote or discouraging the right to vote, that makes no sense. The more they vote, the more English they will be able to learn because they will vote for those provisions.

Mr. Chairman, the bottom line is that the assistance works, it increases voter participation. The point of the this bill, the Voting Rights Act is to encourage participation, and section 203 is clearly consistent with that desire and inconsistent with this amendment.

I would hope that we would defeat this amendment, and I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Smith.

Mr. SMITH. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SMITH. Mr. Chairman, I appreciate your and the Ranking Member's collaborative efforts on this bill, and understand that the product is the result of a long negotiate process. I also appreciate Mr. King's amendment on the subject of bilingual ballots and I intend to support the King amendment as well as the underlying bill.

Our democracy rests on the foundation of the right to vote. The Voting Rights Act has succeeded in helping to guarantee that right over the last 40 years. It has enabled citizens who are eligible to vote, to do so.

The Voting Rights Act has moved America from a place where people who supported the right of minorities to vote were being murdered, to a place where over 123 million citizens including minorities voted in the last national election.

Like others though, I have concerns about 2 sections of the Voting Rights Act and whether they are necessary in their current form. First, I am concern that bilingual ballots are required whether there is a demonstrated need or not. Also, if you were born in America, you should know English. If you are a naturalized citizen, you should have passed an English proficiency test.

Second, I am concerned that the preclearance requirements overly burden many jurisdictions. We should not automatically apply these requirements to jurisdictions that no longer disenfranchise minority or other voters. We should make allowances for jurisdictions across America that no longer engage in illegal or discriminatory practices.

In 1982, Congress added a process that allows jurisdictions to opt out of the requirements if their application was granted by the D.C. district court, but the process is difficult, and in some respects, impractical, which is one reason why only a few jurisdictions have qualified to opt out.

Mr. Chairman, I look forward to the time when the opt out provisions will be used more successfully. Mr. Chairman, I support the goal of the underlying legislation and hope that during the legislative process, we can make the changes necessary to have a more workable Voting Rights Act, and, Mr. Chairman, I will yield balance of my time to the gentleman from Iowa, Mr. King.

Mr. KING. I thank the gentleman from Texas for yielding, and appreciate the opportunity to make a couple of points and I agree with our remarks made by the Chairman with regard to some of the reality in places like Puerto Rico. But I would point out that there has been for a long time a requirement to teach English in the schools in Puerto Rico and the odds of finding people there who are not proficient enough in English to understand a ballot are diminishing by the year.

It becomes less and less essential, and I would speak to the issue, if they can't understand the ballot well enough in English, I still remind the Committee an individual has the opportunity to bring a person of their choice into the polling booth.

Then I would add that the issue of bilingual poll workers being paid the same; they are hard to find. Sometimes it takes quite a lot of money to encourage someone to come in there. I would submit if they are paid the same, perhaps everyone gets a raise because the supply and demand. But they aren't always available.

A third thing would be that if you cannot understand the ballot in English, and you can't learn to understand the ballot in English, even though you can bring someone into the polling booth, how does a voter determine their judgment on how they make a selection on perhaps who would be the next leader in the free world. If you can't understand the language, then how do you understand the culture, how do you make that evaluation.

I would submit that 528 different decisions made in Florida in the year 2000 would have given a different electoral result, and I would also submit that that result may have been different had we seen this provision of the Voting Rights Act, the importance Voting Rights Act expire.

I encourage support of this amendment and yield back to the gentleman from Texas, Mr. Smith.

Mr. SMITH. Mr. Chairman, I will yield back as well.

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Chairman, I rise in opposition to this amendment. We used to have literacy tests in this country on the grounds that only people who we thought were literate in the English language should be able to vote. We have now determined that that was discriminatory, and no one, I presume, on this Committee would defend that today, at least publicly.

Now we have this amendment and this question before us. There are people in this country, Native Americans, people born in Puerto Rico, people who are legal immigrants who came here who are American citizens, all of whom had to take an English exam, civics exam to become citizens, except for those in Puerto Rico because they were already, but who are not as comfortable in English.

I have at my house a history of the United States that ends in 1917 in Yiddish and English. It is the book my grandparents studied for their citizenship exams. They only spoke Yiddish at home until they died. My parents only spoke Yiddish when they wanted to keep a secret from the kids. My brothers and I don't speak Yiddish, for obvious reasons.

Why would it have been harmful if we made it a little easier for my grandparents to vote by having a bilingual ballot. Section 203—and today's immigrants are no different. Section 203 simply says we have a concentration of foreign language proficient, less English proficient speakers in one district, then you should bilingual help there.

The gentleman asks how are they supposed to know how to vote. We publish newspapers in this country in something like 300 different languages. You don't have to read, as much as I hate to say it, The Washington Post or New York Times to know what you are doing. There are plenty of foreign language in Spanish, Russian and Chinese, and God knows what in this country that do as good a job at reporting, some of them.

So the question really is, and Mr. Scott talked about how when you have this assistance, the turnout goes up, when you don't, it goes down. Do we want to discourage or encourage American citizens who want to vote because we are not sure they would vote for the right people. That is not worthy of this House. I had assumed that we weren't going to be offering amendments to this section today. I have an amendment prepared.

I have a couple hundred thousand in New York and elsewhere now, people who immigrated starting under Ronald Reagan from the former Soviet Union. They speak Russian and English. They are not eligible for the bilingual assistance because Russian is not an Asian language. I think it should be. I prepared an amendment for that. I wasn't going to offer it because of an understanding we shouldn't be tampering with this, and I may not, but if we start amending section 203, I may offer that to make 203 even better than it is.

It is a perfectly fine section now. And to go backwards to say that we should make it harder for people to vote, harder for them to understand, and now they all speak English, at least to the degree necessary to pass their citizenship exam. No one has repealed that section. Why would we want to make it harder for people to vote unless we think we know better about who they should vote for? So I pose this amendment.

Mr. CONYERS. I just want to commend the gentleman because he has brought his personal perspective and his family and also his reluctance to take more time as we move toward some votes on the floor that would prevent us from concluding with this measure today. And I thank the gentleman again. I yield back.

Mr. NADLER. I yield back.

Chairman SENSENBRENNER. The gentleman from Indiana, Mr. Hostettler.

Mr. HOSTETTLER. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. HOSTETTLER. Mr. Chairman, I would like to voice my support for the King-Inglis amendment. As has been mentioned several times before, some people would suggest that voting is the most precious right that we encounter in America. I would suggest that probably even beyond that is having citizenship bestowed upon us at birth or as a result of naturalization, and, as has been mentioned, the process of naturalization requires a certain level of proficiency in English, and it was suggested earlier I guess that there is some implicit notion of bigotry in our naturalization process because it requires a proficiency of literacy in the English language. I don't think that is what was meant to be said but that was effectively what was said.

I believe that as we look toward the issue of voting, that as individuals who wish to become citizens or wish to become as citizens proficient in English, that it is a tremendous prize to be able to go into the polling place and use that English language, the de facto new native tongue in the process of exercising that very blessed right, and that is the right to vote.

So I do not believe that it is a great thing; it is a tremendous burden to require individuals to exercise that right of voting in their newly acquired, in the case of naturalized citizens, native

tongue, or in the native tongue in which they are born. It is what we have determined over many years in this country to be the native tongue, and I believe that it is time for this particular provision to be sunsetted and to be eliminated.

And with that, Mr. Chairman, I yield back the balance of my time.

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters.

Ms. WATERS. Thank you very much, Mr. Chairman and Members. I rise in opposition. I move to strike the last word. I rise in opposition to this amendment. I know that there are Members who have all kinds of immigration concerns. I, first, would like to ask my colleagues not to use this bill to address your concerns about immigration and immigration reform.

As it has been stated over and over again, a lot of work went into getting this bill before us today in the shape and form that it is, with a lot of cooperation from both sides of the aisle. And so I think that this amendment would not only violate the kind of cooperation that has been seen in getting this bill before us, but there are other opportunities to deal with immigration concerns.

Let me finally just say it was alluded to by my colleague from California that at one time, minorities were prevented from voting by having to pass a literacy test. For those people who never had the opportunity to go to school, to be educated, they were denied the right to vote.

As we look at trying to make sure that we are fair to all Americans, we don't say that the blind who cannot see or cannot read or understand Braille cannot vote. We don't say that certain handicapped people who may have handicaps that would prevent them from being able to act in a total and complete way cannot be able to vote. And I think that this would be so discriminatory, this would single out Americans who for whatever reasons are not as proficient in English language and say that somehow they are less Americans and they should not be able to vote. I don't think we want to do that. And I think for those people who have worked hard to try and preserve the work of the civil rights movement, that this would certainly undo the kind of agreements entered into to try to do the right thing in this authorization.

