

Chapter 1

Introduction

The right to vote is central to full political participation of all citizens of this Nation. It grants to all citizens the power to elect those persons who make decisions affecting their lives. Although it is a precious right, it has not been exercised freely by minority citizens, due to continued efforts of State and local officials and private citizens to deny them that right. In January 1960, in his annual message to the Congress on the state of the Union, President Dwight D. Eisenhower said:

In all our hopes and plans for a better world we all recognize that provincial and racial prejudices must be combatted. In the long perspective of history, the right to vote has been one of the strongest pillars of a free society. Our first duty is to protect this right against all encroachment. In spite of constitutional guarantees, and notwithstanding much progress of recent years, bias still deprives some persons in the country of equal protection of the laws.¹

The 15th amendment prohibits the denial of voting rights on the basis of race, color, or previous condition of servitude.² Congress was given the power to enforce this amendment through appropriate legislation,³ and such legislation was passed in 1870, 1957, 1960, and 1964.⁴ Nevertheless, pervasive racial discrimination continued to thwart the guarantees of the 15th amendment. Numerous practices were used to deny minority citizens the right to

vote, including physical intimidation and harassment, the use of literacy tests, the poll tax, English-only elections, and racial gerrymandering.⁵ The results of these practices were low registration and voter turnout among minorities when compared with whites and the absence of a significant number of minority elected officials. In many areas, minorities were almost totally excluded from the political process.⁶

* The Voting Rights Act of 1965⁷ is the culmination of numerous efforts to create an effective remedy for discriminatory voting practices. The act as amended is intended to prevent government officials and private citizens from interfering with the right of minority citizens to register and to vote. It contains permanent provisions and special provisions. The permanent provisions of the act protect the voting rights of minorities throughout the Nation. The special provisions⁸ offer added protections to minorities in those jurisdictions where discrimination in voting has been the most blatant and pervasive. This report focuses on the special provisions.⁹

One of the mandates of the U.S. Commission on Civil Rights is to investigate complaints alleging

¹ *Public Papers of the Presidents of the United States: Dwight D. Eisenhower*, Jan. 1, 1960 to Jan. 20, 1961, p. 14.

² U.S. Const. amend. XV, §1.

³ *Id.* §2.

⁴ Act of May 31, 1870, ch. 114, 16 Stat. 140; Civil Rights Act of 1957, Pub. L. No. 85-315, §131, 71 Stat. 637; Civil Rights Act of 1960, Pub. L. No. 86-449, §601, 74 Stat. 90; Civil Rights Act of 1964, Pub. L. No. 88-352, §101, 78 Stat. 241. The current version of these acts is codified at 42 U.S.C. §1971 (1976).

⁵ See, U.S., Commission on Civil Rights: *Report of the U.S. Commission on Civil Rights, 1959; 1961 U.S. Commission on Civil Rights Report, Book 1: Voting; Report of the U.S. Commission on Civil Rights, 1963; Freedom to the*

Free (1963); *Voting in Mississippi* (1965); *The Voting Rights Act . . . The First Months* (1965); *Political Participation* (1968); and *The Voting Rights Act: Ten Years After* (1975).

⁶ See, e.g.: U.S., Commission on Civil Rights: *Report of the U.S. Commission on Civil Rights, 1959; Statutory Reports 1961, Book 1: Voting; Civil Rights '63, "Voting"* (1963); *Voting in Mississippi* (1965); *Political Participation* (1968).

⁷ Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified at 42 U.S.C. §§1971, 1973 to 1973bb-1 (1976)).

⁸ §§4-9 of the Voting Rights Act, currently codified at 42 U.S.C. §§1973b-1973g (1976).

