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VOTING RIGHTS IN THE SOUTH

Ten Years of Litigation Challenging Continuing Discrimination Against Minorities

By Laughlin McDonald
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INTRODUCTION

This report discusses the litigation and administrative proceedings brought by the Southern Regional Office of the American Civil Liberties Union over the past ten years to combat racial discrimination in voting in the South. It assesses the impact of the Voting Rights Act of 1965, and the need for extending its special provisions beyond their effective expiration date in August 1982.

The report is divided into five sections. The History of Disfranchisement details the lengths to which post-Reconstruction governments in the South went to make sure that minorities would never be able to exercise the power of the vote. It is a sorry record which cannot be dismissed simply as "past history," because its legacy of voting discrimination remains powerful to this day.

Modern Enfranchisement describes the slow steps, recently taken, toward securing equal voting rights for minorities, steps which culminated in the Voting Rights Act of 1965.

Progress Under the Voting Rights Act shows how the act has increased black voter registration and the number of minorities elected to office.

Continuing Barriers to Equal Political Participation, the heart of the report, proves through the accumulated evidence of ACLU lawsuits that voting discrimination has not disappeared. The problem remains widespread and persistent. The part on Section 5 Noncompliance shows how many local governments have blatantly and repeatedly ignored the requirements of the Voting Rights Act and instituted new voting procedures that are discriminatory and illegal. The Use of Discriminatory Voting Practices Adopted Prior to the Voting Rights Act presents the even more difficult problem of existing voting practices that cannot be reached effectively by the Voting Rights Act as currently interpreted.

Conclusions and Recommendations states the inescapable: the Voting Rights Act must be extended and its provisions strengthened. To improve enforcement of the Act, the U.S. Attorney General should actively monitor changes in voting procedures, and victims of voting discrimination should be

able to collect damages from local officials. To help successfully challenge discriminatory voting procedures instituted before passage of the Act, Section 2 should be amended to restore the original intent of Congress, namely that election procedures are unlawful if they have a discriminatory purpose or effect.

The ACLU's Southern Regional Office opened in 1965 to assist in the struggle for equal rights in the South. Our program, then and now, consists primarily of litigation. In the beginning, the Southern office concentrated on jury and prison desegregation, and handled such cases as Whitus v. Georgia (1967),[1] invalidating discriminatory jury selection procedures in Georgia, and Lee v. Washington (1968),[2] declaring racial segregation unconstitutional in prisons and jails in Alabama. We did voting rights cases as well, including Reynolds v. Sims (1964),[3] which applied the one person-one vote principle to state legislative reapportionment.

Beginning in the early 1970's, however, our emphasis centered on voting rights. That was so, not because of any pre-conceived plan to concentrate on that kind of litigation, but for the reason that the predominant civil rights complaints we received from the black community were of continuing discrimination in the elective process. More often than not, the complaints were about the inability of blacks to elect candidates of their choice to office.

The complaints from local blacks acknowledged what has long been known, that equal voting rights are key to the provision of governmental services. When an official accountable to black voters sits on a city council and helps decide who will be the new city clerk or police dispatcher, the chances of a black applicant being considered and actually hired are improved than if the council is accountable only to whites. When blacks participate in the decision of where to pave streets, chances are sharply increased that the dirt road in the long-neglected black section of town will get a new surface.

But the complaints also acknowledged that equal voting rights involve more than paved streets and jobs, important as they are. There is an intrinsic value to effective political participation, including office holding, that transcends the provision of services. As Reconstruction and its aftermath of black disfranchisement demonstrate, equal voting rights are

nothing less than an essential condition for racial equality itself.

Special acknowledgement is due the lawyers who helped prosecute the cases described in this report: Southern Regional Office staff Neil Bradley and Christopher Coates; past staff attorneys Reber Boult, Morris Brown, Emily Calhoun, and Norman Siegel; past director Charles Morgan, Jr.; cooperating attorneys James Blumstein, John Brittain, Herbert Buhl, Jeanne Chastain, Bob Cullen, Armand Derfner, Lois Goodman, John Harper, James Head, I.S. Leevy Johnson, Peggy Mastroianni, Ray McClain, Frank Parker, Julian Pierce, Henry Sanders, Edward Still, and David Walbert.

Several cases were co-sponsored by the ACLU with other organizations: Georgia Indigent Legal Services; National League of Women Voters; and, Lumbee River Legal Services. The Index to the report lists cases by jurisdiction, and identifies those which were co-sponsored, or in which the ACLU was amicus.

This report could not have been completed without the able secretarial assistance of Donna Matern and Marilyn Bright, nor the editing of Ari Korpivaara and Laura Murphy.

Finally, I wish to thank Ira Glasser, executive director of the ACLU, and his predecessor, Aryeh Neier, for their constant support and encouragement of the work of the Southern Regional Office.

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NOTES

1. 385 U.S. 545 (1967).
2. 390 U.S. 333 (1968).
3. 377 U.S. 533 (1964).

HISTORY OF DISFRANCHISEMENT

Prior to the Civil War, voting was typically limited throughout the country to white male property owners over 21 years of age. In only six northeastern states did blacks have any access at all to the franchise.[1] After the war, the confederate states were compelled by the First Reconstruction Act of 1867 to adopt new constitutions guaranteeing male suffrage without regard to race as a condition for re-entering the Union.[2] Subsequently, the Fifteenth Amendment was adopted in 1870, guaranteeing nationwide--at least in theory--the equal right to vote irrespective of "race, color, or previous condition of servitude."

The Thirteenth Amendment, abolishing slavery in 1865, has also been held to prohibit discriminatory election procedures,[3] while the Fourteenth Amendment, with its general prohibition of discrimination, has been widely used in more recent times to protect the equal right to vote.[4]

Congress promptly implemented the Fifteenth Amendment by enacting a variety of election laws.[5] The right to vote in all national and state elections was guaranteed. Election officials were required to give all citizens the equal chance to cast ballots and various discriminatory acts were made federal crimes, including the violation of state law in a federal election by any state or federal official. A system was also established of federal supervision of elections and voter registration.

During the early years of Reconstruction, Congress enforced the Fifteenth Amendment and its enabling legislation through criminal prosecutions, the election supervision program and by dispatching federal troops to protect black voters from public and private fraud and intimidation.[6] Blacks registered and voted in substantial numbers and many were elected to local, state and national offices. Some states were nominally under black/Republican control, while 20 blacks served in the House of Representatives and two in the United States Senate during Reconstruction.[7]

Southern whites, however, never acquiesced to black enfranchisement. Edgefield County, South Carolina, home of the notorious B. R. "Pitchfork Ben" Tillman, was typical of the

time and place.[8] After the grant of general suffrage in 1867, local Democratic and agricultural societies were formed in the county whose purposes, among others, were to use social and economic coercion to deter blacks and white Republicans from voting. The Democrats failed in these early attempts to regain dominance, and as a consequence turned to fraud and violence as a means of restoring political control. Rifle and sabre clubs were formed in virtually every township, and operated as a terrorist wing of the Democratic Party.

Tillman was a charter member of one such club, the Sweetwater Sabre Club, organized in 1873. He became captain three years later, and was in command when two of his men executed Simon Coker, a black state senator from nearby Barnwell.[9]

Violence reached its zenith in Edgefield in July, 1876, at the infamous massacre in the town of Hamburg. Tillman, one of the participants, conceded that it "had been the settled purpose of the leading white men of Edgefield to provoke a riot and teach the Negroes a lesson and if one did not offer, we were to make one."[10] Rampaging whites attacked the town and killed a number of blacks. When none were tried or convicted for the murders, it was taken as a sign that Republican control had been broken, and that Reconstruction was coming to an end.

The results of the next county election in 1876 were determined by the "Edgefield Plan" for redemption, authored by George Tillman and General Martin Witherspoon Gary, the fierce unreconstructed "Bald Eagle of the Confederacy." The watchword adopted for the campaign was "Fight the Devil with Fire."

Every Democrat, the standing rules provided, "must feel honor-bound to control the vote of at least one Negro, by intimidation, purchase, keeping him away or as each individual may determine, how he may best accomplish it."[11] As for violence, never merely threaten a man: "If he deserves to be threatened, the necessities of the times require that he should die."[12] Tillman wrote later that "Gary and George Tillman had to my personal knowledge agreed on the policy of terrorizing the Negroes at the first opportunity."[13]

On election day, Gary and several hundred armed men seized the two polling places in Edgefield--the Masonic Hall and the courthouse--and refused to allow blacks in to vote. Open race warfare, together with Gary's doctrine of voting "early and often," was enough to ensure a Democratic majority.

The following year, the Edgefield Plan was essentially condoned by the Compromise of 1877, ending Reconstruction and withdrawing federal troops from the South.[14] Control of Edgefield and the region as a whole was left to men like Tillman, who had vowed never again to see whites subjected to the humiliation of black enfranchisement.

The Democratic redeemers, such as Tillman, had been substantially aided in their recapture of political power by the courts and Congress which systematically dismantled many of the Reconstruction civil rights laws. On March 27, 1876, the Supreme Court, in a pair of decisions, declared unconstitutional, or narrowly construed, major provisions of the Enforcement Act of 1870, the effect of which was to undermine Congress' attempts to protect black voters from official and private intimidation.[15] The Court continued its assault upon the civil rights laws in a series of later opinions essentially nullifying the Reconstruction acts designed to guarantee equal rights to blacks.[16]

Not all decisions construing the Reconstruction Acts were hostile to the rights of blacks. Ex Parte Siebold[17] and Ex Parte Yarbrough[18] acknowledged the guarantee of equal protection in voting in congressional elections.[19] Since most states utilized the same registration and election procedures for state as well as federal officials, the effect of these decisions was to allow the courts in later, more receptive years to regulate voter fraud and abolish the discriminatory all-white primary.[20] But as far as the post-Reconstruction years were concerned, these cases were the exceptions, and were never effectively enforced.

The effects of the Compromise of 1877 and the process of federal disengagement from state politics were predictable. The Southern redeemers, led by men such as Ben Tillman, were set increasingly free to institutionalize white supremacy.

In South Carolina, the legislature passed in 1878 a law eliminating precincts in strong Republican areas and requiring voters to travel great distances to cast a ballot. Then in 1882, a complicated balloting procedure, amounting to a literacy test, was introduced; and another law required eligible voters to be registered by June, 1882. Those who failed to register were barred from registration thereafter, and the only additional registration was for those who became eligible after June, 1882.

Local officials had full discretion in implementing the

registration requirements, and aggrieved persons had to appeal within five days and institute suit within 15 days. The laws were an invitation to fraud, and were used for the sole purpose of disfranchising blacks.[21] Similar methods of "regulating" the black vote were adopted in other Southern states.[22]

Even though politics had been successfully redeemed in the South within a few years of the end of Reconstruction, ruling whites still felt the need for more systematic means to take the actual ballot out of the hands of blacks, and to replace their despised Reconstruction constitutions, often known derisively as Radical Rags. Moreover, the fraud and corruption which it had been necessary to practice to restore white supremacy had distorted the political process nearly beyond recognition or use. Some kind of reform, some permanent, technically legal way of taking away the vote from blacks, was clearly needed.

Judge J.J. Chrisman of Mississippi, a state which was to lead the movement for permanent disfranchisement, commented upon the condition of things in his state in 1890: "/I/t is no secret that there has not been a full vote and a fair count in Mississippi since 1875--that we have preserved the ascendency of the white people by revolutionary methods. In plain words, we have been stuffing ballot boxes, committing perjury, and here and there in the State carrying elections by fraud and violence until the whole machinery for election was about to rot down. No one would deliberately choose to perpetuate such methods. . . who was not a moral idiot."[23]

To accomplish "legal" disfranchisement of blacks, Mississippi called a constitutional convention in 1890. There was nothing covert about the motives of the conventioneers, nor the purpose of the convention itself. The intent, quite simply, was to disfranchise as many blacks as possible within the limitations of the Fourteenth and Fifteenth Amendments. As one delegate declared: "That is what we are here for today, to secure the supremacy of the white race."[24] Another remarked more poetically, but equally to the point: "We are embarked in the same ship of white supremacy, and it is freighted with all our hopes."[25]

The convention favored repeal of the Fifteenth Amendment and adopted such a position in the Resolution of its Preamble Committee. Repeal, however, was out of the question as a matter of political reality. The delegates would have to content themselves with lesser measures. None doubted that they would be found. As one delegate declared: "The remedy is in our hands.

We can if we will afford a safe, certain and permanent white supremacy in our State."[26]

A new constitution was adopted on November 1, 1890. While the Constitution of 1869 had granted the right to vote to any male over the age of 21 resident in the state for six months and not disqualified by reason of insanity, idiocy,or conviction of certain crimes, the new constitution imposed a residency requirement of two years, payment of an annual poll tax, and passage of a literacy test as conditions for voting.

The literacy test stood to have a devastating impact upon blacks. At the time of its adoption, 76% of blacks in Mississippi were illiterate. Still, 11% of whites were also illiterate. To make certain that the test did not accidentally disfranchise some whites, for that was never its purpose, an exemption from literacy was created in favor of those who could understand any section of the state constitution read to them by the registrar. The exemption, administered as it was by whites, was nothing more than another device for disfranchising blacks without at the same time depriving any illiterate whites of the ballot.

The disfranchisement measures adopted by the 1890 convention were effective beyond belief. In 1867, 70% of the black voting age population in Mississippi was registered to vote. By 1889, the figure had plummeted to 9%.

Years later, at a reunion of delegates of the Convention of 1890, the Chairman conceded that: "It was no easy task for the convention. . .to enact a state constitution practically eliminating from the electors of the State at least eight-tenths of its colored people, citizens of the United States, in the face of the Fifteenth Amendment."[27] Judge R.H. Thompson, another reunion delegate, was still in awe of the convention's accomplishments. There was "scarcely a conceivable scheme having the least tendency to eliminate the Negro vote that was not duly considered by the convention," he said. "It is regrettable that all the suggestions. . .were not recorded; had they been preserved, the record would be a monument to the resourcefulness of the human mind."[28]

The delegates of the Convention of 1890 were mindful of the Fifteenth Amendment and were careful to cast the provisions of the new constitution in racially neutral terms. But they need not have been, for in 1894 all but seven of the forty-nine sections of the Enforcement Acts were repealed by Congress at a

single stroke.[29] Suffrage laws were reduced even more when the Criminal Code was adopted in 1909.[30]

Other Southern states followed Mississippi's lead, and with the exceptions of Texas and Florida, adopted literacy tests for voting as the heart of their disfranchising schemes. The ranks of black registered voters were devastated by these state strategems.[31]

Still, no device was to be overlooked in safeguarding the electorate. Eleven States in the South eventually adopted all-white primary elections, from which even those few blacks who were registered were excluded from voting. Since nomination in the primary was tantamount to election to office in these states, blacks were totally shut out from the political process.

Challenges were made to the disfranchising schemes of South Carolina,[32] Alabama,[33] Virginia,[34] and Mississippi,[35] but the Supreme Court dismissed them on technical or procedural grounds, glossing over the racial discrimination patent in the records before it. The Supreme Court continued to uphold the various devices for disfranchisement over the next fifty years. In 1937, it found the poll tax constitutional as an "appropriate" condition for suffrage within the power of the states to impose.[36] All-white primaries were approved of in 1935, provided they were not required by state law.[37] Literacy tests were held constitutional as late as 1959, because they had "some relation to standards designed to promote intelligent use of the ballot."[38]

Nearly 90 years after its adoption, the Fifteenth Amendment's promise of equal voting lay broken at the hands of Congress, the courts, and the individual states of the Union.

NOTES

1. Oregon v. Mitchell, 400 U.S. 122, 156 (1970).

2. Act of March 2, 1867, ch. 153, 14 Stat. 428.

3. Sullivan v. DeLoach, Civ. No. 76-238 (S.D.Ga., Sept. 11, 1977).

4. E.g., White v. Regester, 412 U.S. 755 (1973).

5. Enforcement Act of May 31, 1870, ch. 64, 16 Stat. 140; Enforcement Act of Feb. 28, 1871, ch. 49, 16 Stat. 433.

6. A. Derfner, "Racial Discrimination and the Right to Vote," 26 Vand.L.Rev. 523, 530 (1973).

7. J. Franklin, From Slavery to Freedom, 317-23 (3d ed. 1967).

8. For a fascinating account of Reconstruction in Edgefield see O.V. Burton, "Ungrateful Servants? Edgefield's Black Reconstruction: Part I of the Total History of Edgefield County," South Carolina, Princeton University, Ph.D., 1976.

9. For a good discussion of Tillman's life, see F.B. Simkins, Pitchfork Ben Tillman, South Carolinian (L.S.U. Press, 1944).

10. L. McDonald, "Voting Rights on the Chopping Block," Southern Exposure, May, 1981, 89.

11. Burton, supra, 111.

12. Ibid.

13. Ibid., 112.

14. Southern Democrats agreed to support Republican Rutherford B. Hayes in the contested presidential election of that year, awarding him the disputed votes of three unredeemed states, with the understanding that thereafter the South would be allowed to solve its race problems in its own way. See C. Vann Woodward, Reunion and Reaction: The Compromise of 1877 and the End of Reconstruction (1951).

15. United States v. Cruikshank, 92 U.S. 542 (1876) restricted the offenses cognizable under the conspiracy provisions of the Act, while United States v. Reese, 92 U.S. 214 (1876) held unconstitutional Sections 3 and 4 of the Act because they did not

prohibit state interference with voting rights solely on the basis of race.

16. United States v. Harris, 106 U.S. 629 (1883) (struck down Section 2 of the Act of 1871 prohibiting conspiracies to deprive citizens of equal protection of the law); Civil Rights Cases, 109 U.S. 3 (1883) (declared unconstitutional provisions of the Civil Rights Act of 1875 guaranteeing equal access to public accommodations); Baldwin v. Franks, 120 U.S. 678 (1887) (conspiracy statutes could not be construed to reach private misconduct unaided by official action); James v. Bowman, 190 U.S. 127 (1903)(declared unconstitutional Section 5 of the Act of 1870 prohibiting bribery to prevent persons from voting); Hodges v. United States, 203 U.S. 1 (1906)(Section 16 of the Act of 1870 protecting the rights of blacks to contract for employment ruled invalid). Also see Slaughterhouse Cases, 83 U.S. 36 (1873), and Minor v. Happersett, 88 U.S. 162 (1875), giving a narrowing construction to the broad language of the Fourteenth Amendment.

17. 100 U.S. 371 (1880).

18. 110 U.S. 651 (1884).

19. Other decisions protected the right to equal treatment in jury selection, i.e., Ex Parte Virginia, 100 U.S. 339 (1880), and Strauder v. West Virginia, 100 U.S. 303 (1880).

20. United States v. Classic, 313 U.S. 299 (1941); Smith v. Allwright, 321 U.S. 649 (1944).

21. McDonald, supra, 90.

22. See A. Derfner, supra, 534 n.38 and sources cited therein.

23. Quoted in C. Van Woodward, Origins of the New South, 1877-1913, 57-8 (1951).

24. United States v. State of Mississippi, 229 F.Supp. 925, 986 (S.D.Miss. 1964).

25. Ibid.

26. Ibid.

27. Ibid., 986-87.

28. Ibid.

29. Act of February 8, 1894, ch. 25, 28 Stat. 36.

30. Act of March 4, 1909, ch. 321, 35 Stat. 1088.

31. In Louisiana, for example, in 1896, there were 130,334 blacks registered to vote. By 1900, there were only 5,320. "Political Participation, A Report of the United States Commission on Civil Rights," Washington, D.C., May, 1968, 8.

32. Mills v. Green, 159 U.S. 651 (1895).

33. Giles v. Harris, 189 U.S. 475 (1903); Giles v. Teasley, 193 U.S. 146 (1904).

34. Jones v. Montague, 194 U.S. 147 (1904); Selden v. Montague, 194 U.S. 153 (1904).

35. Williams v. Mississippi, 170 U.S. 213 (1898).

36. Breedlove v. Suttles, 302 U.S. 277, 283 (1937). Numerous attempts were subsequently made to abolish the poll tax through federal legislation. It was not until 1964, however, with ratification of the Twenty-Fourth Amendment that the tax was banned in federal elections. Two years later in a case from Virginia, the Supreme Court, reversing its earlier decision, declared use of the poll tax in state elections to be unconstitutional because "the affluence of the voter or payment of any fee" was not a proper 'electoral standard.'" Harper v. Virginia State Board of Elections, 383 U.S. 663, 666 (1966).

37. Grovey v. Townsend, 295 U.S. 45 (1935). Nine years later, however, the Court reconsidered the lawfulness of all-white primaries and found them to be unconstitutional even where their racially exclusive policies had been adopted without aid or authorization of the legislature. Smith v. Allwright, 321 U.S. 649, 664 (1944).

38. Lassiter v. Northampton, 360 U.S. 45, 51 (1959).

MODERN ENFRANCHISEMENT

The modern movement for enfranchisement began in the national legislature in 1957 when Congress passed the first Civil Rights Act since the Civil War.[1] The Act created the six member Commission on Civil Rights and gave it the duty of gathering information on discrimination in voting. Interference with voting in federal elections was prohibited, and the Attorney General was authorized to bring lawsuits to protect equal voting rights. Procedures were also provided for holding in criminal contempt those who disobeyed court orders prohibiting discrimination.

The Act was amended in 1960 to authorize federal referees to investigate voting discrimination and to register qualified voters.[2] Four years later, Congress passed the Civil Rights Act of 1964. It provided, among other things, that black registration be based upon the same voter qualifications which traditionally had been applied to whites; any literacy or other tests for voting be given entirely in writing; immaterial errors in answering test questions or fulfilling registration requirements not be made the basis for denying voter eligibility; and a sixth grade edcuation was rebuttal evidence of literacy.[3]

The 1957, 1960 and 1964 acts, although they were often used effectively to deal with particular voting rights infringements,[4] did not result in the enfranchisement of any appreciable number of people. That was true primarily because the acts depended upon litigation for enforcement. Litigation, often involving countless appeals and retrials, to some extent merely played into the hands of recalcitrant officials and gave them further opportunity to evade their obligations under the law.

From 1957 to 1965, the Attorney General brought 71 suits under the three acts,[5] but voter registration in Mississippi increased from 4.4% in 1954 to only 6.4% in 1965. The increase in Alabama was from 14.2% in 1958 to 19.4% in 1964; in Louisiana, from 31.7% in 1956 to 31.8% in 1965.[6]

If any significant number of blacks were actually to be registered, clearly some approach different from that contained in the civil rights acts of the 1950's and early 1960's would have to be developed.

In 1965, Congress adopted an entirely new plan for voter legislation. Instead of relying primarily on lawsuits as it had done in the past, Congress passed the Voting Rights Act of 1965,[7] which suspended the standards responsible for the exclusion of blacks from registration and placed supervision of new procedures in the hands of federal officials. The Act, amended in 1970 and 1975, when its protection was extended to language minorities,[8] contains both permanent and special provisions. The permanent provisions apply nationwide, while the special provisions apply only in jurisdictions that meet certain conditions specified in the Act.

The most important permanent provisions of the Act are: Section 2, which bans discrimination in voting based upon race, color or membership in a language minority;[9] and Sections 4 and 201 which abolished "tests or devices" for voting.[10] The term "test or device" includes literacy tests, educational requirements, good character tests, and exclusively English language registration procedures or elections conducted solely in English where a single linguistic minority comprises more than 5 percent of the voting age population of the jurisdiction.

Other permanent provisions: make it a crime to deprive or attempt to deprive anyone of rights protected by the Act;[11] and abolished durational residency requirements and established uniform standards for absentee voting in presidential elections.[12]

The most important temporary provision, often called the heart of the Voting Rights Act, is Section 5.[13] Section 5 applies only in those jurisdictions which used a literacy test or device for voting, and in which less than half of the voting age residents were registered or voted in either the 1964, 1968, or 1972 presidential elections.[14] Twenty-two states, or parts of states, are presently covered by Section 5--all of Alaska, Alabama, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas and Virginia, and counties or towns in Connecticut, California, Colorado, Florida, Hawaii, Idaho, Massachusetts, Michigan, New Hampshire, New York, North Carolina, South Dakota, and Wyoming.[15]

Jurisdictions covered by Section 5 may not implement any changes in voting unless they have first been pre-cleared. Preclearance may be obtained administratively by making a submission to the Attorney General, or judicially by filing a declaratory judgment action in the federal courts of the District of Columbia. In either case, the jurisdiction seeking pre-clearance has the

burden of showing that the change does not have the purpose or effect of denying or abridging the right to vote on account of race, color or membership in a language minority. If the jurisdiction cannot meet this burden, preclearance must be denied and the change cannot be implemented.

A jurisdiction may seek pre-clearance from either, or both, the Attorney General or the District of Columbia courts. There is no appeal from the decision of the Attorney General, but an appeal may be taken directly to the Supreme Court to review a decision of the District of Columbia courts.[16] Administrative submission to the Attorney General is a relatively simple and inexpensive process. No formal hearings or personal appearances are required, and a decision is guaranteed within 60 days (or 120 days if the department requests additional information). Not surprisingly, submission to the Attorney General has been the usual method of seeking pre-clearance.