Let me say also before I close, that this bill is not everything that I would have it be. There are a lot more things that I would like to see. Even though this Voting Rights Act has helped minorities to be able to vote without the kind of interference that we saw during the days of rampant discrimination, I want you to know we are still fighting a lot of things at the polling place.

All of us can remember that there was a database that was put together identifying people as felons down in Florida, people who have never even been arrested before. This does not address that and we know that. We still have voting machines with no paper trail. This does not address that. And we know that.

We know that there have been at least two cases that were brought before the Attorney General and the Justice Department that they precleared, one of which the courts found was discriminatory, and I believe that was the case in Georgia where the requirements for identification just absolutely threw many of us for a loop.

And this amendment that was attempted by Ms. Jackson and withdrawn was an amendment that certainly I could have supported, because of the way that redistricting is being done in order to eliminate the ability for certain people to participate through the redistricting efforts.

So there is a lot that I would have liked to have done in order to deal with the new tricks, in order to deal with the new obstacles, in order to deal with the creative ways by which people get together and decide they are going to eliminate the ability for some people to vote. But I am not doing that. I am not addressing this legislation with any amendment because I think it is important to preserve the basic provisions of the Voting Rights Act.

I would ask my friends on the opposite side of the aisle to not undo the tremendous cooperation that has taken place in order to get this reauthorization bill before us and not to attempt to address this issue in this way.

So I would ask my colleagues to please vote against this amendment, and I yield back the balance of my time.

Mr. GOHMERT. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Gohmert.

Mr. GOHMERT. Thank you, Mr. Chairman.

First, I rise in support of Mr. King's amendment——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GOHMERT.—but I wanted to commend the gentleman from New York. It sounds like the inference by Mr. Nadler was that he would like to see the Voting Rights Act applied across the northeastern States, and I would very much like to see that as well. I would like to see it applied all across the country, not just to a selected group of States. I think what has been good for some States would be good for all the States.

Mr. NADLER. Would the gentleman yield for a second?

Mr. GOHMERT. Yes, sir.

Mr. NADLER. It does apply in my city.

Mr. GOHMERT. But I would like to see it all across the board, all across the northeast. I don't know if Yiddish would be added to the ballots in those situations, but that could certainly be looked at.

But I would just point my friends in the direction of what I believe is a subtle form of bigotry that most people don't realize that they have engaged in. I have a friend there in Tyler, Texas, Gus Ramirez, whose parents both came over from Mexico; and they started a restaurant in Tyler. There was a rule in the Ramirez house that Mr. Ramirez put in place: None of the kids could speak Spanish at home. Mr. Ramirez made the point because he said, if you are going to be successful in this country, if you are going to have good jobs and do well, you need to speak English and you need to speak it well.

And what I have seen is this encouragement by people who intend to be compassionate, they intend well, they want well, but they continue to lure people into speaking Spanish for their lives, which actually condemns them to have nothing but manual labor in most cases for the rest of their lives.

If we really care, what is more compassionate in the eagle world? Is it more compassionate if a mother eagle continues to feed the ba-

bies for their whole lifetime thinking, oh, how terrible it would be to push them out of the nest? Or is it more compassionate to have enough strength of heart to push them out of the nest and force them to fly?

I would say it is more compassionate, though tougher, to push the eagle babies out, let them fly, let them reach their true potential; and I would submit that the subtle form of bigotry in luring people to continue to speak Spanish for their lifetime ensures that they will not rise to their full potential in this country. They could, some of these—they are so bright. You talk to these people. They could have any position in this country and do it well if they were allowed and forced to communicate in the language that would allow them to soar.

So I would support the gentleman's amendment as just one small way to help encourage people to reach the true potential that people have in this country, and I would yield back.

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentleman from Iowa.

Ms. SANCHEZ. Mr. Chairman.

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Sanchez.

Ms. SANCHEZ. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. SANCHEZ. Thank you, Mr. Chairman.

It is a great opportunity to allow me to set the record straight for some of my colleagues who have risen in support of this amendment. I want to start by taking exception to the comment made by the gentleman from Texas, Mr. Smith, that people born in the U.S. should know English.

Well, it is certainly the case that that would be the goal that everybody born in the U.S. would speak English fluently, but three-quarters of those who use language assistance at the polling place are native-born. And I might remind the gentleman that in Arizona there is a school district that is currently being fined half a million dollars a day for their failure to provide adequate English instruction to the kids.

So children who are not being taught in our family school system and who are being harmed by that would then be double harmed at the polling place, because you would yank from them the language assistance that would allow them to perhaps be fully participating members of society and vote for a regime that could probably fix the school systems.

Number two, I might point out to my colleagues who support the King amendment that there is typically a higher level of proficiency required to vote in English than there is to pass the citizenship test in English. And if you ask me how I know that, it is because both of my parents are naturalized citizens. My mother is an elementary school teacher, so she is very proficient in English. In fact, she teaches it to young students. But she often prefers her election materials in Spanish because many of the complexities and subtleties of the vast ballot initiatives that California sees in every election cycle with their double negatives, sometimes triple negative languages are very difficult for her to understand.

So I am offended that people would say that if you can speak English well enough to pass a citizenship exam, you don't need language assistance at the polls. I think that is false.

And to Mr. Gohmert, I think you would say you have cited one example of an Hispanic family who sought to teach their family English. I want to give you another example, which is the example of the household I grew up in, where my parents said you will learn English in school and we will speak Spanish at home and when you grow up you will know both; and I don't think that that has kept me or my sister from reaching our full potential in this society. It depends on the degree of support and it depends on the degree of effort that you are willing to make.

So one size does not fit all here, and I would ask my colleagues to please vote against the King amendment. And I yield back to the Chairman.

Ms. WASSERMAN SCHULTZ. Mr. Chairman.

Chairman SENSENBRENNER. The gentlewoman from Florida, Ms. Wasserman Schultz.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman.

I rise in opposition to the amendment as well——

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman—and for a number of reasons. Particularly because the gentleman from Iowa more than implied but suggested that the reason that we had difficulties in Florida in 2000 was possibly because of Section 203 language requiring ballots be printed in other languages.

Maybe we should be amending this Voting Rights Act to require the supervisors of elections actually speak English. Because the real problem that we had in Florida was the 22,000 African Americans in Duvall County messed up their ballot choice because they were instructed to vote every page on the Duvall County ballot, and the Presidential election ballot was printed on more than one page.

Additionally, there were 3,500 at least Palm Beach County voters who were given the butterfly ballot that was impossible to understand and didn't have the Presidential candidates lined up properly so that many voters voted for the wrong person accidentally.

So if we are going to start talking about what the problems were in 2000, let us be accurate about what those problems were.

Mr. KING. Would the gentlelady yield?

Ms. WASSERMAN SCHULTZ. I would be happy to yield in a minute.

Additionally, let me point out that it is not just Spanish speakers that this ballot language in the Voting Rights Act assists. My county, Broward County, is a Section 203 county both for Spanish speakers and for Seminole Indians. So are you going to suggest to Seminole Indians, who were the first Americans, that they should learn English and that the ballot should not be printed in their native tongue? I don't think so.

I would be happy to yield to the gentleman.

Mr. KING. I thank the gentlelady.

And I would just point out the observation there is something that I think we do all agree on universally amongst Democrats, Independents, and Republicans with regard to the 2000 election in Florida; and that is that those who intended to vote for Al Gore as

opposed to those who intended to vote for George Bush had a lot more difficulty with the ballots; and I think that is an important observation.

I thank you, and I yield back.

Ms. WASSERMAN SCHULTZ. Mr. Chairman, reclaiming my time, the people who had problems voting for Al Gore voted for Pat Buchanan instead, not for George Bush, particularly in Palm Beach County; and those Jewish senior citizens didn't have trouble discerning Spanish from English.

We need to make sure that we preserve democracy and opportunity and the independent secret ballot for all people who have become American citizens, whether they were born here and English is their first language or whether it is their second or their third language.

Mr. GOHMERT. Would the gentlelady yield?

Ms. WASSERMAN SCHULTZ. Sure.

Mr. GOHMERT. I was just curious if you realized you could really be hurting Pat Buchanan's feelings by your comments to say these people didn't really mean to vote for him.

Ms. WASSERMAN SCHULTZ. Reclaiming my time, you know, Mr. Gohmert, I think that you also probably hurt people's feelings by suggesting that in—and I am sure you didn't mean it this way—in the nicest way possible that Spanish-speaking people are smart. I mean, the implication there might be Spanish-speaking people who are not smart is potentially insulting, and I think we all need to be a little bit more sensitive about the language that we use in this Committee.