⁹ For a full discussion of the special provisions, see chapter 2.

denial of the right to vote by reason of race, color, religion, age, sex, handicap, or national origin.¹⁰ To help secure full and meaningful enfranchisement of minorities, the Commission has responded to congressional requests for testimony,¹¹ held hearings,¹² and issued reports¹³ on voting rights problems. After a comprehensive study in 1975 the Commission reported to the Congress on progress under the Voting Rights Act during hearings on extension of the act.¹⁴ The Commission found that minorities had made substantial progress in entering the political system compared to almost total exclusion in 1965, but also found that persistent and serious obstacles remained.¹⁵

The present report assesses whether discrimination continues to exist in jurisdictions covered by the original special provisions of the Voting Rights Act, under consideration for extension in 1982.¹⁶ These special provisions require jurisdictions to preclear with the United States Department of Justice or the U.S. District Court for the District of Columbia any proposed changes in voting practices or procedures prior to implementing them. Jurisdictions must prove that such changes are not discriminatory in purpose or effect.¹⁷ In addition, this report assesses whether discrimination continues to exist in jurisdictions made subject to preclearance by the 1975 amendments to the Voting Rights Act. These provisions are due for extension in 1985.¹⁸

For jurisdictions subject to the preclearance provisions, first, Commission staff examined court cases

on voting between 1975 and 1980. Second, letters from the Department of Justice to covered jurisdictions, objecting to proposed changes in voting procedures that jurisdictions sought to implement, were examined. Third, major civil rights organizations were asked whether they knew of instances of possible or actual denial of voting rights.¹⁹ Fourth, the Commission's regional offices and State Advisory Committees provided information on reported voting problems and made site visits to polling places in their areas.

To determine how extensive and serious these voting rights problems were, Commission staff undertook an indepth examination of jurisdictions subject to the preclearance provisions of the Voting Rights Act.²⁰ Jurisdictions considered for indepth analysis met the following criteria:

- (a) The jurisdiction had a total minority population of 20 percent or more;²¹
- (b) The percentage of minority elected officials was less than the percentage of minorities in the population;
- (c) The jurisdiction had more than one reported voting problem; and
- (d) Sufficient information could be obtained to analyze the nature and extent of the alleged problems.

¹⁰ 42 U.S.C. §1975c(a)(1) (Supp. III 1979).

¹¹ See, e.g.: U.S., Congress, House, Subcommittee No. 5 of the Committee on the Judiciary, *Voting Rights: Hearings on H.R. 6400*, 89th Cong., 1st sess., 1965, pp. 123-311; U.S., Congress, Senate, Subcommittee on Constitutional Rights of the Committee on the Judiciary, *Amendments to the Voting Rights Act of 1965: Hearings on S.818, S.2456, S.2507, and Title IV of S.2029*, 91st Cong., 1st and 2nd sess., 1969 and 1970, pp. 28-87, 396-431, 661-62; U.S., Congress, House, Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, *Extension of the Voting Rights Act: Hearing on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501*, 94th Cong., 1st sess., 1975, pp. 17-60; U.S., Congress, Senate, Subcommittee on Constitutional Rights of the Committee on the Judiciary, *Extension of the Voting Rights Act of 1965: Hearings on S.407, S.903, S.1297, S.1409, and S.1443*.

¹² U.S., Commission on Civil Rights, *Hearing*, Montgomery, Ala., Dec. 8-9, 1958, and Jan. 9, 1959; U.S., Commission on Civil Rights, *Hearing*, Los Angeles, Jan. 25-26, 1960; U.S., Commission on Civil Rights, *Hearing*, San Francisco, Jan. 27-28, 1960; U.S., Commission on Civil Rights, *Hearing*, New Orleans, Sept. 27-28, 1960, and May 5-6, 1961; U.S., Commission on Civil Rights, *Hearing*, Jackson, Miss., Jan. 16-20, 1965.

¹³ See, e.g., U.S., Commission on Civil Rights: *Political Participation* (1968); and *The Voting Rights Act: Ten Years After* (1975).

¹⁴ U.S., Congress, House, Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, *Extension of the Voting Rights Act: Hearings on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501*, 94th Cong., 1st sess., 1975, pp. 17-60; U.S., Congress, Senate, Subcommittee on Constitutional Rights of the Committee on the Judiciary, *Extension of the Voting Rights Act of 1965: Hearings on S.407, S.903, S.1297, S.1409, and S.1443*.

¹⁵ For a full discussion of the types of problems that remained in 1975, see U.S., Commission on Civil Rights, *The Voting Rights Act: Ten Years After* (1975).

¹⁶ See appendix B, table B.1, for a list of jurisdictions covered by the original special provisions of the Voting Rights Act.

¹⁷ Under the special provisions, jurisdictions may also be designated for Federal examiners and observers. For a full discussion of the duties of Federal examiners and observers, see chapter 2.