Section 5 has been broadly construed to cover all proposed changes in election laws, including those which are seemingly minor, such as the relocation of a polling place.[17] According to the Department of Justice, approximately 35,000 changes in voting have been submitted for pre-clearance since 1965. See Table /1/. Of these, 815 changes--over half since 1975--were found objectionable. Table /2/. (Tables appear on pages 20-30.)

The changes most frequently submitted have been annexations, relocation of polling places, at-large elections, numbered posts, majority vote requirements, and reapportionment. Table /3/. The greatest numbers of objections since 1975 have been to annexations, at-large elections, majority vote and numbered post provisions, and redistricting plans. Table /4/. Georgia has received the most objections, 226. Louisiana is second with 136, and Texas, which only became covered in 1975, is third with 130.

Section 5 is enormously significant, for it prevents a jurisdiction from replacing old forms of discrimination with new ones. As the Supreme Court recently observed in an opinion affirming the constitutionality of Section 5: "Case-by-case adjudication proved too ponderous a method to remedy voting discrimination, and, when it had produced favorable results, affected jurisdictions often 'merely switched to discriminatory devices not covered by the federal decrees.'"[18] Section 5 was intended to block discrimination before it occurs, and place the burden of litigation or administrative proceedings and delay

upon the perpetrators and not the victims of possibly objectionable practices.

Another special provision of the Voting Rights Act allows the Attorney General to send federal examiners and observers to covered jurisdictions from which twenty or more meritorious written complaints alleging voter discrimination have been received, or if the Attorney General determines that appointment is necessary to protect the equal right to vote.[19]

Examiners may register or list qualified voters. Those listed are issued registration certificates and may vote in all federal, state, and local elections. Federal observers act as poll watchers and determine whether all the eligible persons are allowed to vote and that ballots are properly counted. One hundred six counties since 1965 have been designated for federal examiners, and a total of 136,744 people listed by them as registered voters.[20] Table /5/.

The use of examiners and observers is not as frequent today as during the early years of the Act's enforcement. Nonetheless, 733 observers were assigned by the Attorney General to 21 counties in the covered jurisdictions in 1980.[21] Table /6/.

The special provisions of the Act allowing the appointment of observers and examiners, and requiring pre-clearance, can also be applied to non-covered jurisdictions through the so-called "pocket trigger" provisions of Section 3.[22] Section 3 was designed to reach pockets of discrimination in jurisdictions not otherwise covered by Section 5 and its provisions may be applied by any federal court which has found a violation of voting rights protected by the Fourteenth or Fifteenth Amendments. Federal examiners have been appointed in three jurisdictions under Section 3[23] and pre-clearance has been required in three others.[24]

The remaining special provision of the Act is Section 203 which requires covered jurisdictions in which a single language minority is more than 5 percent of eligible voters, as well as noncovered jurisdictions in which language minorities are more than 5 percent of eligible voters, and where the illiteracy rate within the language minority is higher than the national average, to conduct bilingual elections and registration campaigns.[25] More specifically, affected jurisdictions are required to provide registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, in the language of the applicable language minority group if such

items and services are provided in English.

Jurisdictions required to provide bilingual election procedures include the entire states of Alaska, Arizona, and Texas and approximately 215 counties and townships, in California, Colorado, Connecticut, Florida, Hawaii, Idaho, Kansas, Louisiana, Maine, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Virginia, Washington, Wisconsin, and Wyoming.[26]

Jurisdictions may exempt themselves from Section 5 coverage, or "bail out," by obtaining a declaratory judgment from the federal courts of the District of Columbia that for the preceding seventeen years (or fewer years if the jurisdiction became covered in 1970 or 1975), no test or device for voting was used with a discriminatory purpose or effect.[27] Because the Voting Rights Act banned tests or devices in many states in 1965 (the ban was not made nationwide until 1970), bail out will be virtually automatic for those states beginning on August 6, 1982.

Chief Justice Earl Warren, quoting from the Fifteenth Amendment, summarized the meaning of the Voting Rights Act in an opinion he wrote for the Supreme Court in 1966 holding the Act to be constitutional:

> After enduring nearly a century of widespread resistance to the Fifteenth Amendment, Congress has marshalled an array of potent weapons against the evil....Hopefully, millions of non-white Americans will now be able to participate for the first time on an equal basis in the government under which they live. We may finally look forward to the day when truly "/t/he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."[28]

Table 1

NUMBER OF CHANGES SUBMITTED UNDER SECTION 5 AND REVIEWED BY THE DEPARTMENT OF JUSTICE, BY STATE AND YEAR, 1965-DECEMBER 31, 1980

STATE	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976
ALABAMA	1	0	0	0	13	2	86	111	60	58	299	349
ALASKA***	0	0	0	0	----	0	0	0	----	----	0	3
ARIZONA****	0	0	0	0	0	0	19	69	33	28	52	228
CALIFORNIA*	----	----	----	----	----	0	0	6	1	5	0	382
COLORADO*	----	----	----	----	----	----	----	----	----	----	0	12
CONNECTICUT**	----	----	----	----	----	----	----	----	----	0	0	0
FLORIDA*	----	----	----	----	----	----	----	----	----	----	1	57
GEORGIA	0	1	0	62	35	60	138	226	114	173	284	252
HAWAII*	0	0	0	0	0	0	0	0	0	0	0	6
IDAHO*	0	0	----	----	----	0	0	0	0	0	0	0
LOUISIANA	0	0	0	0	2	3	71	136	283	137	255	303
MAINE*	----	----	----	----	----	----	----	----	----	0	0	3
MASSACHUSETTS**	----	----	----	----	----	----	----	----	----	0	0	11
MICHIGAN**	----	----	----	----	----	----	----	----	----	----	0	3
MISSISSIPPI	0	0	0	0	4	28	221	68	66	41	107	152
NEW HAMPSHIRE**	----	----	----	----	----	----	----	----	----	0	0	0
NEW MEXICO*	----	----	----	----	----	----	----	----	----	----	0	65
NEW YORK*	----	----	----	----	----	0	4	----	----	84	78	106
OKLAHOMA*	----	----	----	----	----	----	----	----	----	----	0	1
NORTH CAROLINA*	0	0	0	0	0	2	75	28	35	54	293	125
SOUTH CAROLINA	0	25	52	37	80	114	160	117	135	221	201	419
SOUTH DAKOTA	----	----	----	----	----	----	----	----	----	----	0	0
TEXAS	----	----	----	----	----	----	----	----	----	----	249	4,694
VIRGINIA	0	0	0	11	0	46	344	181	123	186	259	301
WYOMING*	----	----	----	----	----	----	0	0	0	1	0	0
TOTALS	1	26	52	110	134	255	1,118	942	850	988	2,078	7,472

Source: U.S. Department of Justice

*Selected county (counties) covered rather than entire state.
**Selected town (towns) covered rather than entire state.
***Entire state covered 1965-1968; selected election districts covered 1970-1972; since 1975 entire state covered.
****Selected county (counties) until 1975; entire state now covered.
----Not covered for years indicated.

Table 1
(Cont'd.)

NUMBER OF CHANGES SUBMITTED UNDER SECTION 5 AND REVIEWED BY THE DEPARTMENT OF JUSTICE, BY STATE AND YEAR, 1965-DECEMBER 31, 1980

STATE	1977	1978	1979	1980	TOTAL
ALABAMA	153	146	142	295	1,715
ALASKA***	0	25	1	8	37
ARIZONA****	180	311	163	655	1,738
CALIFORNIA*	99	105	8	89	695
COLORADO*	4	34	147	36	233
CONNECTICUT**	0	0	0	0	0
FLORIDA*	8	46	28	28	168
GEORGIA	242	444	371	689	3,091
HAWAII*	0	0	0	3	9
IDAHO*	0	0	0	1	1
LOUISIANA	460	254	336	356	2,596
MAINE*	0	0	0	0	3
MASSACHUSETTS**	0	6	0	0	17
MICHIGAN**	0	0	0	0	3
MISSISSIPPI	114	123	112	153	1,189
NEW HAMPSHIRE**	0	0	0	0	0
NEW MEXICO*	----	----	----	----	65
NEW YORK*	96	72	27	25	492
OKLAHOMA*	0	0	----	----	1
NORTH CAROLINA*	183	156	89	158	1,198
SOUTH CAROLINA	299	212	138	192	2,402
SOUTH DAKOTA	0	2	4	0	6
TEXAS	1,735	2,425	2,917	4,188	16,208
VIRGINIA	434	314	267	464	2,930
WYOMING*	0	0	0	0	1
TOTALS	4,007	4,675	4,750	7,340	34,798

Table 2

NUMBER OF CHANGES* TO WHICH OBJECTIONS HAVE BEEN INTERPOSED
BY STATE AND YEAR, 1965 - FEBRUARY 28, 1981

STATE	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976
ALABAMA	-	-	-	-	10	1	3	9	1	6	16	16
ALASKA	-	-	-	-	-	-	-	-	-	-	-	-
ARIZONA	-	-	-	-	-	-	-	-	1	-	2	2
CALIFORNIA	-	-	-	-	-	-	-	-	-	-	-	3
COLORADO	-	-	-	-	-	-	-	-	-	-	-	-
CONNECTICUT	-	-	-	-	-	-	-	-	-	-	-	-
FLORIDA	-	-	-	-	-	-	-	-	-	-	-	-
GEORGIA	-	-	-	6	-	-	12	18	15	22	83	12
HAWAII	-	-	-	-	-	-	-	-	-	-	-	-
IDAHO	-	-	-	-	-	-	-	-	-	-	-	-
LOUISIANA	-	-	-	-	2	-	36	13	6	10	5	52
MAINE	-	-	-	-	-	-	-	-	-	-	-	-
MASSACHUSETTS	-	-	-	-	-	-	-	-	-	-	-	-
MICHIGAN	-	-	-	-	-	-	-	-	-	-	-	-
MISSISSIPPI	-	-	-	-	4	1	19	4	7	2	17	7
NEW HAMPSHIRE	-	-	-	-	-	-	-	-	-	-	-	-
NEW MEXICO	-	-	-	-	-	-	-	-	-	-	-	-
NEW YORK	-	-	-	-	-	-	-	-	-	4	1	-
OKLAHOMA	-	-	-	-	-	-	-	-	-	-	-	-
NORTH CAROLINA	-	-	-	-	-	-	10	-	-	-	8	-
SOUTH CAROLINA	-	-	-	-	-	-	-	7	7	26	4	11
SOUTH DAKOTA	-	-	-	-	-	-	-	-	-	-	-	-
TEXAS	-	-	-	-	-	-	-	-	-	-	1	48
VIRGINIA	-	-	-	-	-	1	6	1	-	3	1	-
WYOMING	-	-	-	-	-	-	-	-	-	-	-	-
TOTALS	0	0	0	6	16	3	86	52	37	73	138	151

Source: U.S. Department of Justice

*Some submissions include more than one change affecting voting. Thus the number of changes to which objections have been interposed exceeds the number of submissions which have resulted in objections.

Table 2
(Cont'd)

NUMBER OF CHANGES TO WHICH OBJECTIONS HAVE BEEN INTERPOSED
BY STATE AND YEAR, 1965 - FEBRUARY 28, 1981

STATE	1977	1978	1979	1980	1981	TOTAL
ALABAMA	1	3	1	5	-	72
ALASKA	-	-	-	-	-	0
ARIZONA	-	-	-	3	-	8
CALIFORNIA	2	-	-	-	-	5
COLORADO	-	-	-	-	-	0
CONNECTICUT	-	-	-	-	-	0
FLORIDA	-	-	-	-	-	0
GEORGIA	34	8	5	10	1	226
HAWAII	-	-	-	-	-	0
IDAHO	-	-	-	-	-	0
LOUISIANA	1	3	-	8	-	136
MAINE	-	-	-	-	-	0
MASSACHUSETTS	-	-	-	-	-	0
MICHIGAN	-	-	-	-	1	1
MISSISSIPPI	8	2	3	3	-	78
NEW HAMPSHIRE	-	-	-	-	-	0
NEW MEXICO	-	-	-	-	-	0
NEW YORK	-	-	-	-	-	5
OKLAHOMA	-	-	-	-	-	0
NORTH CAROLINA	37	3	1	3	-	62
SOUTH CAROLINA	8	7	7	-	-	77
SOUTH DAKOTA	-	1	1	-	-	2
TEXAS	13	22	26	18	2	130
VIRGINIA	-	-	1	1	-	14
WYOMING	-	-	-	-	-	0
TOTALS	104	49	45	51	4	815

Table 3

NUMBER OF CHANGES SUBMITTED UNDER SECTION 5 AND REVIEWED BY THE DEPARTMENT OF JUSTICE, BY TYPE AND YEAR, 1965 - DECEMBER 31, 1980

TYPE OF CHANGE	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976
REDISTRICTING	----	2	4	----	12	25	201	97	47	55	53	335
ANNEXATION	----	1	2	----	2	6	256	272	242	244	571	1,499
POLLING PLACE	----	2	4	4	7	28	174	127	131	154	408	1,983
PRECINCT	----	2	9	7	11	22	144	69	55	81	82	608
REREGISTRATION	----	----	1	----	----	2	52	15	6	4	46	147
INCORPORATION	----	----	1	----	----	----	4	1	3	1	5	15
ELECTION LAW 1/	1	18	24	96	67	105	226	332	258	422	620	1,831
BILINGUAL	----	----	----	----	----	----	----	----	----	----	22	781
MISCELLANEOUS 2/	----	----	----	3	14	8	15	26	99	12	65	168
NOT WITHIN THE SCOPE OF SECTION 5	----	1	7	----	21	59	46	3	9	15	206	105
TOTALS	1	26	52	110	134	255	1,118	942	850	988	2,078	7,472

Source: U.S. Department of Justice

Note: These figures are based on computer tabulations. The computer program is limited to the above general classifications.

1/ Ordinance or other legislation affecting election laws; this category was replaced in 1980 by several others. See page 2.

2/ Miscellaneous change not included in the above classifications.

Table 3
(Cont'd.)

NUMBER OF CHANGES SUBMITTED UNDER SECTION 5 AND REVIEWED BY THE DEPARTMENT OF JUSTICE, BY TYPE AND YEAR, 1965 - DECEMBER 31, 1980

TYPE OF CHANGE	1977	1978	1979	1980	TOTAL
REDISTRICTING	79	48	53	85	1,096
ANNEXATION	939	880	1,130	1,205	7,249
POLLING PLACE	844	1,402	1,122	3,058	9,448
PRECINCT	266	299	542	982	3,179
REREGISTRATION**	366	162	271	5	1,077
INCORPORATION	12	5	11	58	116
ELECTION LAW 1/***	1,094	1,450	1,230	----	7,774
BILINGUAL	171	280	294	201	1,749
MISCELLANEOUS 2/	150	65	68	284	977
NOT WITHIN THE SCOPE OF SECTION 5***	86	84	29	----	671
METHOD OF ELECTION*	----	----	----	196	196
FORM OF GOVERNMENT*	----	----	----	41	41
CONSOLIDATION OR DIVISION OF POLITICAL UNITS*	----	----	----	14	14
SPECIAL ELECTION*	----	----	----	369	369
VOTING METHODS*	----	----	----	93	93
CANDIDATE QUALIFICATION*	----	----	----	11	11
VOTER REGISTRATION PROCEDURE*	----	----	----	738	738
TOTALS	4,007	4,675	4,750	7,340	34,798

*New computer classifications beginning in 1980.

**Modified in 1980; does not include other registration procedures listed above.

***Not used in 1980.

Table 4 Number of Changes Submitted Under Section 5 to Which Objections by Department of Justice were Interposed, by Type of Change, 1975-1980

Type of change	Objections	
	Number	Percent
Annexations	235	30.5
At-large elections	80	10.4
Majority vote	66	8.6
Numbered posts	60	7.8
Redistricting/boundary changes	56	7.3
Polling place changes	55	7.2
Residency requirements	42	5.5
Staggered terms	36	4.7
Single-member districts	26	3.4
Change in number of positions	15	1.9
Multimember districts	13	1.7
Registration and voting procedures	13	1.7
Requirements for candidacy	12	1.6
Election date change	11	1.4
Change in terms of office	8	1.0
Bilingual procedures	8	1.0
New voting precinct	6	0.8
Consolidation and incorporation	6	0.8
Change from appointive to elective/elective to appointive	3	0.4
Miscellaneous	19	2.5
Total	770	100.2

Note: The above figures count each element of an objection separately. For instance, if the Department of Justice objected to a proposed change of six polling places, this was counted as six proposed changes, but the Department of Justice data counted it as one objection. The total number of proposed changes in this table is, therefore, larger than the total number of objections from the Department of Justice data above. The above figures do not include objections subsequently withdrawn. Column does not total 100 percent due to rounding.

(Source: US Commission on Civil Rights analysis of Department of Justice objection letters)

Table 5 Counties Designated for Federal Examiners and Number of Persons Listed by Examiners

State and county	Date of designation	Net no. of persons listed
ALABAMA		
Autauga	10–29–65	1,330
Bullock*	11–06–78	
Choctaw*	5–30–66	
Conecuh*	8–28–80	
Dallas	8–09–65	8,418
Elmore	10–29–65	1,792
Greene	10–29–65	1,639
Hale	8–09–65	2,769
Jefferson	1–20–66	20,560
Lowndes	8–09–65	3,030
Marengo	8–09–65	5,076
Montgomery	9–29–65	9,731
Perry	8–18–65	2,035
Pickens*	9–01–78	
Russell*	9–25–78	
Sumter	5–02–66	25
Talladega*	10–31–74	
Wilcox	8–18–65	3,326
Total		59,731
GEORGIA		
Baker*	11–04–68	
Bulloch*	7–30–80	
Burke*	11–07–78	
Calhoun*	7–30–68	
Early*	7–30–80	
Hancock*	11–07–66	
Johnson*	7–30–80	
Lee	3–23–67	475
Meriwether*	8–08–76	
Mitchell*	7–30–80	
Peach*	11–04–72	
Screven	3–23–67	1,448
Stewart*	8–03–76	
Sumter*	7–30–80	
Taliaferro*	11–04–68	
Telfair*	7–30–80	
Terrell	3–23–67	1,465
Tiff*	7–30–80	
Twiggs*	9–03–74	
Total		3,388
LOUISIANA		
Bossier	3–23–67	1,182
Caddo	3–23–67	3,084
De Soto	3–23–67	1,843
East Carroll	8–09–65	1,618
East Feliciana	8–09–65	1,222
Madison	8–12–66	528
Ouachita	8–18–65	4,677
Plaquemines	8–09–65	1,768
Sabine*	9–27–74	
St. Helena*	8–16–72	
St. Landry*	12–05–79	
West Feliciana	10–29–65	93
Total		16,015
MISSISSIPPI		
Amite	3–23–67	379
Benton	9–24–65	335
Bolivar*	9–24–65	
Carroll	12–20–65	849
Claiborne	4–12–66	1,154

Table 5 Counties Designated for Federal Examiners and Number of Persons Listed by Examiners (continued)

State and county	Date of designation	Net no. of persons listed
Clay	9–24–65	1,161
Coahoma	9–24–65	3,545
Covington*	8–06–79	
De Soto	10–29–65	808
Forrest	6–01–67	160
Franklin	3–23–67	47
Greene*	8–06–79	
Grenada	7–20–66	886
Hinds	10–29–65	13,170
Holmes	10–29–65	3,950
Humphreys	9–24–65	1,733
Issaquena	6–01–67	26
Jasper	4–12–66	614
Jefferson	10–29–65	1,756
Jefferson Davis	8–18–65	1,130
Jones	8–18–65	1,906
Kemper*	10–31–74	
Leflore	8–09–65	4,547
Madison	8–09–65	7,070
Marshall	8–05–67	95
Neshoba	10–29–65	743
Newton	12–20–65	639
Noxubee	4–12–66	378
Oktibbeha	3–23–67	324
Pearl River	4–29–74	181
Quitman*	10–29–80	
Rankin	4–12–66	1,061
Sharkey	6–01–67	366
Simpson	12–20–65	1,062
Sunflower*	4–29–67	
Tallahatchie	8–14–71	79
Tunica*	10–31–75	
Walthall	10–29–65	1,075
Warren	12–20–65	1,649
Wilkinson	8–05–67	125
Winston	4–12–66	25
Yazoo*	10–28–71	
Total		53,028
SOUTH CAROLINA		
Clarendon	10–29–65	3,413
Darlington*	11–06–78	
Dorchester	10–29–65	1,169
Marion*	6–26–78	
Total		4,582
TEXAS		
Atascosa*	10–29–80	
Bee*	10–29–76	
Crockett*	8–11–78	
El Paso*	11–06–78	
Fort Bend*	4–28–76	
Frio*	10–29–76	
La Salle*	10–29–76	
Medina*	4–28–76	
Reeves*	5–05–78	
Uvalde*	4–28–76	
Wilson*	4–28–76	

* No examiners were sent to these counties.

Sources: U.S., Department of Justice, Civil Rights Division, Voting Section, "Counties Designated as Examiner Counties" (Mar. 9, 1981); and U.S., Office of Personnel Management, "Cumulative Totals on Voting Rights Examining" (Dec. 31, 1980).

Table 6 Observation of Elections Under the Voting Rights Act of 1965

State and county	Number of observers					
	1975	1976	1977	1978	1979	1980
ALABAMA						
Bullock	0	0	0	32	0	0
Choctaw	0	14	0	0	0	0
Conecuh	0	0	0	0	0	93
Dallas	0	42	0	0	0	0
Hale	0	0	0	82	0	49
Marengo	0	0	0	195	0	0
Perry	0	25	0	0	0	0
Pickens	0	0	0	27	0	31
Russell	0	0	0	65	0	0
Sumter	0	24	0	55	0	69
Wilcox	0	76	0	142	0	30
Total	0	181	0	598	0	272
CALIFORNIA						
San Francisco	0	0	0	146	140	0
GEORGIA						
Bulloch	0	0	0	0	0	9
Calhoun	0	0	0	0	0	18
Early	0	0	0	0	0	19
Hancock	0	0	0	4	0	0
Johnson	0	0	0	0	0	33
Meriweather	0	15	0	0	0	0
Mitchell	0	0	0	0	0	19
Stewart	0	25	0	0	0	0
Sumter	0	0	0	0	0	26
Telfair	0	0	0	0	0	18
Terrell	11	27	0	0	0	0
Tift	0	0	0	0	0	14
Total	11	67	0	4	0	156
LOUISIANA						
Desoto	5	0	0	0	0	0
East Carroll	38	30	0	0	45	0
East Feliciana	13	3	0	0	0	0
Madison	56	0	0	0	0	0
Plaquemines	0	0	0	0	27	0
St. Helena	4	0	0	0	58	0
St. Landry	0	0	0	0	0	12
Total	116	33	0	0	130	12
MISSISSIPPI						
Benton	29	0	0	0	0	0
Bolivar	55	0	14	5	45	0
Claiborne	76	0	0	0	73	54
Clay	16	16	0	0	0	36
Covington	0	0	0	0	41	0
DeSoto	0	51	2	0	0	0
Greene	0	0	0	0	33	0
Grenada	0	19	0	0	0	0
Hinds	26	0	3	0	0	0
Holmes	34	0	5	0	33	0
Humphreys	67	0	0	0	106	48
Issaquena	2	4	0	0	0	0
Jasper	0	0	0	0	18	0
Jefferson	26	0	0	0	0	0
Kemper	0	0	0	0	55	0
Leflore	162	0	7	0	0	0

Table 6 (continued)

Madison	187	0	0	0	0	0
Marshall	217	0	19	0	377	0
Noxubee	126	26	7	0	65	86
Oktibbeha	16	0	0	0	0	0
Quitman	0	0	0	0	0	20
Sharkey	20	0	0	0	0	0
Sunflower	71	0	6	0	0	0
Tallahatchie	6	0	2	0	85	0
Tunica	8	16	24	10	28	0
Warren	42	0	0	0	133	0
Wilkinson	20	0	0	0	26	0
Yazoo	46	0	0	16	94	30
Total	1,252	132	89	31	1,212	274
NEVADA						
Humbolt	0	0	0	3	0	0
SOUTH CAROLINA						
Darlington	0	0	0	55	0	0
Marion	0	0	0	12	0	0
Total	0	0	0	67	0	0
TEXAS						
Atascosa	0	0	0	0	0	19
Bee	0	24	0	0	0	0
Crockett	0	0	0	8	0	0
El Paso	0	0	0	8	0	0
Fort Bend	0	18	0	0	0	0
Frio	0	26	0	0	0	0
LaSalle	0	26	0	0	0	0
Medina	0	57	0	0	0	0
Reeves	0	0	0	74	0	0
Uvalde	0	24	0	0	0	0
Wilson	0	18	0	0	0	0
Total	0	193	0	90	0	19
WISCONSIN						
Shawano	0	0	0	6	0	0

Source: U.S., Department of Justice, Civil Rights Division, Voting Section, Mar. 12, 1981.