Ms. JACKSON LEE. Would you yield?

Ms. WASSERMAN SCHULTZ. I would be happy to yield.

Ms. JACKSON LEE. May I just add—and, Bill, let me thank you very much for really putting this debate in its expanded framework. Because so many of us have these personal passions, whether it is Florida in the butterfly ballot or the mid-term redistricting of Texas. But we are holding these passions so that we can move forward in something that is vital to our Nation.

And might I just say, Mr. Gohmert, good friend, that just a few weeks ago I stood with an 81-year-old Iranian and a 72-year-old Iranian and that I don't think their language is covered, but they did not speak English. But they took the oath of citizenship loving this country, tears in their eyes.

I think it is just undermining our Constitution to suggest that your birthright of citizenship—you work all these years to become a citizen, you are of Puerto Rican heritage, you are of other heritage, and you tell them because of age or because of the fact that they came here as adults but that they that have the birthright of citizenship, the same thing that my mother had to go through in the State of Florida, born in the 1920's, speaking the King's English but yet she could not vote, her grandmother could not vote, her mother could not vote because of the fact of the color of her skin; and, whatever English she spoke, these are barriers to voting. This is what brings us to our knees in this country. This is the brutality that John Lewis experienced.

Chairman SENSENBRENNER. The time of the woman has expired.

For what purpose does the gentleman from Florida, Mr. Wexler, seek recognition?

Mr. WEXLER. To oppose the amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WEXLER. Thank you, Mr. Chairman. I will be brief.

Just as to Florida—and, quite frankly, I am astonished that we are even having this debate. But with all due respect to Mr. King, if there is going to be an analysis between those voters that chose to vote for President Bush in 2000 and those voters that chose to vote for Al Gore in 2000, with respect to the discrepancy that existed which I think is self-evident at this point, for those voters that chose to vote for President Bush it was a rather simple analysis or process. Because if you wanted to vote for President Bush, his name was first on the ballot, and the bubble that you punch was first. So it was logical. If you intend to vote for President Bush, his name was first, and the bubble was first.

However, if your intention, Mr. King, was to vote for Al Gore for President, his name was second on the list, but his bubble was not second. His bubble was third. Because there was another bubble that was second that corresponded to a name on another sheet of paper as it appeared on the ballot.

So with all due respect—and we have had this argument now for almost 6 years—it is not apples to apples. And those people that chose to vote for President Bush had a very simple exercise that was straightforward and in even the most elementary of analysis would be easy to perform. For other voters, however, it was different.

As to the issue of the amendment, we are not discussing, with all due respect, how families ought to raise their children or what the goal should be with respect to how families should teach their children English. I think we would all agree that the teaching and learning of English is a goal that, hopefully, all Americans would pursue with vigor. But what we are talking about is voting. We are not talking about how we are preparing people for economic life. We are not talking about how we are preparing people for the job market.

Ironically, we have a special law for Cuban Americans which I happen to support. The special law that we have for Cuban Americans is, if they take the extraordinary courage of fleeing the Castro regime and they take an incredibly difficult trip across the Florida Straits where a lot of people perish and if they physically can get their feet onto the ground in Florida, in America, we treat them specially. And I am all for that.

Now some people have problems with that, but I am all for it. Because those people have exercised their great patriotism for democracy by taking an enormous risk, and then they get special treatment to get citizenship, if they master the English language enough to get citizenship, and then probably the first thing they are going to want to do is go vote in Miami-Dade County.

And what you are saying in this amendment is, even though there are pages and pages of instructions, that if that person who took a boat to be an American, that took enormous risks to be an American, you are out of luck. If you are proficient enough to be an American citizen, pass the citizenship test, but now you go to vote and you go to read the amendments to the State constitution which are paragraphs long, that are complicated, that you don't

have the ability to ask for some assistance, so the trip you took across the Florida Straits, that was for naught. The trip that you took that endangered you and your family's life, that was for naught. When you get here, sorry, you don't really have full citizenship. You just can't really vote because you haven't mastered the English language quite proficiently enough so you may not be able to understand the entire ballot.

We are not talking about preparing people for economic life. We are talking about having the common decency to respect people's integrity so that we assist them to become the most engaged citizens that they can be in America as Americans.

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. WEXLER. I yield back.

Chairman SENSENBRENNER. The gentleman from California, Mr. Schiff.

Mr. SCHIFF. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCHIFF. Thank you, Mr. Chairman.

I am proud to join you and Ranking Member Conyers as a cosponsor of this important legislation and honored to play a small part in the reauthorizing of such historic rights legislation. This bill has been responsible—this legislation has been responsible for ensuring that minority citizens are able to elect representatives of their choice.

Just over 41 years ago, on March 7, 1965, what became known as Bloody Sunday, 600 civil rights marchers peacefully protested for the right to vote. Upon reaching the Edmund Pettus Bridge, these marchers were attacked by State and local law enforcement officers.

In commemoration of this event, 2 years ago I joined a pilgrimage led by our colleague, Congressman John Lewis—and I know many of our colleagues have done the same—to the sites of the civil rights struggles; and we visited that bridge. Standing there then and reflecting on the experience now, I can still feel the power yielded by the right to vote, powerful enough then to garner the hatred of a mob of segregationists, influential enough now to continue to incite debate over the legislation before us today.

A decade since those civil rights activists were beaten with billy clubs, sprayed with tear gas in response to their demands for the right to vote, discrimination still continues to remain in elections across the Nation from California to Florida. However, significant progress has been made in the 41 years since the VRA was first passed. Minority voters have a much greater voice today because of the Voting Rights Act. Despite that, after every election we all still hear stories of voter discrimination and intimidation and realize this remains equally important today and we cannot let the temporary provisions of the VRA expire. These expiring provisions—pre-clearance of election law changes, Federal observers at polls, and language assistance for limited English speakers—serve to deter those seeking to weaken minority voting rights.

It is evident to those from my home State of California just how critical language assistance is for those with limited English skills. In this diverse State, 51 of 53 congressional districts are subject to language assistance requirements.

We don't make our elections easy on voters. In a State where 135 candidates ran for governor 3 years ago, it should be no surprise that during the 2004 general election the California voter guidebook was nearly 200 pages. This guide includes information on candidates and ballot measures and helps voters prepare for the election.

Looking at the book when it arrived in the mail, I was able to predict the stories I would hear from my constituents. But it wasn't just those with limited English skills. Countless native English speakers shared with me how confusing the voting was and how difficult to decipher 200 pages of content in preparation for voting. I can only imagine that it would be nearly impossible for a voter with limited or no English. Yet these citizens, too, have the right to vote. Thankfully, due to the VRA in my district, our polling sites provide language assistance voters for Chinese, Filipino, Japanese, Vietnamese, and Latino voters.

For these various reasons and many others, I oppose the amendment of the gentleman; and I support the base bill.

The right to vote for every American citizen is the foundation of our democracy. Unfortunately, there are still barriers to overcome; and we as a Nation are not ready yet to give up this legislation that defends every American's right to vote. For this reason, I am proud to support the Voting Rights Act Reauthorization and Amendments Act and will continue to do my part to ensure that the VRA remains effective and enforced.

And, Mr. Chairman, I yield back the balance of my time.

Mr. CHABOT. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman.

I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I will be very brief.

Having chaired the 12 hearings that we had on the Voting Rights Act, I want to thank my colleagues on both sides of the aisle for going through that process and having 40 plus witnesses.

I think that the product that we have come to, H.R. 9, is a very carefully crafted product which I intend to support. This particular amendment, I have—there are many things about Mr. King's—in fact, not just this amendment but his others—which I am in sympathy with. I think it is important for us to encourage English and emphasize English in this country, and I think all people who live here or may want to live here, it is critical that they do learn English as quickly as possible.

That being said, I intend to oppose the amendment because I know the Chairman has worked both with the Ranking Member and Mr. Watt and other Members to very carefully craft this legislation, which I think is very important, to make sure that every person does have the opportunity and the right to vote in this country, irregardless of skin color. And for, unfortunately, quite some period in this country that was not the case.

So, that being said, I will oppose the amendment. But I want to thank Mr. King for bringing it up, because I think it is important that we do debate this issue. It is a very important issue, it is a

serious issue, and I think that it is one that we as a country really do need to continue to work on.

With that, I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

I want to bring us back to the amendment, if I can, as we approach this vote and encourage my colleagues not to cast a vote on the basis of their ideas or beliefs about immigration. This really is not about immigration; this is about citizens. As the Chairman has indicated, this is not about illegals coming into the country. This is about the basic right of people who are citizens in this country to cast a vote that they understand.