¹⁸ See appendix B, table B.3, for a list of jurisdictions covered by the 1975 amendments to the Voting Rights Act. 42 U.S.C. §1973b(a) provides a mechanism whereby jurisdictions covered by the special provisions of the act may achieve exemption from coverage ("bailout"). Jurisdictions covered in 1965 may seek bailout in 1982. These provisions may be extended in 1982 to require coverage for an additional number of years. Jurisdictions covered by the 1970 amendments may seek to bail out in 1987 while those covered by the 1975 amendments are required to be covered a minimum of 10 years under the act before bailout is possible. These provisions would have to be extended in 1985 if coverage were to be required for an additional number of years.

¹⁹ The organizations contacted were: Lawyers' Committee for Civil Rights Under Law, the Voter Education Project, the Mexican American Legal Defense and Educational Fund, the American Civil Liberties Union, the NAACP Legal Defense and Educational Fund, Inc., the NAACP, the Southern Poverty Law Center, and the Southwest Voter Registration Education Project.

²⁰ Due to limited resources, the Commission was unable to undertake an examination of possible voting problems throughout the Nation as a whole. The study was limited to jurisdictions covered by special provisions of the Voting Rights Act.

²¹ The term "minorities" refers to blacks, Hispanics, Asian Americans, and American Indians.

The report also seeks to determine whether there has been effective enforcement of the minority language provisions of the Voting Rights Act.²² Jurisdictions subject to these provisions are required to print materials related to registration and voting in the applicable minority language as well as English and to provide oral assistance in registration and voting, if needed.²³

The Commission interviewed over 150 individuals who are knowledgeable about the voting problems that exist in the minority communities within the jurisdictions studied. These persons included minority elected officials, former candidates for national, State, and local government positions, attorneys, religious and community leaders, representatives of local and national civil rights organizations, participants in registration and voting drives at the local level, and State and local election officials. In addition, Commission staff analyzed alleged voting problems in depth in 70 jurisdictions subject to the preclearance and/or the minority language provisions in Alabama, Arizona, California, Colorado, Georgia, Louisiana, Mississippi, New Mexico, New York, North Carolina, Oklahoma, South Carolina, South Dakota, Texas, and Virginia. Field visits were made to 32 of these jurisdictions. Alleged voting problems in the remaining 38 jurisdictions were analyzed with information obtained from the Department of Justice and civil rights organizations. This information includes court decisions, Department of Justice objection letters,²⁴ complaints filed with the Department of Justice, and Commission regional office and State Advisory Committee reports. The report that follows presents the results of this analysis.²⁵ (Appendix A lists the jurisdictions discussed in the report.)

Chapter 2 of this report explains the Voting Rights Act and discusses the effects the act has had in enabling minorities to register and vote and in increasing the number of minority elected officials. Chapter 3 explores the issue of whether minorities

continue to experience problems in registering to vote. Chapter 4 considers whether problems in voting continue. Chapter 5 presents an analysis of the difficulties minority voters and minority candidates are experiencing in achieving fair representation. Chapter 6 presents an analysis of Department of Justice objections to proposed changes in voting practices and procedures and of noncompliance with the Voting Rights Act by covered jurisdictions. Chapter 7 analyzes the effectiveness of the minority language provisions in increasing the political participation of language minorities in the political process. Finally, chapter 8 presents findings and recommendations.

In addition, there are seven appendices to the report which contain relevant background information. For example, appendix G includes responses to statements made in the report pursuant to section 102(e) of the Commission's statute and section 702.18 of its rules and regulations. According to the statute, "If a report of the Commission tends to defame, degrade or incriminate any person, then the report shall be delivered to such person thirty days before the report shall be made public in order that such person may make a timely answer to the report."²⁶

In fulfilling this requirement the Commission identified 58 local registration and election officials as well as various officials holding elective office in 38 jurisdictions discussed in the report. Letters were sent to these officials containing pertinent sections of the report and requesting a verified answer. Thirty-five verified responses concerning 28 jurisdictions were received and appear in appendix G. These verified responses were taken into consideration in preparing the report in its final form. In some cases, the draft was modified on the basis of the Commission's analysis of the facts contained in the verified answers. In other cases, a response to the answer was prepared, and it also appears in appendix G, immediately following the verified answer.