NOTES

1. 71 Stat. 634.

2. 74 Stat. 90.

3. 78 Stat. 241.

4. See, e.g., United States v. Raines, 362 U.S. 17 (1960) involving racial discrimination by the voter registrar of Terrell County, Georgia.

5. Hearings on H.R. 6400 Before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess., ser. 2, 5 (1965).

6. Hearings on H.R. 6400, supra, 4.

7. 79 Stat. 437, 42 U.S.C. Sections 1973 et seq.

8. Protected language minorities are American Indians, Asian Americans, Alaskan natives and those of Spanish heritage. 42 U.S.C. Section 1973aa-2(e).

9. 42 U.S.C. Section 1973.

10. 42 U.S.C. Section 1973aa.

11. 42 U.S.C. Sections 1973r and 1973j.

12. 42 U.S.C. Section 1973aa-1(b).

13. 42 U.S.C. Section 1973c.

14. 42 U.S.C. Section 1973b(b).

15. Section 5 coverage is determined by the Attorney General and the Director of Census, and is published in the Code of Federal Regulations, 28 C.F.R., Part 51. The complete list of covered jurisdictions is:

Alabama (entire state);
Alaska (entire state);
Arizona (entire state);
California (4 counties: Kings, Merced, Monterrey and Yuba);
Colorado (1 county: El Paso);
Connecticut (3 towns: Groton, Mansfield and Southbury);
Florida (5 counties: Collier, Hardee, Hendry, Hillsborough and Monroe);

Georgia (entire state);
Hawaii (1 county: Honolulu);
Idaho (1 county: Elmore);
Louisiana (entire state);
Massachusetts (9 towns: Amherst, Ayer, Belchertown, Bourne, Harvard, Sandwich, Shirley, Sunderland, and Wrentham);
Michigan (2 towns: Buena Vista, Clyde);
Mississippi (entire state);
New Hampshire (10 towns: Antrim, Benton, Boscawen, Millsfield Township, Newington, Pinkhams, Grant, Rindge, Stewartstown, Stratford, and Unity);
New York (3 counties: Bronx, Kings, and New York);
North Carolina (39 counties: Anson, Beaufort, Bertie, Bladen, Camden, Caswell, Chowen, Cleveland, Craven, Cumberland, Edgecomb, Franklin, Gates, Gatson, Granville, Greene, Guilford, Halifax, Marnett, Hertford, Hoke, Jackson, Lee, Lenoir, Martin, Nash, Northhampton, Orslow, Pasquotank, Perquamins, Person, Pitt, Robeson, Rockingham, Scotland, Union, Vance, Wake, Washington, Wayne, and Wilson);
South Carolina (entire state);
South Dakota (2 counties: Shannon and Todd);
Texas (entire state);
Virginia (entire state);
Wyoming (1 county: Campbell).

16. Beer v. United States, 425 U.S. 130 (1976).

17. See, e.g., Allen v. State Board of Elections, 393 U.S. 544 (1969); Perkins v. Matthews, 400 U.S. 379 (1971); and Dougherty County v. White, 439 U.S. 32 (1978).

18. City of Rome v. United States, 446 U.S. 156, 174 (1980), quoting from South Carolina v. Katzenbach, 383 U.S. 301 (1966).

19. 42 U.S.C. Sections 1973d and f.

20. U.S. Commission on Civil Rights: The Voting Rights Act: Unfulfilled Goals (1981), 270-71.

21. Ibid., 268-69.

22. 42 U.S.C. Sections 1973a(a) and (c).

23. U.S. Commission on Civil Rights, supra, 23.

24. McMillan v. Escambia County, Civ. No. 77-0432 (N.D. Fla. Dec. 3, 1979, Feb. 27, 1979); Jenkins v. City of Pensacola, Civ. No. 77-0433 (N.D.Fla. Jan. 23, 1979).

25. 42 U.S.C. Sections 1973b and 1973aa-1a.

26. The current list of jurisdictions is set out in 28 C.F.R., Par 55.

27. 42 U.S.C. Section 1973b.

28. South Carolina v. Katzenbach, 383 U.S. 301, 337 (1966).

PROGRESS UNDER THE VOTING RIGHTS ACT

The Voting Rights Act of 1965 has had an undeniable effect in Southern jurisdictions measured by the increase in black voter registration and black elected officials. Less than 300 blacks held office in all the Southern states before the Act was adopted. Today, the figure stands at more than 2,400.[1/] One hundred eighteen blacks serve as mayors, 15 as state senators, 112 as state representatives, and 361 on county governing boards.[2/] Table A shows the number of black elected officials by positions held in those Southern states covered by Section 5. More blacks hold office in Mississippi--387--than in any Southern state. The fewest number of black elected officials are in Virginia, which has 124.

Although the raw numbers sound impressive, blacks remain a disproportionately low number of all office holders. In Georgia, for example, in 1980, the 249 black elected officials were only 3.7% of the total of elected officials, yet the state is 26.2% black. In Alabama, the 238 black elected officials were 5.7% of the total. The state, however, is 24.5% black. In South Carolina, blacks were 7.4% of the elected officials, but 31% of the population.[3/] As Table B illustrates, in none of the Southern states covered by Section 5 are blacks elected to office in numbers approaching their presence in the population.

The under-representation of blacks is most apparent in higher elected offices. Only one black from Southern Section 5 jurisdictions serves in Congress. Conversely, more than 40% of all black elected officials serve as members of governing bodies of municipalities, many of which are small and majority black. Table C shows black elected officials as the percentage of all elected officials by positions held in covered jurisdictions.

Voter registration also remains lower for blacks than whites. According to the Census, which collected registration data in 1976 in states covered by the Voting Rights Act, 75.4% of whites but only 58.1% of blacks were registered in Alabama. In Georgia, 73.2% of whites but only 56.3% of blacks were registered. In South Carolina, 64.1% of whites and 60.6% of blacks were registered. For the other covered states, the figures are similar.[4/] See Table D. More recent figures for

South Carolina show 56.5% of whites and 50.9% of blacks registered to vote.[5]

Progress has been made under the Voting Rights Act of 1965, but the fact remains that blacks still lag far behind whites in office holding and voter registration, two reliable indices of effective political participation. Some of the causes of the failure to realize the goal of equal voting will be discussed in the following chapters of this report.

NOTES

1. New York Times, "Once Again, A Clash Over Voting Rights," September 27, 1981, 104.

2. Ibid.

3. Source: Joint Center for Political Studies, National Roster of Black Elected Officials, Vol. 10, 1981.

4. U.S. Department of Commerce, Bureau of the Census, Registration and Voting in November, 1976--Jurisdictions Covered by the Voting Rights Act Amendments of 1975, Series P-23, No. 74, 1978, Tables 1 and 2.

5. U.S. Department of Commerce, Bureau of Census, Projections of the Population of Voting Age for States: November, 1980, Series P-25, No. 879, Table 1.

Table A Black Elected Officials in Southern States Covered Under the Preclearance Provisions of the Voting Rights Act, July 1980

	U.S. Congress		State legislature		County offices				Municipal offices					
	Senate	House	Senate	House	County governing board	Law enforcement officials	County school board	Other positions	Mayor	Governing body	City school board	Other	Other officials	Total
Alabama	0	0	2	13	18	40	23	9	16	110	2	5	0	238
Georgia	0	0	2	21	20	8	31	5	7	139	12	4	0	249
Louisiana	0	0	2	10	85	34	87	1	12	119	4	8	1	363
Mississippi	0	0	2	15	27	77	45	34	17	143	13	14	0	387
North Carolina[1]	0	0	1	4	18	7	42	2	13	136	16	3	5	247
South Carolina	0	0	0	14	34	20	47	5	13	86	9	1	9	238
Texas	0	1	0	13	5	18	77*	0	5	68	0	5	4	196
Virginia	0	0	1	4	34	5	—	3	5	71	—	1	0	124
Total	0	1	10	94	241	209	352	59	88	872	56	41	19	2,042

[1] Statewide data, including the 40 counties subject to preclearance.
* School board members elected in independent school districts.
— Not an elective position.

Source: Joint Center for Political Studies, *National Roster of Black Elected Officials*, vol. 10 (1981). Data on Virginia supplied by Virginia State Conference NAACP.

Table B

Blacks as Percentage of Population and Elected Officials in Southern States Covered Under the Preclearance Provisions of The Voting Rights Act, July 1980

State	Population percent black, 1980	Elected officials		
		Total officials	Black officials	
			Number	Percent of total
Alabama	25.6%	4,151	238	5.7%
Georgia	26.8	6,660	249	3.7
Louisiana	29.4	4,710	363	7.7
Mississippi	35.2	5,271	387	7.3
North Carolina[1]	22.4	5,295	247	4.7
South Carolina	30.4	3,225	238	7.4
Texas	15.3	24,728	196	0.8
Virginia	18.9	3,041	124	4.1

[1] Statewide data, including the 40 counties subject to preclearance.

Source: Joint Center for Political Studies. *National Roster of Black Elected Officials*, vol 10 (1981). Data on Virginia supplied by Virginia State Conference NAACP.

Table C

Black Elected Officials as Percentage of all Elected Officials in Southern States Covered Under the Preclearance Provisions of the Voting Rights Act, July 1980

State	U.S. Congress		State legislature		County governing body	Local school board	Municipal governing board	Population percent black, 1980
	Senate	House	Senate	House				
Alabama	0.0%	0.0%	5.7%	12.4%	6.6%	7.1%	5.3%	25.6%
Georgia	0.0	0.0	3.6	11.7	3.4	5.9	5.2	26.8
Louisiana	0.0	0.0	5.1	9.5	13.2	13.4	9.4	29.4
Mississippi	0.0	0.0	3.8	12.3	6.6	10.3	10.4	35.2
North Carolina[1]	0.0	0.0	2.0	3.3	3.7	7.4	6.0	22.4
South Carolina	0.0	0.0	0.0	11.3	11.7	11.6	6.7	30.4
Texas	0.0	4.2	0.0	8.7	0.5	1.0	1.4	12.0
Virginia	0.0	0.0	2.5	4.0	6.8	—	5.2	18.9

[1] Statewide data, including the 40 counties subject to preclearance.
— not an elective position.

Sources: U.S., Department of Commerce, Bureau of the Census. *Popularly Elected Officials*, vol. 1, no. 2 (1979), GC77(1)-2; and Joint Center for Political Studies. *National Roster of Black Elected Officials*, vol. 10 (1981). Data on Virginia supplied by Virginia State Conference NAACP.

Table D Percentage of Voting Age Population Reported Registered in Jurisdictions Covered by Section 5 of the Voting Rights Act, by Race and Ethnicity, 1976

State	Percent reported registered, 1976			
	White	Black	Hispanic	American Indian/ Alaskan Native
Alabama	75.4%	58.1%	—	—
Alaska	73.0	—	—	62.8%
Arizona	71.5	—	60.9%	48.0
California*	65.3	—	49.5	—
Colorado*	68.1	—	52.8	—
Florida*	66.5	—	63.7	—
Georgia	73.2	56.3	—	—
Louisiana	78.8	63.9	—	—
Michigan**	63.7	—	52.4	—
Mississippi	77.7	67.4	—	—
New York*	69.8	—	51.4	—
North Carolina*	63.1	48.2	—	65.6
South Carolina	64.1	60.6	—	—
South Dakota*	77.3	—	—	52.7
Texas	69.4	64.0	61.1	—
Virginia	67.0	60.7	—	—

* Selected county (counties) subject to preclearance rather than entire State.
** Selected towns subject to preclearance rather than entire State.
— Group not covered under section 5.

Source: U.S., Department of Commerce, Bureau of the Census, *Registration and Voting in November 1976—Jurisdictions Covered by the Voting Rights Act Amendments of 1975*, series P-23, no. 74 (1978), tables 1 and 2.

CONTINUING BARRIERS TO EQUAL POLITICAL PARTICIPATION

The goal of the civil rights movement, as far as voting rights were concerned, was to remove the discriminatory registration and other procedures which had excluded blacks from the electorate, and to devise a means to block the enactment of new, equally discriminatory procedures to take their place. It was largely assumed, or at least hoped, that once the formal barriers to registration were permanently thrown down, blacks would participate in politics on a basis of equality with whites. But that didn't happen, despite the ban on tests or devices for registration and the requirement of pre-clearance of new election laws contained in the Voting Rights Act of 1965.

First, many jurisdictions ignored Section 5 and adopted new procedures to blunt increased black voter registration.

Second, many jurisdictions used voting procedures, such as at-large elections, enacted before November 1, 1964, the operative date for pre-clearance under Section 5, which perpetuated the effects of past discrimination.

Third, the heritage of separate-but-equal was far more debilitating than had been supposed--indeed if that were possible. Black candidates for office were devastated by racial bloc voting by whites; chronically low black voter registration; sheer inexperience in the political process; and, a depressed, distinctive socio-economic status which made it difficult, if not impossible, to form political coalitions with whites or participate effectively in the electorate.

Finally, the tactics of political intimidation and manipulation were not placed on the scrap heap merely by passage of legislation in Washington.

I. Section 5 Non-Compliance

The level of non-compliance with Section 5 by Southern jurisdictions has been nothing short of spectacular. According to a study by the Southern Regional Council, more than 350

election law changes have been enacted and are currently being applied in Georgia without ever having been pre-cleared. See Table E. In South Carolina, there are 108; in North Carolina 160; in Louisiana 38; and in Alabama 68.

Congress, to be sure, did not intend for covered jurisdictions simply to ignore the requirements of pre-clearance. It placed the initial burden of "voluntary" Section 5 compliance upon the effected jurisdictions,[1] but authorized the Attorney General, as well as private aggrieved citizens, to enjoin the use of any uncleared voting changes through lawsuits filed before special district courts of three judges in the covered jurisdictions.[2]

In order that the judicial enforcement procedure be as effective and expeditious as possible, Congress limited the issues the three-judge court could consider to whether the jurisdiction is covered, whether the change is one affecting voting, and whether there has been pre-clearance. If both the jurisdiction and change are covered, and if there has been no pre-clearance, the three-judge court must enjoin enforcement. The local court has no jurisdiction to consider whether the change has a discriminatory purpose or effect, since these are questions which can be decided only by the Attorney General or the federal courts in the District of Columbia.[3]

Congress also made it a crime to fail to comply with pre-clearance.[4] But in spite of widespread non-compliance with Section 5, there has never been a prosecution for this offense. Given the history of voter fraud in the covered jurisdictions, it is not surprising that discrimination against blacks in the electorate is still not regarded officially as criminal activity.

1. At-Large Elections

A favorite way of circumventing Section 5, with devastating impact upon blacks, has been to change the method of holding elections from districts to at-large in jurisdictions with significant black populations. The effect of such changes is to throw black concentrations of population in individual districts into countywide white majorities, depriving blacks of any opportunity to elect candidates of their choice.

The significance of at-large voting was shown in a survey of elected county officials in Georgia conducted by the Southern Regional Office of the ACLU in 1980. The survey revealed that

Table E

REVIEW OF STATE ACTS FROM 1965 - 1980 AFFECTING VOTING AND NOT SUBMITTED TO US DEPARTMENT OF JUSTICE IN FIVE SOUTHERN STATES UNDER THE VOTING RIGHTS ACT

(Prepared by Southern Regional Council, Atlanta, Georgia)

State	Total # of Counties in State	Total # of Counties Covered by V.R.A.	# of Non-submitted State Acts	# of Non-submitted Acts Affecting the State at Large	# of Non-submitted Acts Affecting Only Certain Counties	# of Counties Affected by Local Non-submitted Acts
Alabama	67	67	68	46	22	6
Georgia	159	159	361	45	316	81
Louisiana	64	64	38	25	13	4
North Carolina*	100	39	160	1	159	31
South Carolina	46	46	108	2	106	16
TOTALS	436	375	735	119	616	138

*All listings of information relating to North Carolina are tentative.

of 18 blacks elected to county governments, 16 (only about 3% of all such office holders), ran in either majority black districts or counties.[5] Blacks in Georgia's majority white counties or districts, for all practical purposes, cannot get elected to office.

The Supreme Court commented in a 1969 case upon the potential for discrimination inherent in at-large voting and why its adoption might be objectionable under Section 5.

> Voters who are members of a racial minority might well be in the majority in one district, but in a decided minority in the county as a whole. This type of change could therefore nullify their ability to elect the candidate of their choice just as would prohibiting some of them from voting.[6]

Political scientists have similarly identified and condemned the discriminatory aspect of at-large voting.[7]

(a) Georgia Counties.

On November 1, 1964, the date upon which pre-clearance began in most of the covered jurisdictions, the following counties in Georgia, among others, had district elections for their county government: Calhoun (63% black), Clay (61% black), Dooly (50% black), Early (45% black), Miller (28% black), Morgan (45% black), Newton (31% black), and Seminole (35% black). There were no black elected officials on any of the eight county governments. The Voting Rights Act promised to change that by creating black registered voter majorities in some of the single member districts. But by 1971, each county, with the exception of Seminole, adopted at-large voting plans--and not a single one complied with Section 5.

Between 1976 and 1980, six of these jurisdictions had to be sued: Calhoun,[8] Clay,[9] Dooly,[10] Early,[11] Miller,[12] and Morgan,[13] and in each case federal courts ordered the defendants to obtain pre-clearance of their current plans, or return to district elections. All now have district voting plans.

Newton County, under threat of litigation, submitted its at-large plan to the Department of Justice in 1975. There was an objection and the county was forced to return to districts for election of the local government. The Board of Education of

Newton County also adopted at-large voting in 1971, but made no effort to pre-clear the change. Rather than face litigation, it followed the lead of the Board of Commissioners and adopted the same district lines for school board elections.

Seminole County had voting districts prior to the Voting Rights Act, but they were drawn in 1933. By 1980, the district encompassing the county seat of Donalsonville, which contained 40% of the county's population and its largest concentration of blacks, had over 2,200 voters. By contrast, the Rock Pond district, which also elected one member to the county government, had only 170 registered voters. The county refused to redistrict, a procedure which would have involved the Section 5 submission of any reapportionment plan. A lawsuit was filed in April, 1980, and the court ordered the county to reapportion.[14] At the next election, Donald Moore, a black school teacher, was elected to the county government from the town of Donalsonville.

(b) Pickens County, Alabama.

The Pickens County, Alabama Board of Education suddenly switched in 1966 from district to at-large elections just as blacks began registereng to vote in substantial numbers. No submission of the change was made until a lawsuit to enforce Section 5 was filed in the district court in 1973.[15] The attorney general objected to the plan and a new apportionment utilizing single member districts was implemented.

Of equal significance as the discriminatory changes in covered jurisdictions to at-large elections is the complete absence of any complimentary effort to facilitate black political participation. No known jurisdiction with at-large voting voluntarily changed to districts after enactment of the Voting Rights Act to allow newly enfranchised blacks an opportunity to elect representatives of their choice to office. The record shows that the response to the Voting Rights Act, to the extent that there was one, was invariably of opposition.

2. Majority Vote

Majority vote requirements are a favored way of disadvantaging minorities in the electorate. In races with one black and

several white candidates, a black conceivably can get a plurality if the white candidates split the white vote. But under a majority vote rule, any black plurality winner is required to enter a subsequent run-off election against the next highest vote getter, which generally means defeat at the hands of the regrouped white voter majority. In the words of the Supreme Court, majority vote requirements, while not per se unconstitutional, "enhance the opportunity for racial discrimination."[16] Not surprisingly, many covered jurisdictions with plurality systems implemented majority vote requirements after November 1, 1964 to blunt black voter registration under the Voting Rights Act. Since 1975 the Attorney General has objected to majority vote requirements under Section 5 on 66 different occasions.

(a) Moultrie, Georgia.

The first blacks to run for city office in Moultrie, Georgia, were Frank Burke, for city council, and Edward Starkey, for the city school board in 1964. At that time, a plurality requirement was in effect for the city. Burke received 458 votes, the fourth highest number in a field of six candidates running for three council seats. Starkey received 434 votes and finished last in a field of three.

The very next year, 1965, the method of elections for city council was changed to provide for election by majority vote. The change was not submitted for pre-clearance.

In 1973, John Cross, the black owner of a local cab company, ran for the council and received a plurality of votes. He was forced into an illegal run-off and was soundly beaten.

The majority vote change was finally submitted in 1977, after the city had been sued by Cross and others for failure to comply with Section 5.[17] The Attorney General objected on June 26, 1977 because "bloc voting along racial lines may exist" in Moultrie, and the majority vote requirement "may have the effect of abridging minority voting rights."[18] At the next elections a black man, Frank Wilson, entered the race for a council seat against four whites. Due to splintering of the white vote, Wilson received a plurality and was elected to office.

(b) Americus, Georgia.

In Americus, Georgia, the method of holding elections for the mayor and council was changed from plurality to majority vote in 1968. No pre-clearance was sought.

Prior to the Voting Rights Act, only 548 blacks were registered to vote in all of Sumter County, of which Americus is the county seat, 8.2% of the eligible population. Sumter County is 44% black.

The majority vote requirement was used on two occasions, October, 1972, and October, 1977, to exclude plurality winning blacks (Willie Pascal and Raymond Green) from office. The city subsequently reapportioned itself into districts following a federal court order finding its at-large elections discriminatory,[19] and the plaintiffs withdrew their objection to the majority vote requirement.

(c) Jackson, Georgia.

The Democratic Party in Jackson, Georgia, the only party which conducts primaries, adopted a majority vote requirement after passage of the Voting Rights Act but failed to seek pre-clearance. On September 17, 1981, a federal court enjoined the change pending submission to the Attorney General.[20]

(d) Covington, Georgia.

Covington, Georgia is a town of 10,267 people, 44% of whom are black. In 1962 its government consisted of a mayor and six councilmen elected by plurality vote to staggered terms of office.

In 1962, race was largely academic, for only 901 blacks were registered in all of Newton County, of which Covington is the county seat. And no black had ever been elected to city office. Following passage of the Voting Rights Act, black voter registration sharply increased. By August, 1967, there were more than 2,000 blacks on the county voters list.

In that same year, the city charter was amended providing for a numbered post system and a majority vote and run-off requirement. Although the amendment was a change in voting

required to be pre-cleared, the city made no attempt to comply with Section 5 of the Voting Rights Act.

In 1975, after preparation of a lawsuit, local blacks made a formal request of city officials to submit the numbered post and majority vote provisions. A submission to the Attorney General was made in April of that year and blacks urged that an objection be entered. The Attorney General, on August 26, 1975, objected to the changes.

(e) St. Marys, Georgia.

The mayor and six member council of St. Marys, Georgia were elected by plurality vote prior to the Voting Rights Act. In 1967, a majority vote requirement was implemented for all city officials, but no attempt was made to pre-clear the changes under Section 5. Local blacks filed suit in November, 1981 to enjoin use of the changes absent pre-clearance.[21/]

3. Change from Appointed to Elected Bodies

A number of jurisdictions which had appointed governing bodies in 1964 switched to elections without bothering to seek pre-clearance. The change can make it more difficult for blacks to hold office, particularly where the elections are at-large and blacks have some influence upon, or access to, the appointive process.

(a) Terrell County, Georgia.

In Terrell County, Georgia, the Board of Education was traditionally appointed by the grand jury, which was selected from the list of registered voters and was, until the mid-1960's, all white. After blacks began to register in some numbers and gain access to jury service, the method of selecting the Board of Education was changed from appointment to election at-large. No pre-clearance was sought and local officials held illegal elections at-large from 1968 through 1978. No blacks were elected, even though 90% of county public schools pupils were black.

A lawsuit was filed in 1976 seeking compliance with Section 5;

a submission was made; and the Attorney General objected to the at-large elections.[22] The county returned to grand jury appointment, and thereafter, a grand jury from which blacks were not excluded, appointed five new members to the board. Two of the new members were black.

(b) Edgefield County, South Carolina.

Edgefield County, South Carolina, is another jurisdiction with a substantial black population (50%) which changed an appointed system of government to one elected at-large in 1966 without securing Section 5 pre-clearance.

During Reconstruction, blacks participated fully in Edgefield County politics. By the mid-1870's, the county senator, county representatives, county commissioners, coroner, sheriff, probate judge, school commissioners, and clerk of court were blacks. Blacks served on the school board, as magistrates, solicitors, wardens, and at every level of city and county government.

After Reconstruction, as we have seen, blacks were effectively excluded from politics in Edgefield and the state. Prior to adoption of the discriminatory registration procedures of 1895, B.R. Tillman, a native of Edgefield and principal architect of disfranchisement, secured passage during his second term as governor in 1894, of state legislation abolishing local elected governments. His purpose was to put it beyond possibility that blacks, even in places where they were a majority, could exercise local control.

County and township commissioners were required to be appointed by the governor upon the recommendation of the local senator and representatives, political offices that had been successfully "redeemed" by White Democrats. All powers to tax, borrow money, appoint local boards and exercise eminent domain were reserved for the state legislature. During the time the appointment system was in effect in Edgefield County, not a single black was appointed to the county government.