I have two bases for opposing the amendment. First is the earlier statement that I made about reaching a balanced bill, working through these issues with the Chairman. I would have to admit, if I got everything I wanted in this bill, we would have had a lowering of the threshold for allowing people to cast, to take advantage of the provisions of this bill, section 203. But that is not what this is about. I think it is balanced to extend the existing provisions that already apply in the Voting Rights Act now, and that is what this bill does.

But my opposition to this amendment is more basic than just preserving the balance and making sure that we don't blow up the Voting Rights Act around the issue of immigration. It is more basic than that. Because on my wall at home in North Carolina I have framed the first ballot that was cast by the people of South Africa, and it keeps reminding me that the folks in South Africa were allowed to vote. We were their model for democracy, but they showed us some things about democracy.

They showed us, first of all, that no registration was required, because people stood in lines and showed up to vote not even having registered to vote.

That ballot shows us, second of all, that the extent to which they went to allow people to cast a meaningful vote, they put photographs on that ballot for people who couldn't read a lick so that they would know who the candidates were that they were casting a ballot for.

So, for many, this is not about immigration or lack of immigration. It is about the basic right to cast a vote in a democracy; and we shouldn't be doing anything, in my opinion, to deprive people, citizens—not illegals, citizens—of the right to cast a meaningful vote.

It is in that context that I encourage my colleagues to put aside all of these things about Florida and about the immigration debate and about even, with all respect to Mr. Wexler, all the preferences we give to Cubans and this and that, and focus in this vote on how we can make it meaningful for people, citizens of this country, to cast a vote, the most basic, basic right that one can have in a democracy such as ours. And let us restore, let us keep restoring the United States to be the gold standard of democracy in the world.

With that, Mr. Chairman, I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Iowa, Mr. King. Those in favor of the amendment will say aye; opposed, no.

The noes appear to have it.

Mr. KING. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Iowa.

Mr. KING. I ask for a recorded vote.

Chairman SENSENBRENNER. A recorded vote is ordered. Those in favor of the King amendment will, as your names are called, answer aye; those opposed, no. And the clerk will call the role.

The CLERK. Mr. Hyde.

Mr. HYDE. No.

The CLERK. Mr. Hyde, no.

Mr. Coble.

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye.

Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Smith, aye.

Mr. Gallegly.

Mr. GALLEGLY. Aye.

The CLERK. Mr. Gallegly, aye.

Mr. Goodlatte.

[no response.]

The CLERK.Mr. Chabot.

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.

Mr. Lungren.

Mr. LUNGREN. No.

The CLERK. Mr. Lungren, no.

Mr. Jenkins.

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye.

Mr. Cannon.

Mr. CANNON. Aye.

The CLERK. Mr. Cannon, aye.

Mr. Bachus.

[no response.]

The CLERK. Mr. Inglis.

[no response.]

The CLERK. Mr. Hostettler.

Mr. HOSTETTLER. Aye.

The CLERK. Mr. Hostettler, aye.

Mr. Green.

Mr. GREEN. No.

The CLERK. Mr. Green, no.

Mr. Keller.

Mr. KELLER. No.

The CLERK. Mr. Keller, no.

Mr. Issa.

Mr. ISSA. No.

The CLERK. Mr. Issa, no.

Mr. Flake.

Mr. FLAKE. No.

The CLERK. Mr. Flake, no.

Mr. Pence.
Mr. PENCE. No.
The CLERK. Mr. Pence, no.
Mr. Forbes.
Mr. FORBES. No.
The CLERK. Mr. Forbes, no.
Mr. King.
Mr. KING. Aye.
The CLERK. Mr. King, aye.
Mr. Feeney.
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no.
Mr. Franks.
Mr. FRANKS. Aye.
The CLERK. Mr. Franks, aye.
Mr. Gohmert.
Mr. GOHMERT. Aye.
The CLERK. Mr. Gohmert, aye.
Mr. Conyers.
Mr. CONYERS. No.
The CLERK. Mr. Conyers, no.
Mr. Berman.
Mr. BERMAN. No.
The CLERK. Mr. Berman, no.
Mr. Boucher.
[no response.]
The CLERK. Mr. Nadler.
Mr. NADLER. No.
The CLERK. Mr. Nadler, no.
Mr. Scott.
Mr. SCOTT. No.
The CLERK. Mr. Scott, no.
Mr. Watt.
Mr. WATT. No.
The CLERK. Mr. Watt, no.
Ms. Lofgren.
Ms. LOFGREN. No.
The CLERK. Ms. Lofgren, no.
Ms. Jackson Lee.
Ms. JACKSON LEE. No.
The CLERK. Ms. Jackson Lee, no.
Ms. Waters.
Ms. WATERS. No.
The CLERK. Ms. Waters, no.
Mr. Meehan.
Mr. MEEHAN. [no response.]
The CLERK. Mr. Delahunt.
Mr. DELAHUNT. No.
The CLERK. Mr. Delahunt, no.
Mr. Wexler.
Mr. WEXLER. No.
The CLERK. Mr. Wexler, no.
Mr. Weiner.
Mr. WEINER. No.
The CLERK. Mr. Weiner, no.

Mr. Schiff.
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no.
Ms. Sanchez.
Ms. SANCHEZ. No.
The CLERK. Ms. Sanchez, no.
Mr. Van Hollen.
Mr. VAN HOLLEN. No.
The CLERK. Mr. Van Hollen, no.
Ms. Wasserman Schultz.
Ms. WASSERMAN SCHULTZ. No.
The CLERK. Ms. Wasserman Schultz, no.
Mr. Chairman.
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Further Members who wish to cast or change their votes?
If not, the clerk will report.
The CLERK. Mr. Chairman, there are nine ayes and 26 nays.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Are there further amendments?
Mr. LUNGREN. Mr. Chairman.
Chairman SENSENBRENNER. The gentleman from California, Mr. Lungren.
Mr. LUNGREN. Mr. Chairman, I have an amendment at the desk.
Chairman SENSENBRENNER. The clerk will report the amendment.
The CLERK. Amendment to H.R. 9 offered by Mr. Daniel E. Lungren of California.
Add at the end the following:
Section blank. Elimination of certain requirements for counties where requirements were imposed because of the presence of large Federal military installations.
Chairman SENSENBRENNER. Without objection, the amendment is considered as read.
[The amendment follows:]

AMENDMENT TO H.R. 9
OFFERED BY MR. DANIEL E. LUNGREN OF CALIFORNIA

Add at the end the following:

SEC. _____. ELIMINATION OF CERTAIN REQUIREMENTS FOR COUNTIES WHERE REQUIREMENTS WERE IMPOSED BECAUSE OF THE PRESENCE OF LARGE FEDERAL MILITARY INSTALLATIONS.

Section 4(a) of the Voting Rights Act of 1965 (42 USC 1973b(a)) is amended by adding at the end the following:

"(10)(A) Notwithstanding paragraphs (1) through (9) of this subsection, and the last sentence of subsection (b) of this section, any determination or certification of the Director of the Census under subsection (b) with regard to a political subdivision as to which this subsection (a) is applicable as a separate unit, which determination or certification of coverage resulted from the presence of military bases of the Nation's armed forces within the territory of that particular political subdivision, and which was published in the Federal Register as required by this

section for the coverage dates of November 1, 1968 or November 1, 1972, shall be reviewable by the United States District Court for the District of Columbia in a civil action for declaratory judgment under this paragraph.

"(B) The court shall grant a declaratory judgment that such determination or certification shall not have any effect if the plaintiff—

"(i) makes a prima facie showing based on historical and statistical data that, excluding the military population and their spouses and dependents eligible to vote, 50 per centum or more of the citizens of voting age were registered on the applicable coverage date, and that 50 per centum or more of such eligible persons voted in the applicable Presidential election; and

"(ii) establishes that the Attorney General has not interposed an objection pursuant to 42 U.S.C. §1973c, in the ten years prior to November 1, 2005, to any voting change adopted by the plaintiff jurisdiction, or to any voting change affecting the plaintiff jurisdiction,.

"(C) The Attorney General may consent to a declaratory judgment under this paragraph if, based

upon the plaintiff's showing and upon investigation, the Attorney General concludes that the political subdivision has made the required showing under this paragraph.''

Mr. WATT. Mr. Chairman, I reserve a point of order.

Chairman SENSENBRENNER. The gentleman is recognized.

Mr. WATT. I reserve a point of order.

Chairman SENSENBRENNER. A point of order, subject to the reservation.

The gentleman is recognized for 5 minutes.

Mr. LUNGREN. Thank you very much, Mr. Chairman.