²² 42 U.S.C. §§1973b(b), (f)(1)-(4), 1973aa-1a(a)-(e) (1976).

²³ *Id.* §1973b(f)(4), §1973aa-1a(c).

²⁴ See chapter 6 for a discussion of Department of Justice objection letters.

²⁵ Due to limited resources, the Commission was unable to undertake a systematic examination of the effectiveness of the Department of Justice in enforcing the Voting Rights Act.

²⁶ 42 U.S.C. 1975-1975e, §102(e). For the complete Commission statute and regulation relating to defame and degrade, see appendix F of the report.

The Voting Rights Act and Its Effects

The Voting Rights Act¹ was enacted on August 7, 1965, and was amended in 1970 and 1975. The act contains general provisions that are permanent and affect the entire Nation; it also has special provisions that are temporary and only affect jurisdictions that meet certain criteria specified in the act.

General Provisions

The general provisions of the act protect the voting rights of Americans in several important ways. These provisions prohibit voting qualifications or procedures that would deny or abridge a person's right to vote because of race, color, or inclusion in a minority language group.² The general provisions also make it a crime for a public official to refuse to allow a qualified person to vote or for any person to use threats or intimidation to prevent someone from voting or helping another to vote.³

Another general provision is section 202, which abolishes durational residency requirements as a precondition to voting for President and Vice President.⁴ Section 202 also establishes nationwide standards for absentee registration and balloting in Presidential elections. Under this section, States are required to allow qualified persons to apply to register to vote 30 days prior to a Presidential election and to allow qualified voters to vote

absentee if they have applied for absentee ballots not later than 7 days prior to the Presidential election.⁵ If a qualified voter moves to another State or jurisdiction within 30 days of a Presidential election (and, therefore, does not satisfy the 30-day registration requirement), the voter must be allowed to vote either in person or by absentee ballot at his or her former residence.⁶

The general provisions, furthermore, provide for increased enforcement of voting guarantees by private parties. Section 3 permits private parties, as well as the Attorney General of the United States, to file suit to enforce the voting guarantees of the 14th and 15th amendments.⁷ Under the remedies of section 3, the court may authorize the appointment of Federal examiners and observers or may require preclearance in any jurisdiction in the United States, regardless of its coverage under the Voting Rights Act.⁸ Private enforcement of voting rights is also aided by section 14, the general provision authorizing the payment of attorney's fees to prevailing parties in voting rights cases.⁹

Another permanent provision with nationwide application that has helped to remove obstacles to voting is section 201 of the act, prohibiting the use of tests or devices in voting.¹⁰ This permanent ban on tests or devices refers to any requirement that

¹ Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437, as amended by Pub. L. No. 91-285, 84 Stat. 314, and Pub. L. No. 94-73, 89 Stat. 402 (codified at 42 U.S.C. §§1971, 1973 to 1973bb-1 (1976)).

² 42 U.S.C. §§1973, 1973b(f)(2) (1976).

³ *Id.* §§1973i(a) and (b) (1976).

⁴ *Id.* §1973aa-1(b).

⁵ *Id.* §1973aa-1(d).

⁶ *Id.* §1973aa-1(e).

⁷ *Id.* §1973a(c).

⁸ *Id.* §1973a(a) and (c).

⁹ *Id.* §1973i(e).

¹⁰ *Id.* §1973aa(a).

persons, as a prerequisite to voting or registering, be required to:

- (1) demonstrate the ability to read, write, or understand, or interpret any matter;
- (2) demonstrate any educational achievement or . . . knowledge of any particular subject;
- (3) possess good moral character; or
- (4) prove [their] qualifications by the voucher of registered voters or member of any other class.¹¹

Special Provisions

Additional voting protections are provided citizens in certain jurisdictions through application of the act's special provisions. The special provisions are found in sections 4 through 9 and section 203 of the act. Unlike the general provisions, which are permanent and apply nationwide, the special provisions are temporary and apply only in those jurisdictions that meet certain criteria.