In 1966, the appointment system was changed to require members of the county council to be elected at-large, but was never submitted for pre-clearance under Section 5. The change was doubtlessly regressive, for it is unlikely that the Governor, given the increased black voter registration in Edgefield County

under the Voting Rights Act, could fail to appoint one or more blacks to the five member council. Under the uncleared at-large plan, no black has ever been elected to office. A lawsuit to require pre-clearance of the 1966 change is now pending in federal district court.[23]

(c) Harris County, Georgia.

The first blacks to serve on the Harris County, Georgia Board of Education were appointed in 1974 by a recently desegregated grand jury. That same year, county officials secured passage of a law requiring the Board to be elected at-large. No black in Harris County, however, has ever been elected to any position at-large.

The Attorney General objected to the change, indicating that if a non-dilutive method of elections, such as districts, was adopted, the objection would be withdrawn:

> Minority candidates have not been able to become elected to any county wide office in Harris County because of the county's system of at-large elections. The use of an at-large system under these circumstances has the discriminatory effect of diluting the ability of minority candidates to participate as members of the Board of Education.[24]

The Board asked for reconsideration of the at-large plan, representing that the two black members "were in favor of the bill."[25] In fact, they were not. Reconsideration was denied.

(d) Dooly County, Georgia.

Dooly County, Georgia is 50% black, and until 1967, its five member Board of Education was appointed by the grand jury. In that year, the Georgia General Assembly enacted legislation providing that board members be elected at-large. Though this change was not legally enforceable until it received federal pre-clearance, no pre-clearance was sought and illegal at-large elections for the school board were held from 1968 through 1976. And no blacks were ever elected to office.

Following a Section 5 lawsuit by local blacks, the district court enjoined elections for the school board and provided that local officials had until March, 1981 to seek enactment of a redistricting plan which could receive federal pre-clearance under Section 5.[26]

In February, 1981, the Georgia General Assembly enacted a plan using five single-member voting districts for the Board of Education. Two of the voting districts have black majorities.

(e) Miller County, Georgia.

Miller County, Georgia abolished its grand jury method of selecting school board members in favor of at-large voting in 1967. No pre-clearance was sought, and illegal elections were held until 1980, when a federal court enjoined continued use of at-large voting.[27] The next year the state General Assembly enacted a redistricting plan for the board utilizing five single-member districts.

(f) Pike County, Georgia.

Until 1967, the five members of the Pike County, Georgia, Board of Education were appointed by the grand jury. In that year, the General Assembly enacted legislation which provided that members were to be elected from single-member districts.

In 1970, two blacks offered for school board positions from two of the single-member districts. Their candidacies marked the first time in the history of Pike County that blacks had run for county office. The two were defeated, but both ran competitive races against their white opponents, and one, Rev. Curtis, was able to reach a run-off election.

Before the next elections the General Assembly again changed the method of electing Board members from single member districts to at-large. Though this change was not enforceable until it received federal pre-clearance, neither state nor local officials sought pre-clearance, and instead held illegal at-large elections in 1972, 1974, and 1976.

In February, 1978, the Department of Justice contacted local officials and requested compliance with Section 5. In October, the 1972 legislation was submitted, but not before at-large

voting was illegally used in the August, 1978 primary. In March, 1979, the Attorney General objected to the 1972 change. Notwithstanding the objection, the Georgia General Assembly took no action during its 1980 session to provide an alternative method of electing Pike County school board members.

In February, 1980, five black registered voters and the local NAACP chapter of Pike County brought suit to block further use of the at-large voting.[28] In June, 1980, a three-judge court enjoined use of the 1972 change.

In constructing a remedy for the Section 5 violation, the court ruled that plaintiffs were due a race conscious plan only if they could prove that the 1972 change to at-large voting was done with a racially discriminatory purpose. The court then found that plaintiffs had not carried their burden of proof and adopted the defendants' plan, which contained five majority white single-member districts. The court further ruled that the plan could be used in elections through 1990 without Section 5 pre-clearance. The plaintiffs appealed on February 1, 1981, arguing that the defendants' plan: (1) is required to be pre-cleared, and (2) is inadequate as a remedy for the Section 5 violation.

(g) Mitchell County, Georgia.

The Attorney General has not objected to the abolition of appointed bodies when the change has had no discriminatory purpose or effect. Mitchell County, Georgia changed the method of selecting its school board from grand jury appointed to at-large elected in 1970. During the period of grand jury appointment, few blacks served on the grand jury and none on the school board. The change was not submitted until 1979, after a Section 5 enforcement lawsuit was begun.[29] That same year, the Attorney General pre-cleared the change on the theory that elections were not racially regressive when compared to past-grand jury appointments.

4. Numbered Posts

Numbered post requirements enhance the opportunity for discrimination because they force candidates to run for individual seats, or posts, rather than for a given number of vacancies.

Blacks become isolated in single seat races, which makes it difficult to win office where there is any degree of white bloc voting. The courts have noted the potential which numbered post provisions have for diluting the effectiveness of minority political participation. Because "each candidate must limit his candidacy...to a particular place on the ballot,...its ultimate effect is to highlight the racial element where it exists."[30]

Since 1975, the Attorney General has objected to 60 submissions involving numbered posts.

(a) Dawson, Georgia.

Dawson, Georgia is a majority black town, but in 1970, all elected city officials were white. In that year, the city implemented a requirement that the 6 members of city council run for numbered posts. No attempt to pre-clear the change was made. Numbered posts were used until 1977, when a lawsuit was filed by local blacks,[31] and the federal court enjoined the provision absent compliance with Section 5. The city elected not to submit the change, and abandoned its post system.

(b) Kingsland, Georgia.

Prior to the Voting Rights Act, Kingsland, Georgia, elected its Mayor and four member council biennially by plurality vote to serve two year terms of office. Kingsland is 34% black. In 1976, without seeking pre-clearance, the city established a numbered post requirement for council members. A lawsuit to enjoin the use of the uncleared change was filed in November, 1981, and is pending in federal court.[32]

(c) St. Marys, Georgia.

The six-member City Council of St. Marys, Georgia, was traditionally elected by plurality vote to staggered terms of office. A numbered post provision, coupled with a majority vote requirement, was implemented in 1967, the effect of which was to diminish the impact of minorities in city politics. No effort was made by local officials to comply with Section 5. A lawsuit to enforce the Voting Rights Act filed in November, 1981 is pending in federal court.[33]

5. Staggered Terms

Staggered terms limit the number of seats to be filled at any given election by having positions expire in different years. Not only are the opportunities for office holding restricted, but the effectiveness of single shot voting by minorities is limited. For a discussion of single shot voting, see page 101. Staggered terms, especially in conjunction with at-large elections and majority vote requirements, are recognized as diminishing the effectiveness of blacks in the electorate. Since 1975, the Attorney General has objected to staggered terms 36 times.

(a) Peach County, Georgia.

Peach County, Georgia, a majority black county, staggered the terms of office of its three member commission in 1968. No pre-clearance of the change was sought. Eight years later, the county was sued, and in February, 1977, a three-judge court enjoined use of the staggered terms.[34/] The court, however, refused to cut short the terms of commissioners elected under the uncleared procedure. The plaintiffs appealed and the Supreme Court ruled that the defendants should be given 30 days within which to make a submission, and if approval was denied, the terms of the illegally elected commissioners should be cut short. The county made a submission prior to the 1978 elections, and the Attorney General, without giving any reasons, pre-cleared the change.

(b) Kingsland, Georgia.

In addition to establishing a numbered post system, Kingsland, Georgia staggered the terms of office for the City Council in 1976. No attempt was made to comply with Section 5. Federal litigation began in November, 1981, to enforce the Voting Rights Act.[35/]

6. Annexations

The Supreme Court held in 1970 that annexations, because of their potential for diluting minority voting strength, must be

pre-cleared under Section 5.[36] Discriminatory annexations occur when a municipality brings majority white areas into the city limits, the effect of which is to reduce the overall percent of blacks and thus dilute their voting strength. The dilution effect of annexations is aggravated where voting is at-large and racially polarized.[37]

Discriminatory annexations have drawn more objections from the Attorney General than any other voting change. That does not mean, however, that Section 5 has been used to block needed municipal expansion. To the contrary, the Supreme Court has held that annexations are not objectionable under Section 5 even if they reduce the overall black population, provided that minorities are fairly represented in the government of the enlarged city.[38] Annexations are normally approved, for example, where the jurisdiction already has, or agrees to adopt, non-discriminatory districts for election of the post-annexation city government.

(a) Jackson, Georgia.

Jackson, Georgia has over the years annexed several dozen areas without seeking pre-clearance. More whites than blacks have been annexed, the effect of which has been to maintain a bare numerical superiority of whites. Because of racial bloc voting and the use of at-large elections, no blacks have ever been elected to a city office. On September 17, 1981, after a lawsuit was filed by local blacks, a federal court enjoined local elections, pending submission of the uncleared changes.[39]

(b) Lumberton, North Carolina.

Robeson County, in which the City of Lumberton is located, is one of 41 counties in North Carolina covered by the pre-clearance provisions of Section 5. The county contains approximately 84,000 people and is 43% white, 26% black, and 31% Indian. Lumberton, by contrast, is 68% white, 24% black, and 8% Indian.

Between 1967 and 1970, the Lumberton City Board of Education annexed into its administrative unit three separate areas in Robeson County. Although these changes in the electorate of the Board were required to be pre-cleared, no submission was made until a written request from the Attorney General in 1974.

The Attorney General objected to the changes on June 2, 1975: "/e/xtensive contact with minority group members both black and Indians through Robeson County, indicates the existence of a racially discriminatory purpose behind the annexations. . . /in/ clear violation of the Fifteenth Amendment. Gomillion v. Lightfoot, 364 U.S. 399 (1960)."[40] The purpose of the annexations, the Attorney General found, was "to assure that the children of suburban whites could continue to attend City of Lumberton schools, rather than attending the predominantly minority Robeson County schools. We have received substantial evidence that the boundaries of these annexations were outlined in a convoluted, meandering fashion with the result that blacks and Indians were virtually excluded from the three annexations in question."[41]

Notwithstanding the objection of the Attorney General, the school board continued to implement the three annexations and hold elections for the Board of Education under the discriminatory apportionment plan. On October 15, 1981, six years after the objection, and fourteen years after the annexations first began, a three-judge court ruled that the board was in violation of Section 5.[42] Inexplicably, the court allowed elections scheduled for November 3, 1981 to go forward with the proviso that if the objection was not removed by December 31, a special election must be held to fill all Board of Education seats. The plaintiffs filed an application in the Supreme Court for an injunction pending appeal prohibiting any use of the annexations in future elections. On October 30, 1981, the Court granted the injunction.

7. Other Forms of Section 5 Non-Compliance

In enacting Section 5 Congress concluded there was no way of anticipating what new procedures in voting might be implemented by covered jurisdictions. Accordingly, it made no attempt to identify particular changes which might prove discriminatory and require pre-clearance only of them. Instead, it required pre-clearance of all changes in voting. Congressional wisdom has been fully vindicated.

(a) DeKalb County, Georgia.

In January, 1980, the DeKalb County, Georgia, Board of

Registration adopted a policy that it would no longer approve community groups' requests to conduct voter registration drives. DeKalb County is in the five-county metropolitan Atlanta area. At that time, only 24% of black eligible voters were registered, as opposed to 81% of whites. The county refused to submit its change in registration policy for pre-clearance, arguing that it was not a change in voting. After a contested lawsuit, the county was required to submit the change.[43] On September 11, 1980, the Attorney General noted an objection because he was "unable to conclude. . .that disallowing neighborhood voter registration drives does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color."[44]

(b) Sumter County, Alabama.

In Sumter County, Alabama, persons seeking nomination by political primary filed their qualification papers with the chairperson, who was always white, of the county Democratic Party. In 1974, a black was chosen as county chairperson. The next year, white candidates chose to bypass the chairperson and file with the judge of probate. They contended that this change was not covered by Section 5 and made no submission. Blacks sued to require pre-clearance. Following a decision by the court of appeals that Section 5 was applicable, the new qualification procedure was abandoned.[45]

(c) Political Parties; Alabama.

The Democratic and Republican parties of Alabama implemented new rules for the conduct of the May 2, 1972 elections of delegates to their national conventions. The rules involved the construction of geographical voting districts from which candidates ran for convention seats.

Since the boundaries of districts can be gerrymandered along racial lines, black residents of the state requested both parties to submit the new rules for pre-clearance under Section 5 to insure that they did not have the purpose or effect of discriminating on the basis of race. The parties refused, contending that they were political parties, not state or political subdivisions, and thus were not covered by Section 5.

On May 13, 1973, the district court granted the relief sought: "if a state could escape the requisites of Section 5 by channeling to political parties its authority to regulate primary elections, the force of the Voting Rights Act in the context of primaries would be entirely abrogated."[46] The changes were required to be pre-cleared.

The Democratic Party thereafter filed suit in the District of Columbia seeking pre-clearance of the new rules, the first Section 5 lawsuit ever filed by a covered jurisdiction in the District of Columbia.[47] The Attorney General, who is required to defend suits brought against the United States under the Voting Rights Act, did not oppose the Democratic Party's motion for judgment on the pleadings.

(d) Americus, Georgia.

Prior to 1965, voting in Americus, Georgia, was segregated by race. After the practice was enjoined by a federal court, the city adopted sex segregated voting but did not pre-clear the change. The city marshall defended the practice on the grounds that segregation by sex made voting more efficient. Local blacks believed the practice was designed to spare white women the "indignity" of standing in line with black males, and asked the Department of Justice to require that the new procedure be pre-cleared. The Attorney General informed city officials in December, 1979, that the change could not be implemented absent pre-clearance. The city elected to desegregate its voting rather than submit the change under Section 5.

(e) Moultrie, Georgia.

In Moultrie, Georgia, the all-white Lions Club traditionally contracted with the city to run municipal elections. Blacks complained about the practice until the city agreed to advertise in the local paper in 1979 for new poll workers to help the Lions. Several people answered the ad, whereupon the city election manager, after consulting with the city attorney, instituted a literacy test for new, but not old, poll workers. Although this was a change in election procedures, no effort was made to comply with Section 5. The literacy test was abandoned after complaints from local blacks, who were plaintiffs in the lawsuit which successfully enjoined further use of an uncleared majority vote requirement for city elections.[48]

(f) Tifton, Georgia.

Rules requiring candidates to live in specified districts are generally thought to disadvantage minorities because they limit the opportunities for single shot voting by separating elections into individual races. In some instances, however, e.g., where a residency district is substantially black, a residency requirement may in practice limit the number of whites seeking office and enhance the chances of election of minority candidates.

In 1968, the four commissioners of Tifton, Georgia, were elected at-large but required to qualify from residential districts. That year, the General Assembly abolished the residency requirement. Though this change was required to be pre-cleared, no attempt was made to comply with Section 5.

In 1977, two candidates, one white and the other black, qualified for one of the commission seats. The white candidate lived outside the district which had formerly been used for electing that commission position. Prior to the election, the black candidate filed suit to enjoin the uncleared repeal of the residency requirement.[49/] The district court did not act upon the complaint until after the election. It enjoined future use of the 1968 change, but nevertheless refused to set aside the 1977 election results.

The ruling of the district court was appealed to the Supreme Court. During the pendency of the appeal, Tifton officials submitted the 1968 enactment to the Attorney General who pre-cleared the change. In light of the ruling of the Attorney General, the appeal to the Supreme Court was withdrawn.

(g) Camden County, Georgia.

In 1978, Camden County, Georgia officials designated an all-white women's club in the City of Kingsland as the new municipal polling place. Although the change was not pre-cleared, the county made preparations to use the club at the August 8, 1978 primary election.

ACLU attorneys, on behalf of local blacks in Camden, informed the county attorney that the change was unenforceable absent pre-clearance, that the use of a racially exclusive club for elections was "inappropriate," and requested that a more

suitable polling place be designated.

The county elected to submit the change to the Department of Justice, but pre-clearance was denied shortly before the August election.

8. Refusal to Comply with Section 5 Objections

While many jurisdictions have failed to submit changes for pre-clearance, a surprising number have refused to comply with objections interposed by the Attorney General after submission has been made. The law is unambiguous that decisions by the Attorney General under Section 5 are final and are not appealable.[50] The only method by which a jurisdiction may seek review of an objection is by filing a declaratory judgment action in the federal courts of the District of Columbia. Nonetheless, many jurisdictions, such as the Lumberton, North Carolina, City Board of Education, (see page 53), have simply refused to obey the law.

(a) Sumter County, Georgia.

The Board of Education of Sumter County, Georgia, adopted at-large voting when its single-member districts were found in 1972 to be malapportioned. At that time, three of the five districts used were majority black. The Board made a Section 5 submission of the change and the Attorney General objected for the reason that at-large voting "would result in the dilution and minimization of the voting strength of black citizens."[51]

The Board, however, notified the Department of Justice that it considered its at-large plan to be court-ordered and exempt from Section 5. In the Board's opinion, the objection was "illegal, void and of no effect."[52] The Attorney General notified the Board that its at-large elections were not enforceable, but the Board has held elections at-large ever since. No blacks have been elected to office.

Local blacks filed a lawsuit in 1980 to enforce the Attorney General's objection. A three-judge court was convened to hear the complaint, and on December 1, 1981, ruled that the Board's 1973 plan was legislative and required to be pre-cleared. The county was directed to develop a new plan "subject to the pre-clearance requirements of Section 5."[53]

(b) Pike County, Georgia.

In 1970, the Pike County, Georgia, Board of Education was elected by districts. After two blacks ran for office, and before the next elections, a statute was enacted providing for elections at-large. No pre-clearance was sought. In March, 1979, at the insistence of the Attorney General, the change was submitted and found objectionable. But the county refused to honor the objection--until a lawsuit was filed in February, 1980 to enforce Section 5.[54]

(c) Waynesboro, Georgia.

Waynesboro, Georgia adopted a majority vote requirement in 1971. A submission was made to the Attorney General who objected for the reason that he could not conclude "that the provision. . . does not have the purpose or effect of abridging the right to vote on account of race."[55] The city ignored the objection until it was sued in 1976, whereupon it finally agreed to return to the use of plurality vote.[56]

(d) Edgefield, South Carolina.

In 1976, Edgefield County was required under a state law, known as the Home Rule Act, to re-establish its county government. It did so and adopted at-large voting and retained a five-member council. This enactment was submitted to the Department of Justice, which objected to the use of at-large elections, noting that if a new election system was adopted, "that more accurately reflects minority voting strength, such as single member districts," the objection would be reconsidered.[57] A single member plan was in fact prepared and approved by the council, but was never submitted under Section 5 because the council subsequently took the position that the Attorney General's objection was not binding. A lawsuit to enforce Section 5 is presently pending.[58]

9. Evasion of Section 5

Many jurisdictions, as the list of submissions to the Attorney General attests, have complied with Section 5. But

some of those have resorted to various strategems to circumvent or undercut objections that have been imposed. Still others have attempted to evade Section 5 altogether by claiming exemptions from pre-clearance.

(a) Thomson, Georgia.

The use of "cuing" in Thomson, Georgia, i.e., the endorsement by white community leaders of a particular candidate prior to the actual election, is a striking example of doing by indirection that which Section 5 expressly forbids. On September 3, 1974, the Attorney General objected to several voting changes submitted by the City, including a majority vote requirement for election of the mayor: "Our analysis shows that where, as in Thomson, there is increasing participation in the political process by the black community, the use of numbered posts, staggered terms and majority requirements have the potential for reducing the opportunity for minority voters to elect candidates of their choice. . . .Under such circumstances, the Attorney General cannot certify that no such effect will ensue."[59]

Before the next elections in 1974, the incumbent mayor announced that he would not seek re-election. E. Wilson Hawes, a white man, was the first to offer for the vacant post. Luther Wilson, Jr., a black assistant school principal, offered next. Subsequently, William M. Wheeler, a white McDuffie County attorney, filed for the vacant mayoral position.

Local whites soon approached the two white candidates and urged one of them to get out of the race to insure that Wilson could not get elected by a plurality. Each candidate, they suggested, should nominate twelve persons to take a vote and "decide which white man was to run."[60] Had the majority vote requirement not been blocked, there would have been no need for one of the white candidates to withdraw. Whites could have simply regrouped in the run-off, even if the black was the top vote getter.

A mini-election was held at City Hall on October 21, 1974 and Wheeler was the winner. Following the meeting, Hawes announced that pursuant to the "gentlemen's agreement" he was bowing out of the race. However, he had an apparent change of heart, whereupon, Wheeler got out of the race, leaving Hawes as the white community's candidate to oppose Wilson. Wheeler publicy announced, "I am not now a candidate. . . .Somebody had

to honor the gentlemen's agreement of Tuesday night, and since Hawes didn't, I will."[61]

The general election was held on October 30, and Hawes soundly defeated Wilson.

(b) Dorchester County, South Carolina.

Dorchester County, South Carolina, was sued in 1973 by local blacks because the two districts used for election of the county council were malapportioned on the basis of population.[62] After the district court declared the plan invalid, the county, rather than redrawing its district lines, adopted at-large voting. Following a Section 5 submission, the Justice Department objected to the plan, because "even though blacks constitute over 35% of the population (1970 census) in Dorchester County, no black has ever been elected to the county council in modern times and there is a history of racial bloc voting."[63]

In response to the objection, the county council developed another plan retaining the two pre-existing districts but shifting precinct lines to reduce population variance. Blacks were in a minority of registered voters in both the proposed new districts.

Subsequently, the defendants concluded that under state law, Dorchester County lacked the power by legislative means to reapportion itself. Under the circumstances, the only method of curing faulty election procedure was through a court-ordered plan. Since courts are required to utilize single-member districts in reapportionment absent compelling circumstances, the defendants prepared for the court a plan utilizing seven single-member districts. Two of the council districts are majority black.

(c) Moultrie, Georgia.

In May, 1977, a three-judge court enjoined use of a majority vote requirement for election of the Moultrie, Georgia City Council because of failure to comply with Section 5.[64] At the elections held later that month, a black won a plurality and was elected to office.

At the elections held the next year, three of the five council posts were scheduled to be filled, and the incumbents

qualified for each of the posts, Two, Four and Five. Two black candidates entered the race for Posts Two and Four. A white man, Roscoe Cook, qualified for Post Five, and later, shortly before the candidate deadline, a black, Cornelius Ponder, Jr., also qualified for Post Five, leaving that seat to be contested by two whites and one black. Cook subsequently withdrew, leaving black candidates for each post opposed by a single white. This configuration ensured that no black would become elected by receiving less than a majority of votes, as had happened following the invalidation of the majority vote requirement by the three-judge court.

As might be expected, all the black candidates in the 1978 elections were defeated, and by approximately the same number of votes. John Green received 717 (28%), JoAnn Wilson received 652 (26%), and Cornelius Ponder, Jr., 716 (28%) of the votes cast. At the time of the election, blacks were approximately 24 percent of the registered voters in Moultrie.

(d) Kleburg County, Texas.

Mexican-Americans, who comprise 47% of the population of Kleburg County, Texas, were successful in getting the apportionment of the governing body (Commissioners' Court) declared unconstitutional on October 2, 1979. The district court ordered the defendants to submit a new plan in six weeks with a hearing to be held four weeks thereafter. Since under state law single-member districts were required, there was no issue of at-large versus single-member districts. The defendants claimed the plan was exempt from Section 5 because it was ordered by the court.

Plaintiffs objected to defendants' plan because it was not submitted for pre-clearance, and alleged that it diluted minority voting strength. The district court approved the plan, finding that it was court ordered and thus not subject to Section 5.

The court of appeals summarily reversed.[65] It held the plan should have been submitted for pre-clearance because a legislative plan does not become a court-ordered plan merely because it is the product of litigation.

The Supreme Court agreed to hear the case. The ACLU filed a brief amicus curiae in the Supreme Court arguing that pre-clearance was required.

County officials argued that the plan was court-ordered and therefore not subject to pre-clearance because: (a) it was a response to a court order, (b) it was prepared by an expert (though hired by them) and so did not encompass their legislative judgment, (c) it was not adopted prior to submission to the court, (d) the district court considered it court-ordered, (3) it was put into effect only when defendants were ordered to do so, and (f) they did not possess the authority under state law to adopt the plan. Defendants also argued that pre-clearance would slow down the reapportionment process and that obstructionist officials could prevent any relief by refusing or failing to draft a plan adequate to receive pre-clearance.

The Supreme Court rejected all of these arguments finding that the federal interest in protecting minority voting rights is the same whether the change in question is to remedy a constitutional violation or is merely a regular political decision, and that centralized review enhances consistent and expeditious decisions. The Court ruled that Congressional policy would be furthered by applying Section 5 and that the interests protected by the statute were not dependent upon the legal authority under state law possessed by defendants.