Mr. Chairman, I rise in support of the base bill. There are a few of us who were back here in 1982 when we had an extension of the law that was an historic extension; and the previous Chairman of the Committee, Mr. Hyde, was largely given credit at that time for holding the hearings as the Chairman of the Subcommittee and bringing to the attention of the American people the need for extending this law.

I was very proud to work with Mr. Hyde; with the current Chairman, Mr. Sensenbrenner; with our Ranking Member, Mr. Conyers; and I was pleased to work with Mr. Conyers on the establishment of the Martin Luther King holiday. Those are some of my proudest moments here in the House.

At the same time, Mr. Chairman, it seems to me extremely important for us to understand that we ought to take a look at some sections of the law to ensure that they are doing what they were intended to do.

In enacting the Voting Rights Act of 1985 and in extending it, Congress intended that the Act's special provisions operate against jurisdictions with a history of racial discrimination. I don't believe it ever intended for these provisions to penalize jurisdictions because they house the Nation's Armed Forces during a time of armed conflict. Yet that very thing occurred in certain small jurisdictions in my State, Merced County, Kings County, Yuba County in California, where U.S. military bases constituted a substantial portion of the county's resident population but where the voter turnout narrowly fell below the 50 percent rule because military personnel often voted in their home States by absentee ballot.

For example, 49.6 percent of the estimated voting age population in Merced County voted in the 1972 Presidential election. If the participation of military personnel, their spouses and dependents eligible to vote but who voted in their other States were excluded, Merced's participation would easily have exceeded 50 percent; and the county would not ever have been covered under section 5 in the first instance.

I believe that coverage of these counties was an unintended consequence of the formula's statement in neutral terms and almost certainly was not anticipated nor desired by Congress. This amendment simply gives relief to those jurisdictions accidentally swept into coverage. It requires these jurisdictions not to be in a State which is covered but only in a subdivision of a State, such as is the case here, that they were in as a result of the presence of military bases with their military populations and that they have had no violation under the Voting Rights Act under the jurisdiction of the counties involved over the last 10 years.

I think it is important to correct this application of jurisdictions covered by reason of a substantial military presence because Congress would address a constitutional vulnerability of any extension.

Numerous parties have expressed concerns about the ability of any legislation extending the special provisions of the Voting Rights Act to survive constitutional scrutiny in light of the Supreme Court's recent jurisprudence restricting power under section 5 of the 14th amendment. That case law requires Congress to establish that any remedial legislation under that section be, quote, congruent and proportional to the harms Congress seeks to remedy by its enactment, in this case, actions of specific jurisdictions with a history of intentional discrimination in voting and artifice to avoid changing discriminatory practices.

Permitting jurisdictions to exit coverage when they can establish they are only subjected to section 5 coverage because of a substantial military presence further tailors the provisions to the evils sought to be remedied and makes it more congruent and proportional to the harms to be addressed.

My amendment does not grant an automatic exemption. Counties would have to initiate a court proceeding in the court most experienced with these matters, the United States District Court for the District of Columbia, in order to exit coverage.

Secondly, the burden of establishing the right to exemption is on the jurisdiction.

Third, parties who have been subject to an objection in the past 10 years may not be granted this exit coverage under this provision.

And, fourth, I would repeat, the way we have drafted this, it does not apply to covered States or subjurisdictions covered as a result of State coverage. This only involves those jurisdictions that were placed in under that special section——

Chairman SENSENBRENNER. The gentleman's has expired.

Mr. LUNGREN.—and only those who were covered as a result of the military presence.

Chairman SENSENBRENNER. Does the gentleman from North Carolina insist on his point of order?

Mr. WATT. No, Mr. Chairman, I withdraw the point of order.

Chairman SENSENBRENNER. The point of order is withdrawn.

For what purpose does the gentleman from North Carolina seek recognition?

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Mr. Chairman, I rise in opposition to this amendment.

The Voting Rights Act currently provides a mechanism for covered jurisdictions to get out from under the provisions of the preclearance section. Under the section 4(a) bailout criteria, jurisdiction may be removed from coverage and no longer subject to preclearance if it demonstrates, one, that it has been in full compliance with the pre-clearance requirements for the past 10 years; two, that no test or device has been used to discriminate on the basis of race, color, or language minority status; and, three, no lawsuits against the jurisdiction alleging voting discrimination are pending.

This amendment would drastically reduce those standards to apply to a small category of counties in an otherwise noncovered State where the presence of a military base within its borders pre-

sumably caused the low voter turnout statistics that brought the area under the coverage of the Voting Rights Act.

There are a number of concerns I have about the amendment.

The amendment, first of all, makes arbitrary distinctions for eligibility. It applies only to counties in noncovered States that had military bases at the time they were brought under coverage. But if a military installation artificially inflated or deflated turnout numbers, it would have done so in States fully covered by section 5 as well.

Second, the amendment would apply only to those counties whose military account allegedly affected coverage determinations made in 1968 and 1972. We don't have a clue how many other counties would be eligible other than the counties that were referenced here, and no record has been developed on this because this is something that came up after the hearings took place, after this discussion took place.

Third, the amendment would apply only to military installations; and this ignores other institutions that could also arguably skew turnout data, most notably college campuses. Jails and prison populations could arguably be included also. I mean, there are a number of things that could have impact on the criteria that bring you under the act.

Fourth, the amendment presumes the entire population of the military installation consisted of either nonresidents of the county or individuals who were not properly registered in that county. Transient populations like students and military personnel often changed their residency for voting purposes. So it is unclear whether we can factually determine who was and who wasn't properly included in the population count in these jurisdictions.

Next, the only factual evidence in the record is submissions from lawyers; and you know how lawyers try to skew things. They always are going to be advocating for their clients in a way. What is so sinister about this is if they would just go and apply through the regular bailout process, they could do this through a court of law if they met the existing criteria, rather than sought some preferential judicial determination with no factual records having been developed.

Most important, there is evidence that counties made eligible under this amendment have independent political entities within their geographical boundaries that do have recent or current evidence of discrimination or failure to comply with section 5. You have got water boards that fall under these counties, school boards that fall under these counties. So I just don't—I think this is a back-door attempt to circumvent the existing bailout requirements.

If we are going to do anything, I would hope the gentleman would consider maybe doing something similar to what Mr. Issa proposed. If there is a problem here, we might be able to document it if we had a study done of it and we could deal with this in the future. But to try to do this in this context is going to destroy the balance that we have worked out here and do so really without having the factual basis, the record basis that we need to justify doing so.

With that, Mr. Chairman, I yield back.

Mr. GOODLATTE. [presiding.] The time of the gentleman has expired.

The gentleman from Tennessee, Mr. Jenkins, is recognized for 5 minutes.

Mr. JENKINS. Mr. Chairman, I yield to gentleman from California.

Mr. LUNGREN. Mr. Chairman, just in response to the points made by the gentleman from North Carolina, first of all, this is hardly a back-door way. This is very upfront about what I am attempting to do.

Mr. WATT. I apologize.

Mr. LUNGREN. Secondly, to criticize it for being restrictive, I restricted it because we have a special set of circumstances.

Third, to suggest that population bases as a result of our military people are somehow equivalent to population bases of our prison population, frankly, I think is a distortion of values in this country. Our military people are serving this Nation and giving us sacrifices in ways virtually no one else does, and the fact that a county has welcomed the presence of military bases it seems to me should not be used to punish those counties.

Fourth, if the gentleman was asking about gaming statistics, we had 30 years worth of statistics on this. If the gentleman is concerned about any other entities that might be eligible under this provision, there is one other. In the State of New Hampshire, Rockingham County, Newington Township would also be able to avail itself of this if they wished. I have not been in contact with them, so I have no idea if they would avail themselves of this.

The gentleman asked why the current bailout provisions are not sufficient. Well, the bailout provisions, as most recently amended in 1982, held the covered jurisdictions responsible for compliance by the political subdivisions within their borders based on the premise that they controlled those political subdivisions. And while that premise is essentially true in Virginia and most of the other covered States, it is not true in California. Merced and Yuba County are held responsible under the gentleman's suggestion for the compliance of numerous special districts which are State rather than county agencies. They are beyond the county control. And the compliance of cities, which, unlike the case of most covered States, they are granted constitutional home rule powers.

So here we have the State of California, which is not a covered State; and the subdivisions of that State are water districts and the other things the gentleman said, have the same legal bases as the counties do. This has brought counties under the coverage.

My amendment would say those counties which are subject to coverage right now because of the presence of military installations would have to show that they have not done anything in violation of the law in the last 10 years, either by a finding of the court or by a rejection of a proposal of an electoral law change by the Justice Department.

So this is a case where California is not covered. Counties are covered by this quirk in the law application because of the presence of military installations and being held responsible for jurisdictions over which they have no control. Arguably, those water districts and others are not covered because they are entities of the State, not entities of the county.