Coverage Formula

A jurisdiction is "covered" or made subject to the act's special provisions if it meets one of the following tests found in section 4:

- (1) The jurisdiction maintained on November 1, 1964, any test or device as a precondition for voting or registering, and less than 50 percent of its total voting age population were registered on November 1, 1964, or voted in the Presidential election of 1964.¹²
- (2) The jurisdiction maintained on November 1, 1968, a test or device as a precondition for voting or registering, and less than 50 percent of its total voting age population were registered on November 1, 1968, or voted in the Presidential election of 1968.¹³
- (3) The jurisdiction maintained on November 1, 1972 any test or device,¹⁴ as a precondition to

¹¹ *Id.* §1973aa(a)(b).

¹² *Id.* §1973b(b).

¹³ *Id.*

¹⁴ *Id.* §1973b(f)(3). This section was added by the 1975 amendments to the act and states that the term "test or device" shall also mean any practice or requirement by which a jurisdiction provided any registration or voting notices, forms, instructions, assistance, or other information relating to the electoral process, including ballots, only in the English language.

¹⁵ 42 U.S.C. §1973b(b) (1976). When the Voting Rights Act was under consideration for extension in 1975, testimony was presented showing that minority language groups were victims of the same types of discriminatory practices used to prevent blacks from registering and voting. In addition, testimony revealed that the use of English-only election materials also prevented minority language groups from registering and voting. As a result of this testimony, a coverage formula was devised that would apply to those areas where discrimination against members of minority language groups was most blatant. *See*, U.S., Congress, House, Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary,

voting or registering, and less than 50 percent of its voting age population were registered on November 1, 1972, or voted in the Presidential election of 1972, *and* more than 5 percent of the citizens of voting age in the jurisdiction were members of a single language minority group.¹⁵

The coverage formula is not limited to one geographic region; jurisdictions throughout the Nation are covered. Jurisdictions covered by these provisions include the entire States 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. Appendix B lists all jurisdictions covered by the Voting Rights Act.

The special provisions of the Voting Rights Act were enacted to provide protection against pervasive racial discrimination in registering, voting, and running for office. Prior to their enactment, State and local officials were able to effectively exclude minorities from political participation in many areas.¹⁶ For example, some jurisdictions used "literacy tests" as a prerequisite to registration, which were manipulated in such a way that most blacks failed, but most whites passed.¹⁷ Other jurisdictions required blacks, who attempted to register, to be accompanied by two persons already registered; since no blacks were already registered, whites had to be found, and none made themselves available.¹⁸ In some areas discrimination was so pervasive blacks knew that any attempt to participate in elections was futile.¹⁹ Although legislation had been passed prohibiting discrimination in voting,²⁰ minorities continued effectively to be excluded from the political

Extension of the Voting Rights Act: Hearing on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501, 94th Cong., 1st sess., 1975, pp. 398-486 (testimony of Dr. Charles Cotrell, professor of political science, St. Mary's University, San Antonio).

¹⁶ U.S., Commission on Civil Rights, *Political Participation* (1968), pp. 6-7, (hereafter cited as *Political Participation*).

¹⁷ Washington Research Project, *The Shameful Blight: The Survival of Racial Discrimination in Voting in the South* (Washington, D.C.: 1972), p. 1 (hereafter cited as *Shameful Blight*); U.S., Congress, Senate, Committee on the Judiciary, *Hearings on Voting Rights*, 89th Cong., 1st sess., 1965, S. Rept. 1564, pp. 9-11.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Act of May 31, 1870, ch. 114, 16 Stat. 140; Civil Rights Act of 1957, Pub. L. No. 85-315, §131, 71 Stat. 637; Civil Rights Act of 1960, Pub. L. No. 86-449, §601, 74 Stat. 90; Civil Rights Act of 1964, Pub. L. No. 88-352, §101, 78 Stat. 241. The current version of these acts is codified at 42 U.S.C. §1971 (1976).

process in many jurisdictions. As a result, few minorities were registered,²¹ and candidates and officeholders were able to ignore the needs and concerns of minority citizens.²²

The special provisions of the Voting Rights Act were intended to overcome such blatantly discriminatory treatment. These provisions are limited to those jurisdictions that manifested a problem of pervasive, overt discrimination, through the use of tests or devices as a prerequisite to registering and voting, resulting in low minority registration and voting rates. In his 1965 testimony before the House Committee on the Judiciary during hearings on the Voting Rights Act, Attorney General Nicholas Katzenbach explained why these provisions were needed:

Three times in the last decade—in 1956, in 1960, and in 1964—those who oppose stronger Federal legislation concerning the electoral process have asked Congress to be patient; and Congress has been patient. Three times since 1956 they have said that local officials, subject to judicial direction, will solve the voting problem. And each time Congress has left the problem largely to the courts and the local officials. Three times since 1956 they have told us that the prescription would provide the entire cure—this prescription aided by time—and Congress has followed that advice. . . .