> /T/he essential characteristic of a legislative plan is the exercise of legislative judgment. . . .As we construe the congressional mandate, it requires that whenever a covered jurisdiction submits a proposal reflecting the policy choices of the elected representatives of the people--no matter what constraints have limited the choices available to them--the pre-clearance requirement of the Voting Rights Act is applicable to them.[66]/

13. Butler v. Underwood, Civ. No. 76-53 (M.D.Ga.).

14. Williams v. Timmons, Civ. No. 80-26 (M.D.Ga.).

15. Corder v. Kirksey, 639 F.2d 1191 (5th Cir. 1981); 625 F.2d 520 (5th Cir. 1980); 585 F.2d 708 (5th Cir. 1978).

16. White v. Regester, 412 U.S. 755, 766 (1973).

17. Cross v. Baxter, 604 F.2d 875 (5th Cir. 1979) on appeal after remand, 639 F.2d 1383 (5th Cir. 1981).

18. Letter from James P. Turner, Acting Assistant Attorney General to Hoyt H. Whelchel, Jr., June 26, 1977.

19. Wilkerson v. Ferguson, Civ. No. 77-30-AMER (M.D. Ga.).

20. Brown v. Brown, Civ. No. 81-198-MAC (M.D.Ga.).

21. Foreman v. Douglas, Civ. No. CV281-143 (S.D.Ga.).

22. Holloway v. Faust, Civ. No. 76-28 (M.D.Ga.).

23. McCain v. Lybrand, Civ. No. 74-281 (D.S.C.).

24. Brown v. Reames, Civ. No. 75-80-COL (M.D.Ga.), Trial Record, 217.

25. Ibid., 250, 264-65, 267.

26. McKenzie v. Giles, supra.

27. Thompson v. Mock, supra.

28. Hughley v. Adams, Civ. No. C80-20N (N.D.Ga.), on appeal, No. 81-7068 (5th Cir.)

29. Cochran v. Autry, Civ. No. 79-59 (M.D.Ga.).

30. Graves v. Barnes, 343 F.Supp, 704, 725 (W.D.Tex. 1972), aff'd, White v. Regester, supra.

31. Holloway v. Raines, Civ, No. 77-27 (M.D.Ga.).

32. Haywood v. Edenfield, Civ. No. CV 281-142 (S.D.Ga.).

33. Foreman v. Douglas, supra.

34. Berry v. Doles, Civ. No. 76-139 (M.D.Ga.).

35. Haywood v. Edenfield, supra.

36. Perkins v. Matthews, 400 U.S. 379, 388 (1971).

37. City of Richmond v. United States, 422 U.S. 358, 370 (1975).

38. Ibid.

39. Brown v. Brown, supra.

40. Letter from J. Stanley Pottinger to Luther J. Britt, Jr., June 2, 1975.

41. Ibid.

42. Canady v. Lumberton City Board of Education, Civ. No. 80-215-CIV3 (E.D.N.C.) grant injun. pend. appeal, ___U.S.___, 102 S.Ct. 494 (1981).

43. Dekalb County League of Women Voters, Inc. v. DeKalb County, Georgia, Board of Registrations and Elections, 494 F.Supp. 668 (N.D.Ga. 1980) (three-judge court).

44. Letter from Drew Days, Assistant Attorney General, to Harry E. Schmidt, September 11, 1980.

45. Sumter County Democratic Executive Committee v. Dearman, 514 F.2d 1168 (5th Cir. 1975).

46. MacGuire v. Amos, 343 F.Supp. 119, 121 (M.D.Ala. 1972).

47. Vance v. United States, No. 1529-72 (D.D.C.).

48. Cross v. Baxter, supra.

49. Washington v. Brown, Civ. No. 77-35 (M.D.Ga. 1977).

50. Morris v. Gressette, 432 U.S. 491, 507 (1977); Briscoe v. Bell, 432 U.S. 404 (1977).

51. Letter from J. Stanley Pottinger, Assistant Attorney General, to Henry L. Crisp, July 13, 1973.

52. Letter from Henry L. Crisp to J. Stanley Pottinger, July-24, 1973.

53. Edge v. Sumter County School District, Civ. No. 80-20-AMER (M.D.Ga. December 1, 1981).

54. Hughley v. Adams, supra.

55. Letter from David L. Norman, Assistant Attorney General to Jerry Daniel, City Attorney, January 7, 1972.

56. Sullivan v. DeLoach, Civ. No. 76-238 (S.D.Ga.).

57. Letter from Drew Days, Assistant Attorney General, to H.O. Carter, February 8, 1979.

58. McCain v. Lybrand, supra.

59. Letter from J. Stanley Pottinger, Assistant Attorney General, to Jack D. Evans, City Attorney, September 3, 1974.

60. "Thomson's Mayoral Race Up in Air," Atlanta Constitution, October 26, 1975.

61. Ibid.

62. DeLee v. Branton, Civ. No. 73-902 (D.S.C.).

63. Letter from J. Stanley Pottinger, Assistant Attorney General, to Treva Ashworth, April 22, 1974.

64. Cross v. Baxter, supra.

65. Sanchez v. McDaniel, 615 F.2d 1023 (5th Cir. 1980).

66. McDaniel v. Sanchez, ___U.S.___, 101 S.Ct. 2224, 2237-38 (1981).

CONTINUING BARRIERS TO EQUAL POLITICAL PARTICIPATION

II. Use of Discriminatory Voting Practices Adopted Prior to the Voting Rights Act

Despite widespread non-compliance with Section 5, pre-clearance has been effective in blocking hundreds of discriminatory voting changes, and undoubtedly, Section 5 has acted as a deterrent to enactment of many others. Section 5 does, however, have two significant limitations. It does not affect voting practices adopted prior to November 1, 1964, even though they may be clearly discriminatory in purpose and effect. Secondly, Section 5 does not affect changes in voting which increase--but only partially--minority participation in the elective process.

In Beer v. United States,[1] the Supreme Court was asked to review a decision of the federal court in the District of Columbia denying clearance to a reapportionment plan for the City of New Orleans. The lower court had ruled that, although the new plan created two single-member districts with a majority of black voters where before there had been none, the plan was objectionable because it failed to eliminate pre-Voting Rights Act at-large seats for the city council which restricted the opportunities of minorities for election. The Supreme Court reversed the ruling, concluding that an "ameliorative new legislative apportionment cannot violate Section 5 unless the new apportionment itself so discriminates on the basis of race or color as to violate the Constitution."[2] In other words, a change in election procedures which removes some, but not all, barriers to voting ordinarily will not violate Section 5.

Unfortunately, most of the discriminatory voting practices in use today are not those which have been implemented without pre-clearance, but those which pre-date the Voting Rights Act, or have been only partially ameliorated, and are thus entirely beyond the reach of Section 5. The only way to challenge these practices is through traditional lawsuits in the local jurisdictions. Litigation has been effective in many instances, but it has also proven to be burdensome and time consuming, and results have often been inconsistent and erratic.

1. The Burdens of Constitutional Litigation

Almost all of the lawsuits brought to protect voting rights have been decided by the courts under the Fourteenth and Fifteenth Amendments of the Constitution. In constitutional challenges, unlike those under Section 5, in which the jurisdiction seeking to implement a change has the burden of showing no discriminatory purpose or effect, those attacking a particular election procedure have the burden of proving a violation of the law. And, the burden is not an easy one.

In White v. Regester,[3] decided in 1973, the Supreme Court said that in determining whether a constitutional violation of voting rights had occurred,

> The plaintiffs' burden is to produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question--that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice.

Applying this standard, the Court affirmed the unconstitutionality of at-large elections in Bexar and Dallas Counties, Texas, upon proof by the plaintiffs of a long history of official discrimination, indifference to minority needs and restricted access of minorities to the political process.[4] In Dallas County, this last factor arose because blacks were not supported by a private citizens group, and were thus unable to win countywide elections. In Bexar County, the evidence was simply the cultural barriers that impeded Hispanics' participation in the political process.

One of the most important circuit court opinions which followed White v. Regester was Zimmer v. McKeithen.[5] In Zimmer, the court said that lack of equal political participation, or unconstitutional dilution of minority voting strength, could be shown by proof of such things as: a history of official racial discrimination, particularly in registering and voting; a disproportionately low number of minority group members elected to office; a lack of responsiveness on the part of elected officials to the needs of the minority community; depressed socio-economic

status of minorities; majority vote requirements; tenuous policy favoring at-large voting; lack of access to candidate slating; large district size; lack of residental requirements for candidates; anti-single shot voting laws.

Later decisions at the appellate level held that discriminatory purpose was necessary for a constitutional violation, but that proof of an "aggregate" of the factors in Zimmer, or factors similar to them, was enough to show invidious purpose.[6]

Proof of the Zimmer factors requires an enormous expenditure of time and money. Since the significance of race in literally every aspect of the public and private life of the jurisdiction is relevant, hundreds of lawyer hours are required to make a record of historical and continuing discrimination in voting, public accommodations, appointments to boards and commissions, provision of services, police practices, employment, education, jury selection, political associations, etc. Historians, sociologists, statisticians, engineers, political geographers, media analysts and demographers, among others, all need to be consulted and used as expert witnesses in gathering and analyzing the relevant evidence in constitutional lawsuits. Not surprisingly, voting cases are given a weight of 2.8420 by a 1980 survey of federal district judges.[7] An average case is weighted 1.000 on a scale that measures the complexity and amount of judicial resources different categories of cases need. Voting cases are exceeded in complexity by only ten of the fifty-five categories listed in the survey.

The Supreme Court has observed that "/v/oting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 man-hours spent combing through registration records in preparation for trial."[8] By comparison to a constitutional challenge in an at-large case, a 6,000 hour registration case may be trivial since the very same registration evidence is often a part, but only a small part, of trying to prove that at-large elections dilute minority voting strength.

Aside from the time and expense involved in proving the factual elements of dilution at trial, use of the legal standards in Zimmer has led to unnecessarily protracted and erratic decision-making. The Zimmer formula contains objective elements, such as a low number of black elected officials and depressed levels of voter registration. It also contains elements that require the trial judge to make essentially subjective judgments, e.g., whether or not local officials have been unresponsive,

which are difficult, if not impossible, adequately to review on appeal. For this reason, in part, cases are often shunted from trial to appellate court for continual revision and fine tuning. As a consequence, decision-making in voting lawsuits has often been impressionistic, and fairly open to the charge of being unreliable.

(a) Pickens County, Alabama.

Blacks in Pickens County, Alabama, after the decision in White v. Regester, filed suit in 1973 alleging that at-large general elections for the county commission diluted their voting strength. The case was tried in the district court, appealed to the court of appeals, sent back for more fact finding to the trial court, appealed again to the court of appeals, sent back again to the trial court for more fact finding, and appealed a third time to the court of appeals. On March 16, 1981, 8 years after the complaint first was filed, the court held that at-large elections for the commission were constitutional.

(b) Fairfield, Alabama.

Black residents of the City of Fairfield, Alabama fared no better. They also filed a dilution lawsuit in 1973 against the City Council. The district court ruled 2 years later that local procedures were unconstitutional. The court's findings included:

(1) A "very very high" level of racial bloc voting;

(2) "disparities in employment of blacks within the City of Fairfield";

(3) "lack of responsiveness to the needs of the black community";

(4) a history of discrimination;

(5) traditional exclusion of blacks from office-holding and "the decision-making process of the city";

(6) a tenuous state policy in favor of at-large districts.[9]

The City appealed, and the court of appeals reversed. It did not question the facts, but said the consideration of the Zimmer criteria was inadequate. It sent the case back for further hearing.

The trial judge, without taking any additional evidence, reconsidered his findings and reached the countrary conclusion that there was no dilution of the black vote. The decision was affirmed on appeal in 1980, seven years after the complaint was filed.

Voting rights litigation, because it seeks to alter the balance of political power, is never popular with local officials. Not surprisingly, voting rights plaintiffs, and their lawyers, are frequently the victims of retaliation.

(c) McDuffie County, Georgia.

Public officials in McDuffie County counterclaimed against the plaintiffs in a voter dilution case for $93,500.00 in alleged actual and punitive damages on the grounds that the complaint was "a malicious abuse of civil process" and plaintiffs had sued them in bad faith.10/ The court eventually entered a consent judgment for the plaintiffs and the counterclaims were dismissed.

(d) Choctaw County, Alabama.

The plaintiffs in a Choctaw County, Alabama voting case decided to dismiss their dilution complaint against the school board voluntarily without prejudice. The trial court, however, refused to allow them to do so, and dismissed the case with prejudice. The court also awarded $2,500 in attorneys' fees to the defendants, payable by the plaintiffs. The court of appeals reversed. It said the plaintiffs had an absolute right to dismiss their complaint and the award of attorneys' fees was "a nullity."11/

(e) Lumberton, North Carolina.

The members of the Lumberton, North Carolina, City Board of Education, when sued in a Section 5 enforcement case, not only asked the court to assess the plaintiffs with costs and attorneys'

fees for alleged failures to comply with discovery, but accused their lawyers of solicitation and "coercing" the plaintiffs into filing suit. Solicitation is an unethical practice that can result in disbarment.[12] The court ruled for the plaintiffs on the merits and found the request for fees moot. It never addressed the charge of solicitation.

Because of the costs, delays, and often inconsistent results in litigation, relatively few voting cases are filed. The total number of all voting rights cases filed nationwide, including those filed by the Department of Justice, in each of the past five years is as follows:

1980	160
1979	145
1978	139
1977	203
1976	176[13]

2. The Repeal of the Zimmer Standard

The burdens of constitutional litigation under the White-Zimmer standard were heavy enough. In 1980, in City of Mobile v. Bolden,[14] the Supreme Court made them even worse.

Blacks in Mobile, Alabama brought suit in federal court in 1975 charging that the election of the city commission at-large diluted their voting strength. The district court agreed and ordered the city to establish a mayor and council form of government elected from districts. The Court of Appeals affirmed based upon proof by the plaintiffs of an aggregate of the Zimmer factors. The Supreme Court reversed.

A plurality of the Court held that the Fifteenth Amendment does not protect against mere vote dilution, but only the right physically to register and vote without hindrance. As for the contention that Mobile's at-large scheme violated the Fourteenth Amendment, the plurality ruled that plaintiffs' burden was to show that it was conceived or operated as a purposeful device to further racial discrimination, and that the Zimmer factors "were most assuredly insufficient to prove an unconstitutionally discriminatory purpose."[15]

Purpose could be shown by proof that a voting system was adopted or maintained "in part 'because of,' not merely 'in spite of,'" its adverse racial effects.16/ The case was sent back for further hearings on whether Mobile's electoral system had been retained for a racially discriminatory purpose.

There were six separate opinions in City of Mobile, and no majority. As a consequence, the decision is often confusing and difficult to follow. Justice White, who wrote the unanimous decision in White v. Regester, said in a dissenting opinion that City of Mobile was "flatly inconsistent with White v. Regester," and left the lower courts "adrift on uncharted seas."17/ And indeed it has.

The Court of Appeals for the Fifth Circuit, which has had the bulk of voting rights litigation, is hopelessly confused about what City of Mobile means. One panel recently held in three cases from Florida that after City of Mobile, the central inquiry of the trial court should be whether there is purposeful discrimination in the adoption or use of a voting procedure, and that most of the Zimmer factors are irrelevant, e.g., "whether current office holders are responsive to black needs and campaign for black support is simply irrelevant. . . . a slave with a benevolent master is nonetheless a slave."18/

A month later, a different panel of the Fifth Circuit held in three virtually identical cases from Georgia that the Zimmer factors were still relevant "to the extent that they allow the trial court to draw an inference of intent,"19/ and that unresponsiveness was the sine qua non of vote dilution--that without a finding of unresponsiveness there could be no abridgement of minority voting strength.

> [A] plaintiff must establish that the governmental body in question is unresponsive to its legitimate needs. Reduced to its simplest terms, failure to prove unresponsiveness precludes a plaintiff from obtaining relief.20/

The Supreme Court agreed on October 5, 1981 to hear one of the three cases from Georgia, Lodge v. Buxton, and may clarify the meaning of City of Mobile. If the court rules that even the limited use of Zimmer in Lodge to create an inference of discriminatory intent was misplaced, it will be impossible to win a constitutional challenge except where local officials

publicly confess to a racial motive. No one can expect that to happen very often.

Regardless of what the Supreme Court may do in Lodge, City of Mobile with its artificial burden of proof standard has deterred the filing of new constitutional litigation. It has also had immediate and adverse impact upon pending cases at the trial and appellate levels.

3. Section 2 of the Voting Rights Act of 1965

Congress was well aware of the delays and uncertainties in contesting possibly discriminatory voting changes in traditional litigation, and for that reason enacted Section 5 of the Voting Rights Act. Congress was equally aware that the same delays and uncertainties could occur in challenging voting procedures enacted before the effective date of pre-clearance, and for similar reasons enacted Section 2 of that Act, which contains a substantive standard similar to that in Section 5.

Section 2 prohibits voting practices which "deny or abridge" the right to vote. Nicholas Katzenbach, then Attorney General, testified before Congress in 1965 that Section 2 was intended to ban "any kind of practice . . . if its purpose or effect was to deny or abridge the right to vote on account of race or color."21/ This interpretation of Section 2 was reiterated last year in an amicus brief filed by the Department of Justice in Lodge v. Buxton. According to the Attorney General, blacks are entitled to relief under Section 2 "if they . . . can establish that the challenged practices, though neutral in design, have the effect of abridging the right to vote on account of race."22/

Given this interpretation, racial minorities could successfully challenge voting procedures under Section 2 which have adverse effect, even if they could not establish a constitutional violation because of lack of proof of racial purpose. Notwithstanding the altered standard of proof under Section 2, no vote dilution cases have been decided solely on the basis of the statute.23/ That has been so, undoubtedly, because, prior to City of Mobile, adverse effect in the context of past and residual discrimination was sufficient to make out a constitutional violation. Section 2 was essentially redundant.

The Supreme Court has never authoritatively construed the scope of Section 2, although a plurality in City of Mobile said the statute has a reach no different from that of the Fifteenth Amendment and prohibits only intentional discrimination. The resolution of this issue by a majority of the Court will have obvious significance for future voting rights litigation.

4. At-Large Elections: Pre-City of Mobile

In spite of the burdens of constitutional litigation, at-large election systems adopted before the effective date of Section 5 have been successfully challenged in a number of cities and counties.

(a) Georgia Consent Decrees.

Some jurisdictions, prior to the City of Mobile, consented to judgment. But in most instances, the plaintiffs were required fully to prepare their cases, and settlement was made only on the eve of trial.

In Georgia, consent decrees were entered establishing district election plans for the McDuffie County Board of Commissioners (1978), the McDuffie County Board of Education (1978), the Thomson City Council (1978);[24] the Coffee County Board of Education (1977), the Douglas City Council 1977;[25] the Peach County Board of Commissioners (1979);[26] the Terrell County Board of Commissioners (1979);[27] the Waynesboro City Council (1977);[28] the Sumter County Board of Commissioners (1980), the Americus City Council (1980);[29] the Dawson City Council (1979);[30] and the Madison City Council (1978).[31]

All of these jurisdictions have a common racial history of discrimination in voting, bloc voting by whites, few if any black elected officials, and election mechanisms such as majority vote requirements, numbered posts and staggered terms of office. Sumter County is typical.

Prior to the Voting Rights Act, only 548 blacks were registered to vote in Sumter County, 8.2% of the eligible population. Voting was segregated and blacks were excluded from positions as election managers and poll workers. The Jaycees, an all white

organization, ran county elections. The Democratic Party was racially exclusive and no blacks served on its executive committee until 1975.

Beginning in the early 1960's, SNCC and other civil rights groups launched voter registration drives in Sumter County. Shortly thereafter, in 1963, four SNCC workers involved in those campaigns were arrested and charged with insurrection--at that time a capital offense in the State of Georgia. The four were held without bail until a three-judge court enjoined the prosecutions, ruled the insurrection statute unconstitutional, and ordered the defendants admitted to bail. The prosecutor, Stephen Pace, Jr., later admitted that "the basic reason for bringing these /insurrection/ charges was to deny the defendants. . .bond. . .and convince them that this type of activity . . .is not the way to go about it."[32] Remaining charges against the four were eventually dismissed.

The courts also began to declare unconstitutional other forms of discrimination in the electorate. In 1965, a federal district court enjoined racial segregation in county elections, interfering with black voters, maintaining voter lists on a racial basis, and prosecuting blacks for their attempts to vote, and failing to release them on their own recognizance.[33]

Two years later, in Bell v. Southwell, the Court of Appeals set aside county elections because of "gross, spectacular, completely indefensible. . .state imposed, state enforced racial discrimination."[34] The practices cited were segregated voting lists, segregated voting booths, intimidation of black voters by election officials, and the "unwarranted arrest and detention" of blacks who protested the racial discrimination.

Resistance to increased black political participation evidenced itself in other ways. On September 7, 1965, the Board of Commissioners instructed the county attorney to investigate recently registered voters to determine if any had ever been convicted of a felony and could be purged under state law.

In June, 1978, the Sumter County Democratic Party abolished its primaries, but failed to comply with the pre-clearance provisions of Section 5 prior to the holding of general elections in December, 1978. Other Section 5 violations are the continuing refusal of the Sumter County Board of Education to honor an objection to at-large voting by the Attorney General, and the

failure of the City of Americus to pre-clear a majority vote requirement for election of the mayor and council adopted in 1965.

On April 7, 1980, the defendants agreed to a judgment finding at-large elections for the county commission unconstitutional on the grounds that they diluted black voting strength. At the next election held in August, 1980, under a court-ordered plan utilizing single member districts, a black was elected to office, the first in Sumter County's modern history.

(b) Lee County, South Carolina.

Lee County, South Carolina, is 60% black, but prior to 1977, no black had ever been elected to a county office. Blacks were excluded from office by discriminatory registration procedures, and after passage of the Voting Rights Act, by the use of at-large elections.

On November 1, 1964, the seven member Lee County Commission was elected from single-member districts. In view of the fact that only 21% of eligible blacks were actually registered at that time, as opposed to 99% of eligible whites, none of the districts contained a black majority capable of electing a black to office.

The Voting Rights Act had substantial impact in Lee County. By July 31, 1967, 2,691 blacks (49% of the eligible population) were registered to vote, more than double the number since 1964.

The first black to run for the Board of Commissioners was Joseph Thomas in 1966. He lost his election, but because of the increased black voter registration in his district, his defeat was by only a few votes.

Prior to the next election, the district system was scrapped in favor of a five member council elected at-large without regard to residency. The Act was subsequently amended in 1971 to increase the membership of the council to seven and establish residency districts. At-large elections were retained.

The legislation was submitted to the Department of Justice and, surprisingly, was pre-cleared.

Blacks continued to run for the county council, but none were elected. On March 4, 1974, a lawsuit was filed in which the plaintiffs contended that at-large voting diluted their voting strength.

In support of their dilution claim, the plaintiffs showed that blacks in Lee County have a depressed socio-economic status, with lower levels of education than whites, higher rates of unemployment, lower incomes, and more substandard housing. Public schools were operated on a racially segregated basis until 1970. Blacks were excluded or under-represented on juries, in public employment and were discriminated against by local law enforcement officials.

No black served as a manager or clerk of any Lee County precinct until the general elections held on October 24, 1968, when 3 blacks served, 2 of the 3 in predominantly black precincts. From June 12, 1962, through July, 1974, of 1,118 persons who served as managers or clerks of precincts for general and primary elections, only 39 (3.5%) were black and those served only in precincts with substantial black population. The officers of the Lee County Democratic Party, chairpersons and secretaries, from 1966 through 1970 were without exception white.

From 1962 to 1975, of 10 persons appointed or reappointed to the Lee County Election Commission, only 2 were black, the first appointment of a black being on October 5, 1972. No black was ever appointed or served as a Supervisor of Registration or on the Industrial Planning Board, the Development Board, the Public Library Commission, the Historical Commission or the Tax Appeals Board.

Blacks seeking office in Lee County were given little or no assistance by local white officials, or were discouraged as an affirmative matter from running. Joseph Thomas, the black who ran for the Board of Commissioners in 1966, talked with Lee County's then state representative, later Circuit Court Judge Dan Laney, prior to elections to find out if there were any limitations on the Voting Rights Act of 1965 as far as Lee County was concerned, and to ask him to appoint poll workers on his behalf.

Judge Laney stated that he did not approve of the Voting Rights Act of 1965, would do nothing to see that illiterate voters received assistance in voting and that he could not appoint poll workers. He did not, however, suggest how Mr. Thomas might

secure such appointments. Mr. Thomas next went to the Chairman of the Democratic Executive Committee and requested him to appoint poll workers on his behalf. The chairman told him that he did not have the authority to appoint poll workers, but did not tell him who in fact had such authority.

Voters in the Spring Hill precinct of Lee County were required to vote at an all white Masonic lodge.

Election returns showed a voting pattern along racial lines in Lee County. The pattern is easily discerned by looking at returns from precincts which are heavily white, e.g., more than 80% white voter registration. Black candidates who showed great strength in black precincts always finished last, or nearly last, in the heavily white precincts.