I would just say to the gentleman there is no evidence whatsoever that these counties have done anything in terms of their law

changes that is in violation of the Voting Rights Act. Again, I am saying adoption of this amendment in my judgment assists us in being able to show the courts that we have done the careful kind of analysis necessary to support the continuation of this law. Because the Voting Rights Act is an exceptional act in response to exceptional circumstances, and in the absence of exceptional circumstances I think the jurisprudence of the Supreme Court is that you don't have a foundation for continuing——

Mr. WATT. Would the gentleman yield on that point?

Mr. LUNGREN. It is not my time.

Mr. WATT. Mr. Jenkins, would the yield?

Mr. JENKINS. I will yield.

Mr. WATT. Just so I can make the point that, had the gentleman made the record during the hearings, what he is saying might be true. But here in this debate we are not making a record. There is no factual record being made. This is a markup. So the gentleman—if the gentleman were going to do this, we should have made a record about it at the appropriate time, not just kind of *ex parte* statements.

Chairman SENSENBRENNER. The time of the gentleman from Tennessee has expired.

For what purpose does the gentleman from California, Mr. Berman, seek recognition?

Mr. BERMAN. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BERMAN. Mr. Chairman, initially on my time I would like to ask the sponsor of the amendment: There are four counties in California that are section 5 counties. The discussion here only makes reference to three of them.

Mr. LUNGREN. Yes.

Mr. BERMAN. Is there a reason why Monterey County is not included in it?

Mr. LUNGREN. Because Monterey County has had a violation or a rejection of a request for a change by the Justice Department within the last 10 years. So it would not be able to apply to this at this present time.

Mr. WATT. Would the gentleman yield so I can tell him also that they are——

Mr. BERMAN. I would be happy to yield.

Mr. WATT. There are boards under these counties that have had violations, also. So I don't know how Monterey would be distinguishable on that basis, because there is a water board that has had a violation. And, notwithstanding what the gentleman says, there is nothing that suggests that those water boards and school boards are independent of the counties under the Voting Rights Act.

Mr. LUNGREN. Would the gentleman yield on that point?

Mr. BERMAN. Yes.

Mr. LUNGREN. The California constitution is the authority for that. Counties have no control whatsoever with those boards. They are independent boards, and in some cases those boards actually go across county lines. They are not even exactly geographically the same as the counties.

Mr. BERMAN. Well, okay. I would like to ask the gentleman to consider delaying the offering of this amendment until we get to the floor, assuming there is an opportunity on the floor if this comes up under a rule. The reason I do it is I don't think this is a malicious amendment in any way. But I think, as the gentleman from North Carolina has mentioned, there are a number of questions I would like to have answered before I could vote for the amendment.

First of all, I don't totally understand the gentleman's answer to the question of why the existing bailout criteria wouldn't apply. As I understand it, have they been in full compliance with the pre-clearance requirements for the past 10 years?

Even conceding—and I think you are probably right—that the presence of those military bases may have been part of why those counties were considered section 5 counties originally, have they been in full compliance with the pre-clearance requirement for the last 10 years? Is there any test or device that has been used in those jurisdictions to discriminate on the basis of race, color or language, minority status? And are there pending lawsuits alleging voter discrimination? If those are the criteria, they seem pretty straightforward. And have these counties applied to get out of the section 5 pre-clearance provisions using those criteria? I didn't quite understand the gentleman's answer to that.

Mr. LUNGREN. If the gentleman would yield, I could try to respond to that.

Mr. BERMAN. If I could have an additional 2 minutes, I would be happy to yield.

Chairman SENSENBRENNER. Without objection.

Mr. BERMAN. I yield.

Mr. LUNGREN. The problem is the way that the provision currently works in the bailout provision the county is held responsible for those jurisdictions that are in part or in total in their geographic area.

As the gentleman knows, in California we have 58 counties; yet we have 2,830 special districts. They are creations under the California constitution of the State, not the county. They are independent of the county. So while the county has no legal ability to control how those districts operate, they are held responsible for purposes of bailout for that, even though they don't control it.

Mr. BERMAN. All right. I appreciate that.

Mr. WATT. Would the gentleman yield?

Mr. BERMAN. I would be happy to yield.

Mr. WATT. I want you all to understand what the gentleman is saying. He is saying, on the one hand, that the county has no control over these jurisdictions; and he is saying, on the other hand, that the voting rights law, if they apply to bailout, they do have control over them, they are presumed to have control over them. So, I mean, heis having his cake and eating it, too.

Mr. BERMAN. Just reclaiming my time. Then one could propose that a different amendment, an amendment which said that section 5 counties can't be asked, changes in the nature of the way the criteria worked to say that if you have no control over the jurisdiction which has been engaged in this, then that can't be used as a basis for denying you the bailout. It would be a different kind of an approach than this amendment takes.

Mr. WATT. If the gentleman would yield, and that goes back to the point I was trying to make. This is so muddy and complex that it is the kind of thing that I think would be the proper subject for a study of some kind to clarify. But to try to do it in the context of this markup I think is a mistake.

Chairman SENSENBRENNER. Would the gentleman from California yield?

Mr. BERMAN. I would be happy to yield.

Chairman SENSENBRENNER. I guess the question that is really relevant is for these subdistricts—and I believe that there is a water district that is in question—who handles the voter registration in the conduct of the elections for these independent districts? Because if the independent districts do it themselves, you know, then I think there is a way that the county, which is kind of an innocent third party, should be allowed to opt out. However, if the county handles the voter registration——

Mr. BERMAN. The county does handle the voter registration.

Chairman SENSENBRENNER.—and pays for the election judges and perhaps prints the ballots, you know, then the county is I guess kind of acting as the agent for the local district; and if there is discrimination, it would be imputed to the agent and section 5 should apply.

Mr. BERMAN. I would ask unanimous consent for 2 additional minutes.

Chairman SENSENBRENNER. Without objection.

Mr. BERMAN. Reclaiming my time, it gets complicated, which again points out what the gentleman from North Carolina is saying. Clearly, the county is in charge of voter registration. But on the issue of these water districts, who pays for the election and who determines the policies which could be seen to discriminate in violation of law, may be less clear. It seems like something we need to have a better answer to, who conducts the elections. When the City of Los Angeles has an election, it is inside L.A. County. The registration roles are those of the County, but the election is conducted and paid for by the City.

So I guess the answer to your points is, in some cases, the county is in control and, in some cases, they are not. We ought to know the answer to that.

I guess the final reason I would ask you to consider deferring consideration of this amendment, again even though I—I mean, I might point out two things perhaps somewhat whimsically. Based on my experience, counties would much rather have military bases than prisons. So this notion of what counties want is I think maybe a little different than the way you indicated.

Secondly, given the gentleman's passionate belief in reforming the redistricting process, I would have thought that his amendment would be to cover all of California under the Voting Rights Act to require—since the one effect of those four counties being section 5 counties is there is no effort to sever those counties and draw strange and slicing kinds of districts through those counties because they are under section 5. So you are working against your redistricting beliefs by your amendment.

But the point I wanted to make was these three counties are in other Members' congressional districts. There are three boards of supervisors in these counties. I don't know what those Members

think of this, and I don't know what—oneis a Republican, and two are Democrats—and I don't know what the boards of supervisors of the counties think. That is the reason why I think a little more time—if there is a way to create a record through a quick study to answer some of these questions, I would ask the gentleman to consider delaying the vote on it.

Chairman SENSENBRENNER. The time of the gentleman has expired, and the Chair recognizes himself for 5 minutes to strike the last word.

I believe that the gentleman from California, Mr. Berman, makes a very valid point.

First of all, there has been at least one violation in one of the three counties involved. I guess we don't know who the guilty party is, whether it is the county or whether it is the local subdistrict or whether it is a combination of the two. It seems to me that, before passing an amendment which effectively is a get-out-of-jail card, we ought to look into this issue and pinpoint the responsibility. Because it seems to me that the level of Government or the agency of Government that was responsible for the violation should not be given such a get-out-of-jail card.

The other thing—and I keep on coming back to this—is that the Voting Rights Act was upheld as constitutional three times by the Supreme Court based upon a showing that Federal intervention was necessary. Now there has been Federal intervention deemed to be necessary up until now. If Federal intervention was not necessary, then the amendment that the gentleman from California, Mr. Lungren, is offering would be redundant and would not have any type of an effect.

I am really very hesitant to go ahead without the type of record to show that a change in the law is necessary that has been done extensively by Mr. Chabot and his Subcommittee to the tune of 40 witnesses and about 8,800 pages of record that is in evidence. So while I agree with Mr. Berman that this amendment is not a malicious amendment to the legislation, it seems to me that we ought to be a little bit more precise in knowing what we are doing before going ahead and adopting it.

Mr. CONYERS. Mr. Chairman.

Chairman SENSENBRENNER. I yield to the gentleman from Michigan.

Mr. CONYERS. I think I can save time by coming in now, because this may be the last major amendment, and I still have hopes that we can beat the clock and report this bill before the voting commences.

Let me point out that I share the understanding that Mr. Lungren has about this. But after a dozen hearings—I said 10 at first—we have a suspicion that there are many other jurisdictions that might be in the same fix as the gentleman's issue about the section 5 counties in California. For that reason and the fact that we did not take this up, we have gone through section 5, the trigger pre-clearance bailout, time after time after time over these weeks and months; and this is a far too complex matter for us to resolve here, especially since we have the unusual cooperation of the other body with an identical proposal.

Now I think a study to this would be a much better way. The gentleman from California Mr. Berman has suggested it. I think the gentleman from North Carolina has.

Let us not muddy the waters. Let us remember that this is a huge measure. We have got a head of steam going. I would urge that the gentleman consider withdrawing the amendment or we dispose of it so that we can report a bill on today, May the 10th.

And I thank the gentleman for yielding.

Ms. JACKSON LEE. Does the gentleman yield.

Chairman SENSENBRENNER. For what purpose does the gentleman from Virginia, Mr. Scott, seek recognition?

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, thank you for having the hearings. There is a reason to having hearings. As has been pointed out, we don't know how many different counties may be affected. There is no record on either the need or the effect, but there is a record on the bail-out provision which was uncontradicted testimony that it is easy to bail out if you qualify. In fact, there is nothing in the record to suggest that this process is even easier than the present process. This might be even more complicated.

It has been pointed out that the effect of this would be to allow a county to get out and in effect to also let those who actually earned coverage within the county to also get out.

So, Mr. Chairman, this is a last minute amendment. We can't carefully analyze it because there is nothing in the record. It adds a complication to the bill. And there is nothing in the record to demonstrate whether there is need or whether it will have the desired effect. I would hope we would therefore, Mr. Chairman, defeat the amendment.

I would yield to the gentlelady.

Ms. JACKSON LEE. I wanted to add to the distinguished gentleman's comments. I would ask my good friend from California to try the bail-out provision and accept the compromise offered by Mr. Conyers which is to prospectively look at relief if the bail-out provision does not work, and then we have a basis of moving forward because there may be many similarly situated. But the bail-out provision is there. It is to be utilized, and I would urge my colleague to withdraw the amendment. I yield back.

Mr. SCOTT. Yield back.

Mr. CANNON. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Utah, Mr. Cannon.

Mr. CANNON. I move to strike the requisite number of words.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CANNON. I am pleased to yield to the gentleman from California.

Mr. LUNGREN. I find some of this debate interesting. On behalf of several of the counties in California, submission was made to the Committee on November 4th of last year. We have been in discussion with Members on the other side of the aisle on this for at least a week on the language that it has presented.

I appreciate the fact we want to get this bill through. I support this. I supported it in 1982. I support it now. But this is a 25-year extension, and the idea that somehow these three counties should wait until the next time around doesn't seem to be reasonable to me. I can't help that the hearings weren't held on this when submission was made last November. I didn't decide what the hearings were going to be.

I have every single county that is covered under this section in a non-covered State. The non-covered States are California, Florida, New York, North Carolina, South Dakota, Michigan, New Hampshire. I have the number of military bases involved there. I have the period of coverage.

I would say that the records show that there is one other jurisdiction in the entire country, and that is Newington in Rockingham County in the State of New Hampshire. And I would say that there have been no objections affecting it.

I would just say, again, to clear up the record, under California law and the California constitution, the county has no control over the activity of the governing boards of the entities described. Several of them cover more than one county, such as the Central California Irrigation District and San Louis Water District. Many of the districts are authorized by California law to conduct their own elections, and some do. And yet what I am saying, the county is held responsible to compliance or non-compliance when we look at the bail-out provision.

Again, I would tell you those other districts are political subdivisions of the State of California, which is not a covered jurisdiction, so they are in a catch-22 situation is what they are in.

What is to stop us from, when we get to the floor, being told that we can't consider any amendments at that time because this is a carefully crafted vehicle that we can't deal with?

Mr. BERMAN. Would the gentleman yield?

Mr. LUNGREN. Be happy to yield.

Mr. CANNON. The time being mine.

Mr. BERMAN. Thank you.

Understanding better the relationship of these special districts, your general proposition of rights. Even your own sentence said some special districts run their own elections; some are run by the counties. It is a big thing to do, and it is a big thing not to do, and just seems to me that if there is no fundamental underlying policy reason to hold three random counties under section 5 when the other counties in California aren't and where maybe in fact there may be more serious problems of voter access in some of those other counties, it makes sense to clean that up.

But there are two different ways to clean it up and some information to get. I do think it is appropriate to know—I didn't know about this amendment until last night when you told me about this amendment. I didn't know that the counties have submitted something. I would like to know what my colleagues from the areas think, and I would like to understand better just what the nature of these, quote, water district violations are and the extent to which the county is truly unable to impact on them because in the end, those water districts if they aren't still voting based on how much land you own, if they aren't voting that way, if they are vot-

ing by people, there are people from rolls that the counties are in charge of.

So it is just getting—in other words, this isn't—I am not suggesting this is a trap to keep you from having a chance for the next 25 years. I am suggesting that I think there is something to what you are saying, but I can't vote for it until I get at least some answers to these questions.

Mr. CANNON. Yield back to the gentleman from California.

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. LUNGREN. Mr. Chairman, I request unanimous consent for 2 additional minutes.

Chairman SENSENBRENNER. Without objection.

Mr. CANNON. I am pleased to yield to the gentleman from California.

Mr. LUNGREN. If Mr. Berman would—if he's saying he is willing to work with me to see if we can actually achieve something that would be brought, if we are allowed, to the floor as a solution to this problem, I would be happy to entertain that and work with the gentleman.

My purpose is not to make some sort of statement here, I am trying to clear up something that I think makes some sense and is consistent with what we want to do with this extension. And if the gentleman will agree to work with me on that, I would be willing to withdraw the amendment at this time.

Chairman SENSENBRENNER. Is the gentleman withdrawing the amendment?

Mr. LUNGREN. I ask unanimous consent.

Chairman SENSENBRENNER. Without objection.

Are there further amendments?

The gentleman from Iowa, Mr. King.

Mr. KING. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. Clerk will report the amendment.

Mr. KING. Number 110.

The CLERK. Amendment to H.R. 9 offered by Mr. King of Iowa, page 12, line 7, strike 2032 and insert 2013. Page 12, beginning in line 13 strike subsequent and all that follows through increments in line 14.

[The amendment follows:]

AMENDMENT TO H.R. 9
OFFERED BY MR. KING OF IOWA

Page 12, line 7, strike ''2032'' and insert ''2013''.

Page 12, beginning in line 13, strike ''and subsequent'' and all that follows through ''increments'' in line 14.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. KING. Thank you, Mr. Chairman. This amendment, amendment 110, is a very simple amendment and the subject has been brought up here in the discussion on the debate on this bill, and I think the intensity of the debate we have had, and I would like to compliment my colleagues on the breadth of their knowledge and the depth of the debate and the intensity that is here. It tells us a lot about how important this reauthorization of the Voting Rights Act is.

And what my amendment does is it strikes the 25-year period of time for reauthorization for the sunset and sets it at a 6-year time. It takes us up to 2013, and it is designed to get us through the next census and through the election subsequent to the redistricting and of the census in 2010 so that we have an opportunity to see the effect of the reauthorization.

There are so many unknowns in there, and there is certainly a significant amount of disagreement on how this policy plays out. There is no provision in this legislation that allows for a covered district to become an uncovered district, if I could coin that term, and we will have, if this is authorized for 25 more years, we will have then had established multilingual balance for 56 years in this country, the majority of the century. And by Thomas Jefferson's term of 19 years per generation, we will be approaching three and a half generations, perhaps. So that is the scope of this.

I would say if we proceed with 25 years, it will institutionalize multilingual balance, and I believe that we should stop and take a look at it far more quickly than that, and I would ask for support on this amendment that will allow us—Members of this Committee, many will still be here hopefully in 2013, but by 2032, it is unlikely any of us will be here, and the institutional knowledge will have passed from this Judiciary Committee and from the Congress, and the institutionalization of multilingual ballots will have been established, probably never to be reconsidered again in a serious way, and I would again urge support for this simple amendment.

Yield back the balance of my time.