On March 31, 1976, the district court ruled against the plaintiffs. While it adopted many of the plaintiffs' proposed findings, it concluded that "black citizens in Lee County participate on an equal basis with the white citizens" in the political process.[35] In support of its conclusion, the court noted that "favorable review" of the plan by the Attorney General in 1971 was entitled "to deference by the courts."[36] Plaintiffs appealed.

In the meantime, legislation was enacted by the General Assembly requiring all counties in South Carolina to elect one of five designated forms of government. The plaintiffs and other black citizens in Lee County secured enough signatures on a petition requiring the holding of a referendum whether the designated form of government should be elected by districts. The referendum was approved and on May 21, 1977, the General Assembly enacted a seven single member district plan for election of the county council. A majority of the districts are majority black.

The Court of Appeals, at plaintiffs' request, dismissed the appeal as moot.

(c) Henderson, North Carolina.

On February 20, 1974, the NAACP filed a lawsuit on its own behalf and that of black voters and candidates, challenging the at-large election system, with residential candidacy districts, in the City of Henderson, North Carolina.[37] Blacks were 45%

of the city's population, but no blacks had ever been elected to city office. The district court granted summary judgment for the city.

The Fourth Circuit affirmed on June 3, 1976. The ACLU Foundation, Inc. filed a Motion for Leave to File a Memorandum Amicus Curiae, arguing that summary judgment was inappropriate in a case under the Fifteenth Amendment involving dilution of minority voting strength by an at-large system. Although the Court ordered the parties to respond to the motion, it ultimately let its decision stand, declining to order a rehearing sua sponte.

(d) Prattville, Alabama.

White residents of Prattville, Alabama, brought a private suit challenging the apportionment of the residency districts used in at-large elections for the Autauga County Commission and school board.[38] The city districts had far more population than the other districts, the effect of which was to insure rural dominance of both bodies. The Court held the plans unconstitutional.[39]

At the remedy stage, a black resident, Sallie Hadnott, represented by ACLU attorneys, was granted permission to appear as amicus curiae to evaluate the plaintiffs' and defendants' proposed plans for racial or other bias, and to submit a plan of her own.

Amicus submitted to the court single-member district plans for both bodies. The court, however, adopted the defendants' plan, which used all single-member districts for the county commission, but incorporated two multi-member districts for the school board. While those apportionments did not maximize the opportunity for black participation in the electorate, their use of some, or all, district voting was a clear improvement over the prior at-large systems.

5. At-Large Elections: Post-City of Mobile

The City of Mobile, while not yet a total bar to constitutional challenges of discriminatory voting procedures, has had

direct, and generally negative, impact on all pending litigation.

(a) Burke County, Georgia.

Burke County is the second largest of Georgia's 159 counties. Its population is in excess of 10,000 people, a slight majority of whom are black. However, no black has ever been elected to the five-member county commission.

Herman Lodge and other black residents of the county filed suit in 1976 alleging that at-large elections for the county commission were unconstitutional. The District Court found for the plaintiffs prior to the City of Mobile decision, and the Court of Appeals affirmed after the City of Mobile decision on the grounds that plaintiffs had proved intentional discrimination. The appellate court held that the county commissioners "have demonstrated such insensitivity to the legitimate rights of the county's black residents that it can only be explained as a conscious and willful effort on their part to maintain the invidious vestiges of discrimination. To find otherwise would be to fly in the face of overwhelming and shocking evidence."[40]

The Court of Appeals also concluded that previous acts of official discrimination had a significant negative impact on the opportunity of blacks in Burke County to participate in the electorate. Prior to the Voting Rights Act of 1965, black suffrage was "virtually non-existent."[41] At the present, it is only approximately 38% of those eligible.[42] Evidence of past and present "bloc voting was clear and overwhelming."[43] Inadequate and unequal educational opportunities, both in the past and present, as the result of official discriminatory acts, precluded equal participation of blacks in politics.

Moreover, discrimination by the Democratic party in the county primary system deterred blacks from participation in the electorate. At the present time, only one of the 24 members of the Burke County Democratic Executive Committee is black. Upon the evidence, the court "concluded that the effect of historical discrimination was to restrict the opportunity of blacks to participate in the electoral process in the present."[44]

An additional factor showing discrimination in the use of at-large elections was the depressed socio-economic status of blacks: "Such depression has a direct negative impact on the opportunity for blacks to effectively participate in the electoral

process."[45] Blacks were found to have a lack of access to the political process because of their inability to participate in the operation of the local Democratic Party; the county commissioners' failure to appoint blacks to local governmental committees; and "the social reality that person-to-person relations, necessary to effective campaigning in a rural county, was virtually impossible on an inter-racial basis because of the deep-rooted discrimination by Whites against Blacks."[46] The court also found that other factors enhanced the dilution effect of the at-large voting, including the large size of the county, the presence of a majority vote requirement, the use of a numbered post system, and the absence of a residency requirement.

Upon all the evidence, the Court of Appeals concluded that the electoral system was maintained for invidious purposes. "The picture that plaintiffs paint is all too clear. The vestiges of racism encompass the totality of life in Burke County."[47]

The county appealed the decision, arguing that the lower court had erroneously applied the discredited Zimmer standards. The Supreme Court has noted probable jurisdiction.

(b) Putnam County, Georgia.

A lawsuit challenging at-large elections for the Putnam County, Georgia, Board of Commissioners, Board of Education and Eatonton Aldermanic Board was decided after the City of Mobile decision, and the district court ruled for the plaintiffs.

Putnam County is approximately 50% black, but had no black elected officials. Its county seat, Eatonton, the birthplace of Joel Chandler Harris, is also majority black, but had an all white government.

The trial court ruled in May, 1981 that at-large voting for all three local governments was being "maintained for the specific purpose of limiting the county's and the city's black residents' ability to meaningfully participate therein."[48] In making its finding, the district court observed:

> If the city and county officials could point to a single period in this century when blacks have been able to meaningfully participate in the electoral process, the court would be receptive

> to the proposition that blacks just aren't interested in politics. The court suggests that a careful review of discrimination in Putnam County indicates the contrary. Having concluded that blacks are interested in their standard of living, and that the present elected officials ineffectively represent them, the court must examine whether their vote is perceived to be meaningless. The past history of official segregation within Putnam County combined with both their inability to elect the members of their own race and with low voter registration and turnout compels but one conclusion--Putnam County blacks, through the actions of white elected officials past and present, have been denied equal access to the political process to such an extent that they will continue, in spite of their popular majority, to be defeated at the polls.[49]

The defendants have indicated they may appeal.

(c) Edgefield County, South Carolina.

Edgefield County has strong traditions of discrimination in voting and no black in this century has ever been a member of the county government, even though Edgefield is more than 50% black. The underlying cause for the inability of blacks to elect candidates of their choice to office is the use of at-large voting and severe racial polarization which exists as the heritage of past segregation.

Prior to enactment of the Voting Rights Act, only 650 blacks were registered in Edgefield County, 17% of the eligible population. By contrast, nearly 100% of eligible whites were registered.

In 1974, Tom McCain, an assistant professor of mathematics at Paine College in Augusta, became the first black since Reconstruction to run for Edgefield County government. McCain lost the 1974 race and a second race two years later because whites don't vote for blacks in Edgefield.

A visual examination of election results shows the severe racial polarization in local voting. In predominantly white districts where voting patterns are clearest, black candidates always get virtually the same number of votes--few or none at all. Bloc voting has been confirmed by Dr. John Suitch, a scientist at Aiken, who analyzed elections in Edgefield in which blacks have been candidates. The statistical correlation between the race of voter and candidate was "extraordinarily high" in the rage of .9 (on a scale of -1 to +1) for each election. "The correlations are not just statistically significant," says Suitch, "they are overwhelming."[50]

McCain and other Edgefield blacks filed a federal lawsuit in 1974, alleging, among other things, that the at-large method of elections diluted their voting strength. On April 17, 1980, the court ruled that the at-large method of elections constitutionally infringed upon "the rights of the blacks to due process and equal protection of the laws in connection with their voting rights."[51] Further elections were enjoined until a new and constitutional method of electing the county council was adopted under state law. Some of the court's findings were:

*"Until 1970, no black had ever served as a precinct election official, and since that year the number of blacks appointed to serve has been negligible."

*"Blacks were historically excluded from jury service in Edgefield County."

*"Blacks have been excluded from employment. . .it was only when trial was about to begin that the county suddenly began hiring blacks in any numbers....in addition, blacks are heavily concentrated at the lower wage levels."

*"Blacks have been excluded by the county council in appointments to county boards and commissions."

*"There is bloc voting by the whites on a scale that this court has never before observed. . .whites absolutely refuse to vote for a black."[52]

Four days after the district court's opinion, the Supreme Court decided City of Mobile v. Bolden. The Edgefield defendants moved the court to alter, amend or vacate the judgment on the basis of City of Mobile and the motion was granted. The plaintiffs were given leave to introduce additional evidence

of whether "the at-large system was conceived or operated as a purposeful device to further racial discrimination."[53]

Determination of the dilution claim has been stayed pending resolution of certain Section 5 issues which are also present in the case.

(d) Columbia, South Carolina.

Columbia is the capital city of South Carolina and 35% of its population is black. Yet no black, within living memory, has ever been elected mayor or to the four-member city council.

Columbia's at-large system of elections was adopted in 1910, at a time when blacks were excluded from the electorate. It would be a mistake, however, to assume that race did not play a critical role in the decision about what kind of government Columbia was to have.

The father of at-large voting in Columbia was John J. McMahan, one of Richland County's senators in the South Carolina legislature. For McMahan who had also been a member of the delegation from Richland County to the South Carolina Disfranchising Convention of 1895, "good government" was directly tied to restricted suffrage, which meant utilizing at-large voting and continuing the exclusion of blacks from elections.

The McMahan bill for election of the city government in Columbia incorporated all the racially discriminatory provisions limiting the suffrage in general elections adopted by the Disfranchising Convention of 1895, and applied them for the first time to the primary.[54] No person could vote in the city primary unless he was a registered elector. In addition, would-be voters had to furnish receipts showing payment of all city, county and state taxes. Only then were special tickets issued allowing persons to vote.

Poll taxes were notorious as a device to thwart black registration, and some people criticized the McMahan bill for the reason that it "would deprive many citizens of their voting privileges."[55] But limitation of the franchise was one of the very things to be accomplished by the McMahan bill. The State newspaper, in fact, using the code words of the day, supported the bill precisely for the reason that "/t/he elections will be safeguarded."[56] The McMahan bill was adopted overwhelmingly in an all-white citywide referendum.

McMahan accomplished precisely what he set out to do in 1910--to perpetuate the exclusion of blacks from the electorate, consolidate local rule in the hands of a white, business and professional elite, and bring to an end broad based, participatory government for the City of Columbia. Blacks have run for office on many occasions since enactment of the Voting Rights Act of 1965, but because of at-large voting in Columbia none has ever been elected.

In 1977, black citizens of Columbia filed suit charging that the at-large method of elections diluted their voting strength. Part of their proof was evidence of Columbia's past and continuing racial history, with de jure and de facto discrimination extending to virtually all areas of life.

Blacks did not register and vote in significant numbers in Columbia until after abolition of the all-white primary in 1947, and enactment of the Voting Rights Act of 1965. In 1964, for example, blacks were only 13% of the registered voters in all of Richland County, of which Columbia is the county seat.

Schools were segregated from the first grade through college, and remained so long after the decision in Brown v. Board of Education (1954),[57] due to the deliberate strategy of "massive resistance" to desegregation by state and local officials.

Public accommodations, public housing, health care facilities, parks, public employment, public transportation and penal facilities were all rigidly segregated by law and by custom until passage of civil rights laws in the mid-1960's and federal judicial intervention.

So significant has race been that it was libelous per se in South Carolina as late as 1957 to publish in print that a white person is a Negro. During the same year, a bill was introduced into the South Carolina House of Representatives requiring any blood bank in the state to label all blood "so as to indicate white or colored."[58] The preceding year (two years after the Brown decision), the House and Senate passed a resolution removing from public libraries as "inimical to the traditions of South Carolina" a book entitled Swimming Hole, which was about "the insignificance of skin color."[59]

Because of this past history of discrimination, blacks in Columbia exist at a lower socio-economic level than whites in housing, education, income, health care, and employment.

Residential areas in the city, public and private, are racially identifiable, and whites oppose the dispersal to their neighborhoods of integrated public housing.

Blacks have been excluded from many local boards and commissions to which the mayor and council make appointments. Blacks have also been discriminated against in employment by being excluded altogether from certain departments, and clustered in lower paying jobs.

The city presently maintains a membership for the Columbia City Manager in the all-white Summit Club, and on occasion has conducted business there. At one time, the city also maintained a membership for the city manager in the racially exclusive Wildwood Country Club.

Because of the continuing effects of past discrimination, Columbia remains essentially two societies, one black and one white. Consequently, one of the critical problems faced by minority candidates is the lack of access to the dominant, numerically superior white community. As one black candidate, E.J. Cromartie, explained during the trial of the lawsuit challenging at-large elections in Columbia:

> In the white community, there's a tremendous problem of access. . . .You have civic organizations such as the Rotary, of course, and there are no blacks in the Civitan Club or the Summit Club. . . .The political process is simply an outgrowth. . .of how we live.[60]

In addition to the lack of access by black candidates, it is difficult in Columbia for others to campaign effectively for black candidates in the white community. The Fire Fighters Association got an adverse reaction in the 1978 mayor and council elections in white neighborhoods urging voters to support a biracial ticket. There was no comparable problem in black neighborhoods. And when a black who was successful in the primary election in 1972 ran in the general election, mailings were made by the Democratic Party to black registered voters, but not to white for fear of "stirring up a bunch of persons to vote against" the black candidate.[61]

Cultural and social barriers erected by segregation continue significantly to impede black political opportunities and deny minority candidates white support. According to another

black candidate for city council, Franchot Brown:

> We cannot depend, as voting practices have proven in the past, on the white vote to elect a black candidate to city council. That's it, and I'm not being racist in what I'm saying, and I'm certainly not being anti-white or pro-black. I'm speaking from the facts as they have proven themselves in past campaign results.[62]

Douglas McKay, an expert in the field of electoral geography, conducted a study, based upon census data, of the relationship in Columbia between socio-economic and class factors and voting behavior. Race, he said, was "very significant" in explaining voting behavior, and has continuing significance.[63] In fact, because of the constant relationship between socio-economic conditions, such as the race of voters, it is actually possible to predict voting behavior in the City of Columbia. In McKay's judgment, at-large voting clearly disadvantages blacks.

Earl Black, professor of government at the University of South Carolina and author of Southern Governors and Civil Rights (1976), concluded that the chances of a black winning office in the City of Columbia are slim:

> They are not able to get that minimum degree of white support given very heavy black support and given relatively high black-to-white turnout.[64]

While blacks have actually won in the Democratic primary, the importance of the primary in city politics has diminished. Because of an influx of Republican, primarily white, voters, the general election has an added significance, the consequence of which "is that the size of the black vote is diluted when you move from Democratic primaries to the general elections."[65]

Racial bloc voting, because of an "underlying cleavage along racial lines," is a "working assumption as far as politics in Columbia is concerned." "For many--it's most unlikely that they are going to take seriously the question of whether they vote for a black candidate or not."[66] In Columbia, there is a "typical pattern of widespread racial polarization."[67] There is

> a very strong reason to conclude that although it is not impossible for black candidates to win, it is unlikely, given the nature of the rules of the game. The requirements that blacks have a substantial minority of white allies for support puts a very heavy burden on black candidates, and to this point in time, black candidates in the city council races have not been able to find the 30 percent or 33 percent of the white voters that they need to win.

After reviewing precinct returns for all city elections in which blacks were candidates, Professor Black concluded that "at-large elections of this type put black candidates at a severe disadvantage."[68]

The district court in the Columbia at-large challenge, ruled for the defendants on March 24, 1981. It held that there was "no evidence that blacks cannot be elected under the present system,"[69] and that the plaintiffs failed to prove racial discrimination in the use of at-large elections. The court of appeals affirmed on November 17, 1981.

In the meantime, a referendum was approved in December, 1981, providing for a combination of district and at-large voting for the mayor and council. One of the members of the council who opposed the referendum later acknowledged what to the courts has seemed obscure. At-large voting in the City of Columbia, he said, "was a racial issue from day one."[70]

(e) Moultrie, Georgia.

Moultrie, Georgia has a long history of racial discrimination in elections. John Cross, the owner of a black cab company, attempted to register during the days of the all-white primary in 1941-42, and again in 1943. On each occasion he was denied registration. "/O/n one occasion they told three of us that it was too late in the day. You know, it was about four o'clock and they just closed the window."[71] On another occasion in 1942, "they told us. . .we had to pay poll tax. . . .I was unable to pay."[72] Cross finally registered in 1946 after a federal court declared unconstitutional Georgia's all-white primaries.

Even then, Cross and every other black voter in the City of Moultrie eligible to participate in the Democratic primary

were challenged in 1946 for not having proper voter registration qualifications. No whites were challenged.

It was not until the Voting Rights Act of 1965 that any significant number of blacks registered in Moultrie. Prior to the Act, as of December 19, 1962, only 1,117 blacks were registered to vote in the entire county, 27.4 percent of the eligible population. By contrast, 11,362 whites were registered, 71.1 percent of the eligible population.

Although the Democratic all-white primary has been abolished, the legacy of party discrimination persists. As of 1976, no black had ever served as an officer of the party, and only one black had ever served on the twelve-member county executive committee.

City elections were run on a racially segregated basis as late as May, 1962. White voting booths were located "next to the City Hall, and. . .the Negro polling place in a booth. . .in the fire department."[73] Voter registration lists were also maintained on a racially segregated basis. Neither segregated voting nor segregated registration ended in Moultrie "until the integration issue came up," during the mid-1960's.[74]

Not only have elections been conducted on a racially segregated basis, but municipal elections were traditionally managed by the Moultrie Lions Club, an organization which excludes blacks from its membership. Blacks were occasionally allowed to assist with operating voting machines but the Lions Club never permitted any blacks to certify voters or hold managerial positions. The Lions Club still manages city elections, although at the elections held in 1980, a black women's club was allowed to assist the Lions.

Moultrie also has an aggravated history of violating Section tion 5, (see pages 44, 56, 61).

The city council has traditionally been unresponsive to the needs of the black community. One of the councilmen, Donnie Turner, said that prior to the time he was elected to the council in 1972, the "council was neglecting the black community," particularly in paving, housing and other services.[75]

Discrimination and inequality based upon race have characterized virtually every aspect of public and private life in Moultrie. Penal facilities were racially segregated until the late 1960's. Law enforcement was racially segregated--the first

black policeman was not hired until the mid-1960's, and even then was not allowed to arrest whites. Juries were racially exclusive. Housing for blacks is typically substandard and segregated. Employment opportunities for blacks are depressed. For example, in January, 1972, there were no blacks employed in the city hall and only one "in a building adjacent to City Hall."[76] The majority of blacks presently employed by the council work as either garbage collectors or laborers. Clubs and churches remain for all practical purposes as rigidly segregated now as they were a hundred years ago. Schools were not desegregated until 1970, and then only after bitter, local resistance. Blacks are substantially under-represented on boards and commissions over which the city council has exercised its appointment power.

Black citizens asked the mayor and council in 1975 to adopt a single-member district plan for elections to provide an opportunity for black political participation. As John Cross explained it: "as the present at-large system works in Moultrie, the white majority controls the outcome of every single election.... People get elected who are naturally more responsive to the needs of whites than they are to blacks."[77] The city council, however, responded that "the present system. . .had worked properly for the entire history of the city" and declined to make any change.[78]

Cross and other blacks filed a lawsuit in which they claimed that the at-large system of elections was unconstitutional. The district court held on October 26, 1977, there were no barriers to present registration and the at-large system did not preclude "effective participation" by blacks in politics; "the Constitution does not require that elections must be somehow arranged that black voters be assured that they can elect some candidate of their choice."[79]

On appeal, the Fifth Circuit reversed. It held there was "substantial evidence tending to show inequality of access;" that plaintiffs "have demonstrated a history of pervasive discrimination and. . .have carried their burden of proving that past discrimination has present effects;" and, that "plaintiffs have demonstrated recent pervasive official unresponsiveness to minority needs."[80] The case was sent back to the district court.

A second hearing was held on January 25, 1980. A major element of the city's case was the election of a black man, Wesley Ball, to city council on May 22, 1979. Ball was a 68-year-old

retired former waiter at the Colquitt Hotel in Moultrie. He had a seventh grade education, had never run for office, nor had he ever been involved in any political campaign. He ran against Wilson, the black incumbent, and Cook the white candidate who had withdrawn from the 1978 election.

According to Cook, "most businessmen around. . . white businessmen" had supported Ball or Wilson because if they were defeated by a white opponent, "the ward system would be more effective to come in" and the city might lose its lawsuit.[81] "/T/hey wanted. . .a black post, and they didn't. . .want me on there for that reason. . .said, let them two have it out. . . . Ball and Wilson."[82]

After Ball won the election, someone put a sign on Cook's place of business: "got beat by a black man--business for sale--leaving town." Ball himself said that race has always been critical in city politics. He testified that "the primary thing" that had caused black candidates to lose in elections for the City Council was race: "It's been on racial lines."[83]

In addition to evidence of "cuing" by whites to give the appearance of racial fairness to city elections, the plaintiffs showed that: the Lions Club continues officially to participate in management of city elections; as recently as the 1979 elections, black voters were turned away from the polls by members of the Lions Club; city officials continue to ignore Section 5 of the Voting Rights Act of 1965--an uncleared literacy test was implemented in 1979 for new poll workers (presumably black) who responded to a newspaper ad and volunteered to assist the Lions Club in conducting city elections; and, the city council voted in 1979 strictly along racial lines to retain at-large elections without citing any non-racial reasons supporting the majority's vote.

Following the rehearing, the district court ruled once again against the plaintiffs, concluding that the at-large system in Moultrie was not discriminatory. The plaintiffs appealed. The Fifth Circuit, relying upon City of Mobile, held that plaintiffs must prove unresponsiveness in order to establish vote dilution, and because the district court had found responsiveness by the Moultrie City Council, a finding not permitted to be reversed on the appellate level unless "clearly erroneous," the plaintiffs were absolutely foreclosed from obtaining any relief. None of the evidence of direct discrimination was discussed or even mentioned. It was simply deemed irrelevant.

The plaintiffs have requested the Fifth Circuit to hear the case en banc with all of the active judges reviewing the decision.

(f) Harris County, Georgia.

Black plaintiffs in Harris County, Georgia have also been stymied by City of Mobile.

Harris County is 45% black, but no black within living memory has ever been elected to the Commission or any other county office. Blacks did not register in the county until the administration of Franklin Roosevelt. Some blacks voted at that time, but for the next two elections, according to Willie Simpson, a long time resident of the county, "they dug some graves there by the courthouse. . .some short graves and burned some crosses at the crossroads."[84/]

Prior to the Voting Rights Act, only 263 blacks were registered to vote in Harris County--8.5% of the eligible population. By contrast, more than 100% of the eligible whites were registered. Following enactment of the Voting Rights Act and the suspension of literacy tests, by August 31, 1967, black voter registration had increased to 1,119, but still only 36.1% of the eligible population. To the present time, black registration remains substantially depressed.

Voter lists in Harris County were maintained on a racial basis until 1964-65. Many blacks did not register to vote in the county simply because of their belief that their votes would not be effective and because of their fears of retaliation, economic and otherwise, by the white community.

No black ever served as a poll worker in Harris County until 1972. During that year, both the Department of Justice and local black citizens requested the judge of probate, who runs county elections, to appoint blacks to these positions. In response to the requests, the judge appointed approximately six blacks out of approximately 38 persons to serve as poll workers for the 1972 election. The judge "received a phone call from a man who identified himself as Barry Weinstein of the Civil Rights Division of the Department of Justice to which I said, who else would Barry Weinstein work for. He laughed. He said I was a nice fellow."[85/] At the next election in 1974, only one black was appointed to serve as a poll worker.

Prior to the 1975 elections, Willie Simpson, a black man, went to the judge of probate and asked that blacks be appointed as poll workers in the Shiloh area of the county. The judge sent Simpson to the chairman of the Democratic Party, but he took no action. No blacks at all served as poll workers in the 1975 election. In 1976, there were two blacks appointed as poll workers. No black had ever been appointed or served as a poll manager in any election in Harris County.

In 1974, when the county first used voting machines, Willie James Brown, a black resident, wrote to the judge of probate asking that he take action to instruct citizens in the use of the machines. Brown never received a reply.

No black has ever been an officer or member of the executive committee of the Democratic Party of Harris County. The chairman has indicated that he does not intend to take affirmative steps to insure greater participation by blacks in Party affairs. "I'm going to mind my own business and I want everybody else to do that,too."86/

Racial segregation has always been the way of life in Harris County. The county jail remained racially segregated until 1975. Discrimination against blacks in jury selection has been chronic. Desegregation of schools was bitterly contested in Harris County until 1970-71, when litigation by the Justice Department and the threat of termination of funds forced the adoption of a desegregation plan.