Chairman SENSENBRENNER. The chair recognizes himself in opposition to the amendment.

What the gentleman from Iowa proposes to do is to shorten the length of time for this reauthorization. The 25-year reauthorization that was passed in 1982 has worked well. This Committee has done oversight during the entire 25-year period of time as to how the Voting Rights Act has operated, and the conclusion was reached that discrimination has not gone away, and that another 25 years reauthorization is proper.

I am confident that whomever sits in this chair for the next 25 years will continue to do reauthorization of this, the most important of all of the important Civil Rights Acts that have passed. Shortening the period of time to a mere 6-year reauthorization I think is a hostile amendment.

I respect the gentleman from Iowa's position on this, but I don't think that this Committee should be continuously reauthorizing, particularly in light of the fact we have had a 10-year reauthoriza-

tion and a 25-year reauthorization and neither appeared to be too short a period of time.

Mr. CONYERS. Mr. Chairman.

Chairman SENSENBRENNER. I yield to the gentleman from Michigan.

Mr. CONYERS. Could I remind our Members that throughout a dozen hearings there has been no discussion about reducing the 25-year period? I think to cut it to 6 years would actually be stepping on a lot of testimony that has demonstrated that there are plenty of problems like you say that are out there. And so I plead with this Committee not to tamper with the 25-year period, which has worked pretty well. The former Justice Sandra Day O'Connor referenced it. And I think that it is a perfectly excellent way to continue.

Mr. KING. Would the gentleman yield?

Chairman SENSENBRENNER. I yield to the gentleman from Iowa.

Mr. KING. I thank the Chairman.

I wanted to point out for point of clarification that this amendment only addresses the bilingual balance section of the bill. It doesn't affect any other section of the bill.

I thank you and yield back.

Chairman SENSENBRENNER. I yield back the balance of my time.

The question is on the amendment offered by the gentleman from Iowa, Mr. King. Those in favor will say aye. Opposed, no.

Mr. KING. No.

Chairman SENSENBRENNER. Noes appear to have it.

Mr. KING. Mr. Chairman, I would ask for a recorded vote.

Chairman SENSENBRENNER. Recorded vote is ordered on the King amendment. Those in favor of the King amendment will, as your name is called, answer aye; those opposed, no. The Clerk will call the role.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble.

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye.

Mr. Smith?

Mr. SMITH. Aye.

The CLERK. Mr. Smith, aye.

Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte, aye.

Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.

Mr. Lungren?

Mr. LUNGREN. Aye.

The CLERK. Mr. Lungren, aye.

Mr. Jenkins?

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye.

Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no.
Mr. Bachus?
[No response.]
The CLERK. Mr. Inglis?
Mr. INGLIS. Aye.
The CLERK. Mr. Inglis, aye.
Mr. Hostettler?
Mr. HOSTETTLER. Aye.
The CLERK. Mr. Hostettler, aye.
Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no.
Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no.
Mr. Issa?
[No response.]
The CLERK. Mr. Flake?
[No response.]
The CLERK. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no.
Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no.
Mr. King?
Mr. KING. Aye.
The CLERK. Mr. King, aye.
Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no.
Mr. Franks?
Mr. FRANKS. Aye.
The CLERK. Mr. Franks, aye.
Mr. Gohmert?
[No response.]
The CLERK. Mr. Conyers?
Mr. CONYERS. No.
The CLERK. Mr. Conyers, no.
Mr. Berman?
Mr. BERMAN. No.
The CLERK. Mr. Berman, no.
Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. No.
The CLERK. Mr. Nadler, no.
Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no.
Mr. Watt?
Mr. WATT. No.
The CLERK. Mr. Watt, no.
Ms. Lofgren?
[No response.]

The CLERK. Ms. Jackson Lee?
Ms. JACKSON LEE. No.
The CLERK. Ms. Jackson Lee, no.
Ms. Waters?
Ms. WATERS. No.
The CLERK. Ms. Waters, no.
Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
Mr. WEXLER. No.
The CLERK. Mr. Wexler, no.
Mr. Weiner?
Mr. WEINER. No.
The CLERK. Mr. Weiner, no.
Mr. Schiff?
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no.
Ms. Sanchez?
Ms. SANCHEZ. No.
The CLERK. Ms. Sanchez, no.
Mr. Van Hollen?
Mr. VAN HOLLEN. No.
The CLERK. Mr. Van Hollen, no.
Ms. Wasserman Schultz?
[No response.]
The CLERK. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Further Members who wish to cast or change their vote?
Mr. Boucher.
The CLERK. Mr. Boucher, no.
Chairman SENSENBRENNER. Gentleman from California, Mr. Issa.
The CLERK. Mr. Issa, no.
Chairman SENSENBRENNER. The gentleman from California, Gallegly.
The CLERK. Mr. Gallegly, aye.
Chairman SENSENBRENNER. Further Members?
The gentlewoman from Florida, Ms. Wasserman Schultz.
The CLERK. Ms. Wasserman Schultz is not recorded.
Ms. Wasserman Schultz, no.
Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Delahunt.
The CLERK. Mr. Delahunt, no.
Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? If not, the Clerk will report.
The CLERK. Mr. Chairman, there are 10 ayes and 24 nays.
Chairman SENSENBRENNER. The amendment is not agreed to. Are there further amendments?
If there are no further amendments, a recording quorum is present. The question occurs on the motion to report the bill H.R. 9 favorably, as amended. All in favor will say aye. Opposed, no.

Mr. KING. No.

The CLERK. The ayes appear to have it, and the chair on his own request will order a rollcall. Those in favor of reporting the bill H.R. 9 favorably, as amended, will as your names are called answer aye; those opposed, no.

And the Clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble.

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye.

Mr. Smith?

Mr. SMITH. Aye.

The CLERK. Mr. Smith, aye.

Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte, aye.

Mr. Chabot?

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot, aye.

Mr. Lungren?

Mr. LUNGREN. Aye.

The CLERK. Mr. Lungren, aye.

Mr. Jenkins?

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye.

Mr. Cannon?

Mr. CANNON. Aye.

The CLERK. Mr. Cannon, aye.

Mr. Bachus?

[No response.]

The CLERK. Mr. Inglis?

Mr. INGLIS. Aye.

The CLERK. Mr. Inglis, aye.

Mr. Hostettler?

Mr. HOSTETTLER. Aye.

The CLERK. Mr. Hostettler, aye.

Mr. Green?

Mr. GREEN. Aye.

The CLERK. Mr. Green, aye.

Mr. Keller?

Mr. KELLER. Aye.

The CLERK. Mr. Keller, aye.

Mr. Issa?

Mr. ISSA. Aye.

The CLERK. Mr. Issa, aye.

Mr. Flake?

[No response.]

The CLERK. Mr. Pence?

Mr. PENCE. Aye.

The CLERK. Mr. Pence, aye.

Mr. Forbes?

Mr. FORBES. Aye.

The CLERK. Mr. Forbes, aye.
Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no.
Mr. Feeney?
Mr. FEENEY. Aye.
The CLERK. Mr. Feeney, aye.
Mr. Franks?
Mr. FRANKS. Aye.
The CLERK. Mr. Franks, aye.
Mr. Gohmert?
[No response.]
The CLERK. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye.
Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye.
Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye.
Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye.
Ms. Waters?
Ms. Waters. Aye.
The CLERK. Ms. Waters, aye.
Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye.
Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye.
Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye.
Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Ms. Sanchez?
Ms. SANCHEZ. Aye.
The CLERK. Ms. Sanchez, aye.
Mr. Van Hollen?

Mr. VAN HOLLEN. Aye.

The CLERK. Mr. Van Hollen, aye.

Ms. Wasserman Schultz?

Ms. WASSERMAN SCHULTZ. Aye.

The CLERK. Ms. Wasserman Schultz, aye.

Mr. Chairman?

Chairman SENSENBRENNER. Aye.

The CLERK. Mr. Chairman, aye.

Chairman SENSENBRENNER. Members who wish to cast or change their vote?

The gentleman from Virginia, Mr. Boucher.

The CLERK. Mr. Boucher, aye.

Chairman SENSENBRENNER. The gentleman from California, Mr. Gallegly.

The CLERK. Mr. Gallegly, aye.

Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? If not, the Clerk will report.

The CLERK. Mr. Chairman, 33 ayes and one nay.

Chairman SENSENBRENNER. The motion to report favorably the bill, as amended, is agreed to. Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute incorporating the amendments adopted here today. Without objection, the staff is directed to make any technical and conforming changes and all Members will be given 2 days as provided by the House rules in which to submit additional dissenting supplemental or minority views.

[Intervening business.]

[Whereupon, at 12:50 p.m., the Committee was adjourned.]

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