At-large elections are devastating for blacks because of chronic bloc voting by whites. Black candidates nearly always run last or next to last in multi-candidate races in the predominantly white precincts. That is true even if the black candidates run well in the city of Hamilton, which has a substantial black population.

In the 1970 primary, for example, Walker, a black, carried the city of Hamilton in a three-way race for county commission post number one, but came in dead last in the four predominantly white precincts of Pine Mountain Valley, Skinners, Upper 19th and Lower 19th. The pattern is repeated in other elections. In 1974, Bowen, a black, carried Hamilton in a three-way race for post number one. He came in last, however, in Pine Mountain Valley, Skinners, Upper 19th and Lower 19th. Blacks running for offices in Hamilton and Pine Mountain, two of the largest towns in Harris County, also consistently go down to defeat.

The present apportionment for the board was enacted by the legislature in 1972. The grand jury in 1966 and 1972, during the time blacks were excluded from its membership, had recommended expansion of the commission to five or seven members elected from residential districts at-large. The state representative who introduced the act followed the recommendation of the grand jury. He also talked to people in the county to ascertain their wishes, but can only recall one black with whom he discussed the proposed legislation. That black opposed the at-large feature and favored a ward system.

As might be expected, county government has been unresponsive to the needs of the black community. For instance, from October, 1963, to November, 1975, the Commission exercised its power to make appointments 98 times. In only three instances were blacks nominated or appointed.

Local officials are either unconcerned or unaware of race discrimination and its continuing consequences. Commissioner Raymond Reames, for example, said that the under-representation of blacks on boards and commissions "does not concern me. It should concern them."[87/] Other commissioners, George Teal and Charles Knowles, were not even aware that racial segregation or discrimination ever existed in Harris County.

Knowles was unaware that no blacks were employed at the courthouse; it "didn't occur" to him that few blacks had been appointed to serve on boards and commissions; he was not aware that schools were ever segregated in Harris County nor that state laws ever required segregation; he was not aware that prisons and jails were ever segregated and was largely unaware of the condition of race relations in Harris County;

Teal, who had been on the commission 34 years, didn't remember whether schools in Harris County had ever been segregated--at least not until after his deposition had been recessed; he couldn't recall if penal facilities were racially segregated at one time; he had no knowledge if public accommodations in the county were ever segregated on the basis of race; he couldn't recall whether a predominant number of whites had been appointed to boards and commissions; he knew of no statute or practice in Harris County providing for separation of the races; he couldn't recall whether blacks were ever excluded from the affairs of the Democratic Party nor whether the present members of the Democratic Committee were all white; he was not aware of whether blacks worked at the polls during elections.

The judge of probate was "not aware of any particular problem" that the black community might have.[88] Commissioner Knowles said no special needs or problems "had. . .been made known to me by the black community."[89] His concern was that "all people are not responsive to the government."[90] Commissioner Reames didn't "know of any" lingering effects from segregation.[91]

In jurisdictions like Harris County, social and private contacts are crucial in the operation of the political process. Candidates rarely run on issues. The judge of probate's campaigns have involved no issues and no platform. He has run on his "personality."[92] The success of candidates depends upon friendships and personal contacts built up over the years, but because of the continuing segregation that exists in Harris County, black candidates have fewer opportunities than whites to establish contacts in the majority white community.

When Brown ran for coroner in 1972, he felt unable to campaign in the white neighborhoods because of an atmosphere of racial prejudice, and as a result was unable to establish political alliances with the white community. He received invitations to speak to black groups, but never to white groups or organizations. Since blacks were excluded from membership in social and civic clubs in Harris County, and because the legacy of racial segregation exists, opportunities for black candidates to draw upon personal ties and connections in the white community are severely limited.

Brown and other Harris County blacks filed suit in 1975, alleging that at-large elections for the county government discriminated against minorities. Following a lengthy hearing the district court found the plan had neither the purpose nor the effect of diluting minority voting strength. Subsequently, on May 21, 1980, the Court of Appeals vacated the decision and sent the case back to the district court for further consideration in light of City of Mobile.

(g) Alabama.

In 1964, one year before the enactment of the Voting Rights Act, the Supreme Court decided Reynolds v. Sims,[93] which applied the one person-one vote principle to the legislative apportionment of the State of Alabama. Reynolds was not a race case, but its subsequent implementation eliminated multi-member

districts in both houses of the Alabama legislature, allowing blacks to hold office for the first time since Reconstruction.

Alabama, despite a state constitutional provision requiring dicennial reapportionment, had failed to reapportion itself for seventy years, resulting in rural domination of the legislature. Following Reynolds v. Sims, Alabama adopted redistricting for both houses of the legislature. The district court approved the senate plan, despite use of at-large elections in the three largest cities, but held the house plan unconstitutional because of unjustified size deviation and because majority black counties were lumped together with white counties creating at-large seats when single-member districts could have been used. Reciting the state's history of racial discrimination, it found the conclusion inescapable that some counties "were combined needlessly for the sole purpose of preventing the election of a Negro House member."[94]

The court ordered its own plan for the House into effect and these two plans were to be utilized until the state legislature had the opportunity to redistrict after the 1970 dicennial census.

After the census, the Alabama legislature drew up no less than four plans, the most balanced of which had a deviation of 24.28%.[95] The court rejected all four plans:

> In sum, all four of the defendants' plans are unacceptable since, in conjunction with their discriminatory effect, they fall considerably short of guaranteeing to each citizen of Alabama that his vote "is approximately equal in weight to that of any other citizen in the State."[96]

The court adopted plaintiffs' plan, which used all single-member districts for both legislative houses. The defendants appealed to the Supreme Court and the decision was summarily affirmed.[97]

The district court subsequently said it would still consider a reapportionment plan duly enacted by the state legislature. Such a plan was enacted by the state and after extensive discovery and analysis by plaintiffs, the court rejected it for, among other reasons, failure to prove the plan "racially non-discriminatory."[98] The Supreme Court affirmed the district

court.[99/] The implementation of single-member districts has resulted in a state legislative delegation with approximately 25 black members.

(h) Pickens County, Alabama.

Elections for the Pickens County, Alabama, County Commission were held from single-member districts for the primary, but at-large for the general election. This scheme was not unusual, for Democratic Party primaries in Alabama determined the election results, and primaries were restricted to white voters until the late 1940's. The Democratic Executive Committee used the same single-member district lines for its primary election for the County Commission.

James Corder and Harry Western, black residents of the county, filed suit on November 15, 1973. They contended that the districts used for both bodies were malapportioned, and that at-large voting in the general elections for the county commission diluted their voting strength. No black had ever been elected to public office in Pickens County.

The district court ruled for the plaintiffs on January 23, 1975, on the one person-one vote claim. The Board of Commissioners adopted new, properly apportioned districts for primary elections, but retained at-large voting for the general elections. The plan was submitted to the Department of Justice, was approved by the Attorney General, and subsequently approved by the court.

The Democratic Executive Committee agreed to adopt the districting plan of the Board, apportioning 8 committee members to each of the county commission districts, and to be elected only by members of each district.

The plaintiffs appealed the use of at-large voting for the Board of Commissioners in the general elections. The reapportionment plan for the Executive Committee, which didn't have general elections, was not objectionable.

The plaintiffs' evidence of dilution from the use of at-large voting included bloc voting, public and private employment discrimination, higher poverty rates in the black community, and black appointments to boards only where required by federal grants or contracts. In spite of this evidence, after two

remands for more fact-finding, the Court of Appeals found on March 16, 1981, after the decision in City of Mobile, and almost 8 years after the complaint was first filed, that the use of at-large elections in the general elections was constitutional.[100]

6. Non-Racial Vote Dilution or Denial

The requirement of proving invidious purpose in City of Mobile has not, significantly, been applied when the group claiming vote denial or dilution has been a non-racial minority.

(a) Tuscaloosa County, Alabama.

Residents of Tuscaloosa County, Alabama filed suit in 1974, complaining that the practice of allowing residents of the City of Tuscaloosa, which had its own school system, to vote in county school board elections diluted their voting strength. The Court of Appeals agreed and held that the double voting scheme "impermissibly dilutes the voting strength of the county electors and that the City of Tuscaloosa electors do not have a substantial interest in the election of the county board members that warrants their right to participate."[101] Although the case was decided after City of Mobile, the court did not find that invidious purpose to dilute the vote of county residents existed, nor even suggest that it was necessary. The voting plan was invalidated solely because of its adverse impact upon the voting strength of county residents.

(b) Walker County, Alabama.

A challenge to "double-voting" in Walker County, Alabama, similar to that in Tuscaloosa County, was defeated because the court found that city residents had a substantial interest in county schools, based upon student cross-overs, shared facilities and tax revenues.[102] The case was decided in 1976, prior to City of Mobile, but less than a month before Nevett v. Sides, in which the Fifth Circuit held that discriminatory purpose must be shown to establish vote dilution in race discrimination cases. There is no suggestion in the Walker County case, however, that county residents had to show invidious purpose to establish dilution of their votes.

(c) Tuscaloosa County, Alabama.

Another lawsuit by residents of Tuscaloosa County, Alabama, presented the converse of a normal vote dilution claim.

Alabama law grants municipalities a police jurisdiction zone, either a one-and-a-half or three-mile band outside the city limits, in which the city may enforce its municipal ordinances, including various tax and inspection laws. Residents living outside the City of Tuscaloosa filed a lawsuit in 1973, challenging the right of the city to exercise extraterritorial powers over them because they could not vote in city elections. They did not seek the right to vote, only that they not be governed by officials whom they had no power to elect.

The lower federal courts denied relief and the plaintiffs appealed to the Supreme Court. It upheld the constitutionality of Alabama's police jurisdiction law.

According to a majority of the Supreme Court, the case presented no voting rights issues, since "a government unit may legitimately restrict the right to participate in its political processes to those who reside within its borders."[103] The issue was thus not whether plaintiffs were properly excluded from voting, but whether the statute bore some rational relationship to a legitimate state purpose. The court found that it did.

> Alabama's police jurisdiction statute, enacted in 1907, was a rational legislative response to the problems faced by the state's burgeoning cities.[104]

Nowhere in the Court's opinion, however, is there any suggestion that plaintiffs' burden of showing a denial of equal protection included any element of proof of invidious purpose.

7. Full Slate Laws

Full slate, or anti-single shot, laws are acknowledged as favoring majority race candidates.[105] Under a full slate requirement, voters are required to vote for as many positions as there are to be filled in a particular race, rather than only for the candidate or candidates of their choice. In races

with fewer black candidates than positions to be filled, minority voters are required essentially to vote against black candidates by also voting for white candidates, thereby diluting the effectiveness of limited, or single shot, voting.

(a) Rock Hill, South Carolina.

Voters in the 1973 Rock Hill, South Carolina Democratic primary election for city council were instructed to "Leave 2-Scratch 4," i.e., they were told not to vote a single shot ballot. The previous year a federal court had found unconstitutional on equal protection grounds the state's full slate law used in connection with a numbered seat requirement for the state House of Representatives. The Democratic Party, however, had left its corresponding full slate rule untouched.

As a result of the ballot instructions, an undetermined number of voters, principally those supporting a black candidate C.G. Davis, cast a coerced second vote for an opposition candidate. Many of these second votes may have been cast for white candidate O. Hugh Rock, enabling him to be elected without a runoff. Had it not been for the coerced votes, it is likely that Davis, the third highest vote getter, would have forced a runoff.

Davis, in fact, had geared his entire race to the strategy of urging his supporters to single shot, i.e., to vote for him and no other candidate. Many of his supporters, however, voted for an additional candidate because they felt to do otherwise would void their ballots.

Losing candidates and voters filed suit to void the full slate law and require new elections. Prior to trial the full slate issue was settled by consent of the parties.[106] The defendants agreed in all future primary elections to design the ballot so that it did not state or imply that voters must vote for as many candidates as there were offices to be filled. The defendants also agreed to notify each member of the State Democratic Executive Committee and the Chairman of each County Executive Committee that pursuant to court order no ballot could be used in any primary which directed or suggested the use of a full-slate requirement, and that use of any such requirement would create the risk of having the election declared invalid and a new election ordered.

The plaintiffs abandoned their claim to injunctive relief requiring new elections.

(b) Louisville, Georgia.

The City of Louisville, Georgia in 1974 changed the method of its elections from plurality to majority vote, adopted a numbered post requirement, and abolished its anti-single shot law. The legislation was submitted to the Attorney General and he objected to the majority vote and numbered post requirements, but not to the abolition of the anti-single shot law.

Local officials took the position that the objection had the effect not only of blocking the majority vote and numbered post requirements, but of reviving the anti-single shot law.

The anti-single shot law was enforced until the state Attorney General issued an opinion in 1980 that such provisions were in violation of state law. At the next elections, a black, urging his supporters to vote single shot ballots, won a seat on the city council.

8. Restrictions on Registration and Voting

The abolition of "tests or devices" by the Voting Rights Act in 1965 removed the major barrier to black voter registration. But vestiges of past discrimination remained.

(a) South Carolina (disqualifying offenses).

One of the provisions adopted at the South Carolina Disfranchising Convention of 1895 was a law disqualifying persons from voting upon conviction of certain offenses. The offenses chosen, according to both contemporary and modern historians, were those to which blacks were thought to be especially prone: thievery, adultery, arson, wife-beating, housebreaking, and attempted rape. Such crimes as murder and fighting, to which whites were thought to be as disposed as blacks, were significantly omitted from the list.

The statute was attacked in 1975 by Gary Allen, a black

car dealer in Aiken. Allen had been convicted of the crime of forgery in the state court and was struck from the voting rolls for having committed a disqualifying offense. He contended that the disfranchising statute was an unconstitutional crazy quilt; discriminated on the basis of race; and, violated the Act of June 25, 1868, 15 Stat. 73, readmitting South Carolina into the Union upon condition that it should never deprive any citizen of the right to vote except as a punishment for crimes made felonies at common law.

The district court on June 13, 1979, ruled on the first of Allen's contentions, holding that "South Carolina's list of disfranchising crimes is so discriminatorily selected that it is unconstitutional as a denial of equal protection."[107]

The state appealed and the Fourth Circuit sitting en banc reversed. It held that the statute was not facially unconstitutional because Section 2 of the Fourteenth Amendment gave the states unreviewable power to disqualify persons convicted of crime. It sent the case back to the district court to determine whether the statute was enacted to discriminate against blacks.

Several days later, the Governor of South Carolina signed into law an act amending the statute which had been enacted by the legislature following the district court's opinion. The new law, which is conceded to be constitutional, disfranchises only those convicted of a felony carrying a penalty of five years or more, and only during the time of service of sentence.

Allen subsequently filed a petition for writ of certiorari with the Supreme Court asking that the unreviewed opinion of the Court of Appeals be withdrawn and the complaint dismissed as moot so that it would have no precedential value. Certiorari was granted on October 5, 1981 and the judgment of the Court of Appeals was vacated on grounds of mootness.

(b) South Carolina (absentee balloting)

South Carolina allowed absentee balloting to several classes of persons, including anyone "physically unable to present himself at his precinct on election day."[108] The Attorney General of the state issued an opinion that the phrase "physically unable" was limited to "health reasons,"[109] and did not include those whose employment prohibited them from going to the polls. This interpretation of the statute was entirely

consistent with the traditional state practice of making it as difficult to vote as possible.

A group of voters whose employment would take them away from the polls on election day, asked the federal court in 1972 to require election officials to issue them absentee ballots to vote in the primary. The court granted plaintiffs' motion for a temporary restraining order and enjoined the party officials from denying the absentee ballots.

Subsequently, the South Carolina General Assembly amended state voting laws, allowing persons who would be out of their counties of residence on election day because of their employment to vote absentee. This action of the legislature, granting the plaintiffs the relief they sought as a matter of state law, mooted their federal lawsuit.

(c) Wilcox County, Alabama.

When black voters went to the polls in Wilcox County, Alabama, to vote in the general election in 1972, some of them met with discriminatory practices that were old and familiar. Many precincts were located at private establishments, such as retail stores. The right to cast a secret ballot was unknown. Voters were required to cast their ballots, if at all, after marking them out in the open on feed sacks, store counters, etc. White poll officials looked at the marked ballots before placing them in the ballot box. Some black voters were denied a ballot altogether because they refused to address poll officials as "sir."

Black voters who had been registered by federal registrars in 1965 and had since moved within the county were not allowed to vote at their new precincts because, according to local officials, federal records could not be altered. Requests for absentee ballots were held until the last possible day, so that they would have to be mailed back immediately or they would arrive too late to be counted.

The National Democratic Party of Alabama, a predominantly black political party, nominated persons in 1972 for each of 21 constable positions up for election in Wilcox County. The job of constable, not one of overwhelming importance, had been overlooked by the Democratic and Republican parties. By the time the NDP filed its list of nominations, it was too late under state law for other parties to add nominations.

Nonetheless, the county Democratic Party placed on the ballot the names of various people for the positions of constable. Not only was this in violation of state election law, but many persons whose names were placed on the ballot had no knowledge that this was being done and were not allowed to have their names removed. As a result of this strategem, many of the black party candidates lost the election.

Subsequently, six black residents of Wilcox County filed suit in federal court. On November 7, 1973, the court entered a consent order which enjoined all of the complained of practices.[110]

The defendants promised to promptly and properly process absentee applications and ballots, explain the right and allow the casting of challenged ballots, not place anyone's name on a ballot without that person's consent, not discriminate in the selection of poll officials, make all feasible efforts to locate polling places on public premises, provide privacy in balloting and specifically instruct poll officials not to open or view ballots prior to official counting, provide written instructions to all poll officials, not discriminate in any manner against black voters and candidates and make appropriate changes on the voters list to reflect new precincts of those who moved within the county.

(d) Georgia.

Georgia, faithful to the Southern tradition of restricting the franchise to white males, had a statute derived from the common law that a married woman could not establish a domicile for voting purposes different from that of her husband. Patricia Kane, a former resident of New Jersey, moved from that state in 1961. She later moved to Albany, Georgia, and tried to register to vote, but was turned away because her husband, a Marine Corps officer assigned to Albany, retained his legal residence in New Jersey.

Kane filed suit in federal court in 1973 contending that the Georgia law discriminated on the basis of sex and deprived her of the right to vote. A three-judge court (required at that time to hear the challenge to a statewide statute), entered an order declaring the Georgia law unconstitutional. The Georgia Code, it said, "in so far as it establishes an irrebutable presumption that the domicile and residence of a married woman is

that of her husband, and thereby prevents her from registering to vote in Georgia, violates the nineteenth amendment of the Constitution of the United States."[111]

(e) Tennessee.

Durational residency requirements were a common method of restricting the franchise to the supposedly more stable white community and excluding migratory blacks. Tennessee had such a law, i.e., residence in the state for a year and in the county for three months.

James Blumstein moved to Tennessee in June, 1970, to take a job as a law professor at the University of Tennessee in Knoxville. Several weeks later he tried to register to vote, but was turned down because he didn't satisfy the state's durational residency requirement. He filed a lawsuit which made its way to the Supreme Court two years later. The Court held the state law unconstitutional.

Acknowledging that states may impose restrictions on the franchise to assure that only bona fide residents vote, the Court found that durational residency requirements do not serve that interest in the least restrictive manner. Rather, they discriminate between newly arrived and long time residents, all of whom are bona fide residents. The Court gave weight to the provision of the Voting Rights Act which abolished durational residency requirements for presidential elections. "/T/he conclusive presumptions of durational residence requirements are much too crude. They exclude too many people who should not, and need not, be excluded."[112]

The effect of the decision was to render invalid similar requirements in many states of the Union.

(f) Georgia.

After the decision in the Tennessee case, Dunn v. Blumstein, a federal court held Georgia's one year durational residency requirement unconstitutional.[113] The state, however, continued to administer a 1964 law requiring voter registration to be cut off 50 days prior to election day. Plaintiffs, who were denied registration after the cut-off period, sued in federal court, relying upon, inter alia, the Court's language in Dunn, "that

30 days appears to be an ample period of time for the State to complete whatever administrative tasks are necessary."[114] Nonetheless, the District Court found 50 days to be "reasonable" and dismissed the claim.[115] The Supreme Court affirmed in a per curiam opinion, stating that "the 50-day registration period approaches the outer constitutional limits in this area."[116]

Georgia subsequently repealed the 1964 statute and enacted a 30-day registration cut-off period.

(g) Young Harris, Georgia.

Challenging the registration of individual voters was a common method of excluding blacks from the electorate and was widely used after abolition of the all-white primary in the mid-1940's. A more recent example of class-based challenges took place in Young Harris, Georgia in 1980.

Prior to the August, 1980 primary elections in Towns County, over one hundred long time residents filed a voting challenge against 104 registered voters, all of whom were students at Young Harris College. The sole evidence alleged of non-eligibility was their student status.

The Board of Registrars scheduled hearings on the challenges, whereupon the plaintiffs filed suit in federal court charging that the board was applying an unconstitutional presumption of non-residency to students in derogation of the right to vote.

The evidence at the federal trial showed that while the

resistrars made some effort to determine residency by checking car registrations, etc., this was not done until after the board had decided to go forward with hearings on the challenges. State law required that in order to schedule hearings, the board was required to find probable cause that the person challenged was not a resident. The probable cause in this case thus was based solely on student status.

The district court entered a preliminary injunction on October 31, 1980 permitting all the students to vote in the 1980 general election.

> As the passage of the twenty-sixth amendment makes clear, the college age population is expected to participate actively in the government of this country through the exercise of their right to vote. If by an uneven application of electoral requirements this right is denied them in the formative stages of their growth as responsible citizens, then everyone will suffer as a result.[117]

The case was concluded after the board of registrars restored the students' names to the official voter registration list and agreed not to proceed with any challenges based solely on student status.

9. Restrictions on Candidacy

Minorities may be effectively excluded from equal political participation by such devices as onerous filing fee requirements and candidate slating procedures. A remarkable example of exclusionary candidate slating exists in the City of Thomaston, Georgia.

(a) Thomaston, Georgia.

Prior to 1979, Thomaston had never had a black to serve on its seven-member City Board of Education. That was a consequence of its peculiar candidate or member selection system.

In 1915, the Georgia General Assembly created the Board of Education of Thomaston to operate a public school system for the city. The 1915 statute absorbed the then existing R.E. Lee Institute, a private academy whose charter required segregation, into the public system and made R.E. Lee Institute's seven-member, all-white board of trustees Thomaston's Board of Education with powers of self-perpetuation. One new member was slated and appointed each year by the incumbents to a seven year term.

A separate school system existed "for colored youths" known as the Thomaston Starr School.[118] It was never the equal of R.E. Lee Institute. The Starr School frequently opened later than the white school and frequently closed earlier.

Ten years after the decision in Brown v. Board of Education,[119] the superintendent of schools "strongly" stressed the need for keeping the black schools in a state of repair because of "the present situation in Georgia."[120] There was considerable opposition to desegregation of schools. In 1956, the superintendent ceased deducting National Education Association dues from teachers' checks, "since the NEA has taken a stand against segregation."[121]

Because of the self-perpetuation method of choosing school board members, no blacks were ever chosen, and certain local white families in Thomaston dominated membership of the Board. The Hightower family has placed six of its members on the Board; the Adams family five; and the Hinson, Varner and Thurston families have each placed two of their members on the Board.

Suit was filed on May 23, 1979, by black residents of Thomaston who charged that board member selection procedures were discriminatory. Several months later, the Board elected one of the plaintiffs, Rev. Willis Williams, to its membership. Prior to Williams' selection, blacks had asked the Board to allow members of their race to serve, but no action was ever taken.

The District Court ruled against the plaintiffs, but on September 21, 1981, the Court of Appeals reversed. It held that "this unique system for selection of the school board that was operated in a discriminatory manner, together with the self-perpetuation of the Board of Education that originated from an all-white board of trustees, is violative of the appellants' rights under the Fourteenth Amendment."[122] It invalidated the self-selection method and remanded to the district

court with instructions to retain jurisdiction over the case until a new system for selection is chosen. The defendants have appealed to the Supreme Court.

(b) Florida.

Florida, like many other states, allowed for no other manner to gain ballot access than to pay a filing fee of five percent of the annual salary of the office sought. This long standing practice discouraged all but mainstream, "acceptable" candidates and those affluent enough to pay the filing fee regardless of the seriousness of their candidacy.

Several aspiring candidates challenged the fee system in 1972. The federal court, relying upon a prior Supreme Court decision involving filing fees, held that, while the five percent filing fee was itself valid, "the State must provide an alternative method of obtaining a place on the ballot that does not involve the payment of a substantial sum of money to the State."[123] An interim remedy had been imposed for the impending 1972 elections, allowing candidates for office who were unable to pay the filing fee to petition for inclusion on the ballot by obtaining signatures of registered voters. The number of signatures varied, depending upon whether the office was statewide or local and the population of the relevant district or county.

Plaintiffs took a partial appeal to the Supreme Court, arguing that since 91 percent of the filing fee went unencumbered to the political party (and the party did not finance primaries), the fee was not justified by any compelling state interest. They also challenged the district court's remedy to the extent that it required candidates in multi-member districts to gather up to six times the numbers of signatures (in a six member district) than a candidate in a single-member district.

The Supreme Court vacated the judgment of the three-judge district court and remanded for consideration in light of three intervening candidate qualification cases from Texas and California.[124]

Six weeks later the Florida legislature enacted a petitionary statute setting the number of signatures for state-wide office at 115,000 and more than doubling the number formerly required for local offices. The five percent filing fee for those who could afford it was retained.

The district court sustained the new statute as not unconstitutionally burdensome, including the requirement of multi-member district candidates having to gather up to six times the number of signatures required of a single-member district candidate. Plaintiffs again appealed but the Supreme Court affirmed without opinion.

(c) Vernonburg, Georgia.

Georgia law provides that write-in candidates must file notices of their candidacy 20 days prior to the election. In the May, 1978 election for the four commissioner positions in the town of Vernonburg, Georgia, four residents ran a write-in campaign and received more votes than the incumbents.

A critical local issue at the time involved city zoning supported by the incumbents, which generated strong--and adverse--voter interest immediately prior to the elections. Election officials did not initially certify the results but after several days declared the incumbents the winners because the four write-in candidates had not filed notices that they would be write-in candidates as required by state law.

The four write-in candidates brought suit challenging the constitutionality of the notice of write-in provision on the grounds that it served no useful state purpose. On May 19, 1980, the court sustained the statute, finding it had a rational basis, serving to protect the electoral process from last minute distortions and insuring that issues would be aired prior to the election.[125]

(d) Mississippi.

In traditionally one party states, such as Mississippi, winning the Democratic nomination was tantamount to election to office. As a consequence, denial of party affiliation was for all practical purposes denial of access to the ballot itself. It was for this reason that the Supreme Court declared the all-white primary unconstitutional in 1944. Restrictions on party affiliation and party name, however, have continued into more recent years, with equally severe impact upon blacks.

Following political party delegate challenges in 1964 and 1968, based upon, among other things, the exclusion of blacks,

the National Democratic Party recognized and issued its convention call to a predominantly black political party in Mississippi. This party (known as the Loyalists), with its chairman Aaron Henry, was a successor to the Freedom Democratic Party. It also considered itself the successor to the Democratic Party of Mississippi, and attempted to register its officers with the secretary of state and generally to conduct political party business. The secretary of state considered this party a legal non-entity and continued to regognize the Democratic Party of Mississippi (known as the Regulars) which the National Democratic Party had found to discriminate against black citizens.

Aaron Henry found his party faced with numerous legal obstacles. A state statute required political parties to register with the secretary of state, but in order to register, the party had to conduct precinct meetings at the polling places. Many polling places were owned by private persons, were located at segregated clubs, all-white churches, and even private carports. The state took the position that it could not provide access to these polling places since they were private property and because Aaron Henry's party was not registered.

Additionally, the party registration statute prohibited any new party from using any part of the name of a party already registered. Any form of the term "Democrat" was already registered by Aaron Henry's opponents.

Aaron Henry's party conducted precinct, county, congressional and state conventions as best it could in preparation for the 1972 National Democratic Party Convention. Thereupon, they and the National Party were sued in federal court by the Democratic Party of Mississippi (the Regulars). The Regulars sought to enjoin the National Party from doing business with the Loyalists, sought to be allowed to attend the 1972 convention, to recover any money the Loyalists had raised by the use of the name "Democrat," and essentially wanted to put the Loyalists out of business.

The district court refused to issue any injunction, but did remand the Regulars to a convention delegate challenge before the National Party. This challenge was rejected and the Loyalists were again seated at the 1972 convention. The district court did, however, find the Loyalists to have no legal existence and no right to the Democratic party name.

All parties appealed. The Court of Appeals for the Fifth

Circuit reversed the District Court saying:

> /W/e believe that the state's attempt to deprive the Loyalists of the opportunity to describe themselves on the ballot as part of the Democratic Party is an unconstitutional and impermissible restraint on the Loyalists' constitutional guarantees of free association.126/

In 1976 the two state parties merged and a consent agreement, based upon the invalidation of the party registration statute, was entered by the court.

10. Majority Vote Requirements

Majority vote requirements have been routinely objected to by the Attorney General in Section 5 proceedings, and have drawn a higher percent of rejections than almost any other voting change. Constitutional litigation, by contrast, has not proven to be nearly as effective in blocking the identical voting requirement.

(a) Georgia.

In 1964, a year before enactment of the Voting Rights Act, Georgia enacted a statute which required a majority vote in Congressional elections. Andrew Young and Julian Bond filed a lawsuit in 1971 before the next regularly scheduled elections charging that the law was racially discriminatory. The reason for filing suit in advance of the elections was to insure an orderly, non-disruptive decision. But the federal district court found the complaint too speculative and not ripe for adjudication: "We do not know what Congressional races /the plaintiffs/ seek to enter or vote in, how many candidates will be in each race, and whether those candidates will be white, black, or members of some other minority."127/ The Supreme Court affirmed.

There is little doubt that had the majority vote requirement been enacted after 1964, it would have been objected to under Section 5.

11. Protection of Voting Rights by State Courts.

State courts have a generally uneven record of enforcing minority voting rights, making even more critical the continuation of existing federal protection.

(a) Tuscaloosa County, Alabama.

In 1971, the State of Alabama enacted a local law applying to Tuscaloosa County, Alabama, which required the Board of Registrars to conduct Saturday registration once a month during October through January. The Board refused to comply with the state law.

The League of Women Voters, concerned about the restrictions on opportunities for voter registration, particularly of blacks and daily wage earners in the county, brought suit against the Board to require it to conduct registration on Saturdays.[128] Since the suit sought to enforce a state law, the complaint was filed in state court. The state courts, however, denied relief. The Alabama Supreme Court said that "a thing may be within the letter of a statute, but not within the meaning; or within the meaning, but not within the letter." What that meant was that although the law said registration had to be conducted on Saturday, the Tuscaloosa County registrar didn't have to do it.

(b) Edgefield County, South Carolina.

Blacks in Edgefield County, South Carolina got enough names on a petition to require the calling of a referendum whether the county government should abolish at-large voting in favor of single member districts. No black has ever been elected to the county council running at-large. Local officials refused to call the referendum, and the state courts declined to grant any relief. The Supreme Court of South Carolina said the signatures hadn't been filed in time to give "reasonable notice" of the election.[129]

(c) Wadley, Georgia.

In Wadley, Georgia, a black lost an election to the white incumbent by only 4 votes. He filed a state election challenge and showed, among other things, that more votes were counted

than people had voted, and that 12 absentee ballots had been cast in violation of state law. The state courts declined to set aside the elections on the grounds that the inconsistencies or violations were "mere irregularities."[130]

(d) Clay County, Georgia.

State election challenges on behalf of blacks in Clay County were similarly dismissed on the basis that violations of state law in issuing absentee ballots--which provided the margin of victory for 2 white candidates--were "mere irregularities."[131]

(e) Greenville, Georgia.

At least one election challenge by a defeated black candidate was successful, Tobe Harris in Greenville, Georgia. A state court set aside the election in which Harris lost by 2 votes after finding that the returns of the election and the ballot box were mishandled after the votes were tabulated, that votes were improperly counted, that the city failed to comply with state election law, and that non-residents had voted.

Shortly after the ruling, three blacks were charged with election law violations, two with having voted but not being residents, and a third with assisting his illiterate parents in voting without getting prior approval from election officials. No charges were brought against any white election officials, in spite of the findings by the trial judge that official misconduct had occurred. Charges were all eventually dismissed after the three black defendants filed motions to quash based upon selective racially motivated prosecution.

(f) Talladega County, Alabama.

A common campaign practice in Alabama has always been to distribute handbills or facsimile ballots with particular candidate's names marked. Emmet Gray, a black school teacher from Talladega County, had such handbills in his possession when he was arrested by local police on the June, 1974 primary election day. He was charged with violating state law which made it a crime to do any number of constitutionally protected activities on election day, including soliciting votes and "passing our

/sic/ sample ballots that were marked for certain candidates."[132/] The racial impact, if not the purpose, of such bans on electioneering is apparent. Gray was convicted by a local jury, fined $500, sentenced to two months hard labor, plus 167 days for payment of the fine and 40 days for the costs.

He appealed, claiming the state statute was unconstitutional. The Supreme Court of Alabama avoided that issue, finding that the proof (that he possessed the handbills, talked to black voters) was insufficient to convict. The statute has since been repealed.

NOTES

1. 425 U.S. 130 (1976).

2. Ibid,, at 141.

3. 412 U.S. 755, 765-66 (1973).

4. The plurality in City of Mobile v. Bolden, 446 U.S. 55 (1980) identified these factual elements as determinative in proving purposeful discrimination.

5. 485 F.2d 1297 (5th Cir. 1973)(en banc).

6. Kirksey v. Board of Supervisors, 554 F.2d 139 (5th Cir. 1977) (en banc); Nevett v. Sides, 571 F.2d 209 (5th Cir. 1978).

7. Annual Report of the Director of the Administrative Office of the United States Courts, 1980, Table X-2, Civil and Criminal Weights by Nature of Suit or Offense, p. A-161.

8. South Carolina v. Katzenbach, 383 U.S. 301, 314 (1966).

9. Nevett v. Sides, 533 F.2d 1361, 1366-72 (5th Cir. 1976).

10. Bowdry v. Hawes, Civ. No. 176-128 (S.D.Ga.), Defendants' counterclaims.

11. Williams v. Ezell, 531 F.2d 1261, 1264 (5th Cir. 1976).

12. Ohralik v. Ohio State Bar Association, 436 U.S. 447 (1978).

13. Annual Report of the Administrative Office of the United States Courts, 1980, Table 28, 70.

14. 446 U.S. 55, 100 S.Ct. 1490.

15. Ibid., 100 S.Ct. at 1503.

16. Ibid., 100 S.Ct. at 1502 n.17.

17. 100 S.Ct. at 1514, 1519.

18. McMillan v. Escambia County, 638 F.2d 1239, 1249 (5th Cir. 1981).

19. Lodge v. Buxton, 639 F.2d 1358, 1375 (5th Cir. 1981).

20. Cross v. Baxter, 639 F.2d 1383 (5th Cir. 1981), citing Lodge v. Buxton, supra.

21. Allen v. State Board of Elections, 393 U.S. 544, 566 n. 31 (1969).

22. Lodge v. Buxton, supra, Brief for the United States as Amicus Curiae, 51.

23. See, e.g., Toney v. White, 476 F.2d 203 (5th Cir. 1973), finding that voter irregularities violated both the Constitution and Section 2.

24. Bowdry v. Hawes, Civ. No. 176-128 (S.D.Ga. Jan. 3, 1978).

25. NAACP of Coffee County v. Moore, Civ. No. 577-25 (S.D. Ga.).

26. Berry v. Doles, Civ. No. 76-139 (M.D.Ga.).

27. Holloway v. Faust, Civ. No. 76-28 (M.D.Ga.).

28. Sullivan v. DeLoach, Civ. No. 76-238 (S.D.Ga. Sept. 11, 1977).

29. Wilkerson v. Ferguson, Civ. No. 77-30-AMER (M.D.Ga.).

30. Holloway v. Raines, Civ. No. 77-27 (M.D.Ga.).

31. Butler v. Underwood, Civ. No. 76-53 (M.D.Ga.).

32. The Atlanta Constitution, October 11, 1963; October 22, 1963.

33. United States v. Chappell and Bell v. Horne (M.D.Ga. 1965), 10 R.Rel.L.Rptr. 1247.

34. 376 F.2d 639, 644 (5th Cir. 1967).

35. Lloyd v. Alexander, Civ. No. 74-291 (D.S.C. March 31, 1976), slip opinion, 11.

36. Ibid., 16.

37. Hatton v. City of Henderson, North Carolina, No. 75-2061 (4th Cir. June 3, 1976)(unreported).

38. Medders v. Autauga County, Civ. No. 3805-N (M.D. Ala. 1973).

39. The decision was rendered prior to Dallas County v. Reese, 421 U.S. 478 (1975), which rejected similar constitutional claims based solely on malapportioned residency districts.

40. Lodge v. Buxton, 639 F.2d 1358, 1377 (5th Cir. 1981).

41. Ibid.

42. Ibid.

43. Ibid., at 1378.

44. Ibid.

45. Ibid., at 1379.

46. Ibid.

47. Ibid., at 1381 and n.46.

48. Bailey v. Vining, 514 F.Supp. 452, 463 (M.D.Ga. 1981).

49. Ibid.

50. McDonald, "Voting Rights on the Chopping Block," Southern Exposure, May 1981, 90-1.

51. McCain v. Lybrand, Civ. No. 74-281 (D.S.C. April 17, 1980), slip opinion, 20.

52. Ibid., 8-15.

53. Ibid., August 11, 1980.

54. C. Benet, "A Campaign for a Commission Form of Government," The American City, 1910, 277-78.

55. Benet, 277.

56. "Fight Ahead for Columbia," The State, January 25, 1910.

57. 247 U.S. 483.

58. Journal of Proceedings of the House of Representatives of South Carolina, 1957, 918.

59. Ibid., 1956, 936-37.

60. Washington v. Finlay, Civ. No. 77-1791 (D.S.C.), trial transcript, 417-18.

61. Ibid., 137.

62. Ibid., 139

63. Ibid., 20, 22

64. Ibid., 55.

65. Ibid.

66. Ibid., 56, 57.

67. Ibid., 62.

68. Ibid., 69.

69. Ibid., slip opinion, 9.

70. "Mayor Speaks Out," The State, December 11, 1981.

71 Cross v. Baxter, Civ. No. 76-20 (M.D.Ga.), trial transcript, 30.

72. Ibid., 59.

73. Ibid., plaintiffs' exhibit 8.

74. Ibid., trial transcript, 139-40.

75. Ibid., trial transcript, 173-74

76. Ibid., 200-01.

77. Ibid., plaintiffs' exhibit 22.

78. Ibid.

79. Ibid., slip opinion, 18.

80. Cross v. Baxter, 604 F.2d 875, 881, 883 (5th Cir. 1979).

81. Cross v. Baxter (II), trial record, vol. IV, 187.

82. Ibid.

83. Ibid., 67-68.

84. Brown v. Reames, Civ. No. 75-80-COL (M.D.Ga.), trial transcript, 115, 118.

85. Ibid., 151.

86. Ibid., 285-86.

87. Ibid., trial transcript, 397.

88. Ibid., trial transcript, 197.

89. Ibid., 266

90. Ibid., 264.

91. Ibid., 378.

92. Ibid., 192.

93. 377 U.S. 533.

94. Sims v. Baggett, 247 F.Supp. 96, 109 (M.D.Ala. 1965) (three-judge court).

95. Sims v. Amos, 336 F.Supp. 924, 934 (M.D.Ala. 1972).

96. Id., 936.

97. Amos v. Sims, 409 U.S 942 (1972).

98. Sims v. Amos, 365 F.Supp. 215, 223 (M.D.Ala. 1973).

99. Wallace v. Sims, 415 U.S. 902 (1974).

100. Corder v. Kirksey, 585 F.2d 708 (5th Cir. 1978), and Corder v. Kirksey, 625 F.2d 520 (5th Cir. 1980).

101. Phillips v. Andress, 634 F.2d 947, 952 (5th Cir. 1981).

102. Creel v. Freeman, 531 F.2d 286 (5th Cir. 1976).

103. Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60, 68-9 (1978).

104. Ibid., 439 U.S. at 75.

105. The Voting Rights Act: Unfulfilled Goals, a report of the U.S. Commission on Civil Rights, Washington, D.C., September, 1981, 105.

106. Cleveland v. Reese, Civ. No. 73-1618 (D.S.C.).

107. Allen v. Ellisor, Civ. No. 75-1411 (D.S.C. June 13, 1979), slip opinion, 6.

108. S.C. Code, Section 23-449.41.

109. Bly v. McLeod, Civ. No. 72-988 (D.S.C.), transcript of hearing, August 24, 1972, 9.

110. Threadgill v. Bonner, No. 7475-72-P (S.D.Ala.).

111. Kane v. Fortson, 369 F.Supp. 1342, 1343 (N.D.Ga. 1973).

112. Dunn v. Blumstein, 405 U.S. 330, 360 (1972).

113. Abbott v. Carter, 356 F.Supp. 280 (N.D.Ga. 1972).

114. Dunn v. Blumstein, supra, 405 U.S. at 348.

115. Burns v. Fortson, Civ. No. 17179 (N.D.Ga. Sept. 27, 1972).

116. Ibid., 410 U.S. 686, 687 (1973).

117. Pinney v. Letourneau, Civ. No. C80-80G (N.D.Ga. Oct. 31, 1980), slip op. 8.

118. Charter of Thomaston Starr School, 1915.

119. 347 U.S. 483 (1954).

120. Searcy v. Hightower, Civ. No. 79-67-MAC (M.D.Ga.), plaintiffs' exhibit L-30.

121. Ibid., plaintiffs exhibit L-14.

122. Searcy v. Williams, ___F.2d___(5th Cir. Sept. 21, 1981), slip op. 11519.

123. Fair v. Taylor, 359 F.Supp. 304, 306 (M.D.Fla. 1973).

124. Lubin v. Panish, 415 U.S. 709 (1974); Storer v. Brown, 415 U.S. 724 (1974); American Party of Texas v. White, 415 U.S. 767 (1974).

125. James v. Falligant, No. C.V. 479-199 (S.D.Ga.).

126. Riddell v. National Democratic Party, 508 F.2d 770, 779 (5th Cir. 1975).

127. Bond v. Fortson, 334 F.Supp. 1192, 1194 (N.D.Ga. 1971).

128. League of Women Voters v. Renfro, 290 So.2d 167, 168 (1974).

129. McCain v. Edwards, 272 S.C. 539, 252 S.E.2d 924 (1979).

130. Johnson v. Rheney, 245 Ga. 316 (1980).

131. Richardson v. Crozier, Civ. No. 33-80 (Sup.Ct. Clay County); Ricks v. McKemie, Civ. No. 34-80 (Sup. Ct. Clay County).

132. Gray v. State, 315 So.2d 612, 613 (1975).

CONCLUSIONS AND RECOMMENDATIONS

1. Section 5 of the Voting Rights Act of 1965 should be continued.

Racial minorities have made progress in office holding and voter registration since enactment of the Voting Rights Act, but as this report documents, there is still widespread resistance to equal political participation. Resistance has included the continued enactment of discriminatory voting procedures, pervasive, widespread non-compliance with Section 5, including the non-submission of changes and disobedience or evasion of objections from the Attorney General.

Conversely, there is no evidence that jurisdictions covered by Section 5 have made voluntary, constructive efforts to eliminate discriminatory election procedures, such as at-large voting or majority vote requirements, or otherwise facilitate minority political participation. Ameliorative changes that have occurred have been the result of enforcement of Section 5 or traditional federal lawsuits. The record shows that pre-clearance is still needed to safeguard the equal right to vote.

Affirmative litigation is not an acceptable alternative to Section 5 in blocking discriminatory changes in voting. Litigation places an enormous burden of expense and delay upon minorities, and its results are inconsistent. It is inconceivable that the more than 800 voting changes objected to by the Attorney General under Section 5 could all have been challenged in traditional, local lawsuits, or if challenged, that plaintiffs would have invariably prevailed. Section 5 is inexpensive, efficient and has insured reliability in decision making. It should be continued.

2. Congress should strengthen enforcement of the Voting Rights Act by: (1) giving the Attorney General the affirmative duty of monitoring state and local election law changes and requiring pre-clearance; and (2) by providing damages in favor of aggrieved persons for failure of local officials to comply with the Act.

Section 5 enforcement has relied primarily upon voluntary compliance by covered jurisdictions. As this report documents, many jurisdictions have ignored Section 5, while the minority community lacks the resources adequately to police voting rights violations. In order to insure compliance with pre-clearance, the Attorney General should be given the affirmative duty by Congress of monitoring state and local election law changes in covered jurisdictions and requiring pre-clearance.

The Voting Rights Act should also be amended to provide damages in favor of aggrieved persons for failure of local officials to comply with the Act. The criminal sanctions presently contained in the Act have never been used, and have thus had no deterrent effect on voting rights violations. The addition of a damage provision enforceable by aggrieved persons would provide a strong, new incentive to local officials to comply with the law and escape financial liability.

Under the present Act, the victims of voting rights violations are without an adequate remedy. The plurality winning black candidate, for example, who is defeated in an uncleared, illegal runoff, has no remedy other than to enjoin future use of the change and seek new elections. There is no way he or she can be compensated under the present law for the exclusion from office. An amendment of the Act to allow the victims of voting rights violations to recover damages would close the present gap in the law, act as a strong deterrent to violations, and would further the intent of Congress to insure equality in voting.

3. Section 2 of the Voting Rights Act should be amended to clarify the original intent of Congress that election procedures are unlawful which have a discriminatory purpose or effect.

The legislative history of the Voting Rights Act makes clear that Congress intended for Section 2, *in pari materia* with Section 5, to prohibit election practices which have a discriminatory effect regardless of their purpose. A plurality of the Supreme Court in City of Mobile, however, concluded that Section 2 is co-extensive with the Fifteenth Amendment and prohibits only purposeful discrimination. The proposed amendment to Section 2 would thus merely clarify the original intent of Congress.

Prior to City of Mobile, a violation of Section 2 could be established by circumstantial and other evidence, including the effect of the challenged procedure. Amendment of Section 2 would essentially restore the law as it existed prior to the City of Mobile decision, by providing that direct, or "smoking gun," evidence of purpose is not required for a statutory violation.

As this report demonstrates, election practices, such as at-large voting, that were enacted prior to the effective pre-clearance date of Section 5 continue to exploit past discrimination and effectively exclude minorities from the political process. Since City of Mobile, however, it has become increasingly difficult and sometimes impossible successfully to challenge these pre-Section 5 practices. Local officials invariably deny that they discriminate, and it is generally impossible to find other direct evidence of racial purpose. The amendment of Section 2 would insure that statutory challenges to discriminatory voting procedures would not have to meet the highly artificial and unrealistic burden of proof required for constitutional challenges by City of Mobile.

Some lower federal courts, since City of Mobile, have held that minority plaintiffs must meet the threshold test of showing that elected officials are unresponsive to their needs in order to establish a violation of voting rights. Unresponsiveness is a highly subjective standard that invites impressionistic—and often unreliable—decision making. For example, does the paving of a road in a black neighborhood after decades of neglect preclude a finding that elected officials are unresponsive to the needs of the minority community? Some trial courts have answered that question in the affirmative, and their decisions have been shielded from meaningful review on appeal by the "clearly erroneous" rule.

It is difficult to draw an objective, principled distinction between at-large voting in Burke County, Georgia, held to be unconstitutional because the trial judge found, inter alia, that local officials were unresponsive, and at-large voting in Moultrie, Georgia, held to be constitutional because the trial judge found as a threshold matter that local officials were not unresponsive. Both jurisdictions have essentially identical histories of race discrimination and at-large voting has the same effect of excluding blacks from local politics. The individual facts may vary, but the underlying significance of race, and at-large voting, in each jurisdiction is the same.

Not only do current litigation standards insure inconsistent results in basically identical cases, but the requirement of proving unresponsiveness resurrects the discredited separate, but equal, doctrine of Plessy v. Ferguson,[1] and applies it to voting rights. As long as a jurisdiction provides equal services to its racial minorities, the Plessy equivalent of equal railway accommodations, it may retain a separate, or racially exclusive, electoral scheme.

The emphasis by some courts on responsiveness, or provision of services, is simplistic. To paraphrase Chief Justice Warren, who rejected for the Court in Brown v. Board of Education a similar notion that equal schools meant merely equal "buildings, curricula, qualifications and salaries of teachers and other 'tangible' factors," a racially exclusive electoral system "generates a feeling of inferiority as to their /blacks'/ status in the community that may affect their hearts and minds in a way unlikely ever to be undone."[2] Stated differently, equal political participation means vastly more than garbage collection and street paving. It means an equal opportunity to elect representatives of one's choice to office.

The provision of a purpose or effect standard in Section 2 would avoid the use of subjective, impressionistic factors and establish in their stead an objective, reliable test for violations of voting rights.

NOTES

1. 163 U.S. 537 (1896).
2. 347 U.S. 483, 492, 494 (1954).

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This report proves, through the accumulated evidence of ACLU lawsuits, that voting discrimination has not disappeared. Many local governments have blatantly and repeatedly ignored the requirements of the Voting Rights Act and instituted new voting procedures that are discriminatory and illegal. Discriminatory voting practices adopted before the passage of the Act have practically become immune to challenge. The report's conclusions are inescapable: The Voting Rights Act of 1965 must be extended and its provisions strengthened. Equal voting rights are nothing less than an essential condition for racial equality itself.

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