I will not burden this committee again with numerous examples of the use of tests and similar devices which measure only the race of an applicant for registration, not his literacy or anything else.

And I need not describe at length how much time it takes to obtain judicial relief against discrimination, relief which so often proves inadequate. Even after the Department of Justice obtains a judicial decree, a recalcitrant registrar's ability to invent ways to evade the court's command is all too frequently more than equal to the court's capacity to police the State registration process.²³

Attorney General Katzenbach stated that the coverage formula, which would apply to jurisdictions that used tests or devices and that had low registration rates or voter turnout, was not perfect, in that it would include areas that might not be using tests or devices in a discriminatory manner, and it could exclude areas that might be discriminating in other ways. He believed, however, that the coverage formula did affect most areas where voting discrimination was particularly flagrant:

The tests and devices with which the bill deals include the usual literacy, understanding and interpretation tests that are easily susceptible to manipulation, as well as a variety of other

repressive schemes. Experience demonstrates that the coincidence of such schemes and low electoral registration or participation is usually the result of racial discrimination in the administration of the election process.²⁴

Exemption from Coverage

In order to exempt itself (bail out) from coverage under the special provisions, a jurisdiction must obtain a declaratory judgment in the U.S. District Court for the District of Columbia that it has not used a test or device with a discriminatory purpose or effect for a certain period of years prior to filing the action. Jurisdictions that maintained tests or devices as a precondition to voting or registering on November 1, 1964 (i.e., jurisdictions covered by the act in 1965), or November 1, 1968 (i.e., jurisdictions covered by the 1970 amendments), must prove that such tests or devices have not been used with a discriminatory purpose or effect for 17 years.²⁵ Jurisdictions covered in 1965 may seek to bail out in 1982, and those covered by the 1970 amendments may seek to bail out in 1987. Jurisdictions that maintained tests or devices in November 1972 (i.e., jurisdictions covered by the 1975 amendments) must prove that such tests or devices have not been used with a discriminatory purpose or effect for 10 years.²⁶ These jurisdictions may seek to bail out in 1985. Some jurisdictions have been able to prove that they have not used a test or device with a discriminatory purpose or effect prior to the end of the 17- or 10-year period and, thus, have been able to bail out.²⁷

The bailout provision, which indicates the number of years required for jurisdictions to prove that they have not used a test or device with the purpose or effect of discriminating, has been extended twice, for 5 years in 1970 and 7 years in 1975. Extension of this provision means that jurisdictions included in the coverage formula will be subject to the preclearance provision of section 5 and can be designated for Federal examiners and observers.

Past extensions of the act were based on judgment by the Congress that denials of voting rights continued to exist in jurisdictions subject to preclearance. The issue of whether the 1975 extensions were justified was raised in a recent decision of the

²⁷ *Id.* Since January 1975 jurisdictions in three States have bailed out of the special provisions. They are: (1) the 18 municipalities in the State of Maine (*Maine v. United States*, No. 75-2125 (D.D.C. Nov. 25, 1975)); (2) Curry, McKinley, and Otero Counties, New Mexico (*New Mexico v. United States*, No. 76-0067 (D.D.C. July 30, 1976)); and (3) Choctaw and McCurtain Counties, Oklahoma (*Oklahoma v. United States*, No. 76-1250 (D.D.C. May 12, 1978)).

²¹ *Political Participation*, pp. 12-13.

²² *Shameful Blight*, p. 1.

²³ U.S., Congress, Senate, Committee on the Judiciary, *Hearings on Voting Rights*, 89th Cong., 1st sess., 1965, S. Rept. 1564, pp. 8-9.

²⁴ *Id.* at 14.

²⁵ *Id.* §1973b(a).

²⁶ 42 U.S.C. §1973b(a) (1976).

Supreme Court of the United States, *City of Rome v. United States*.²⁸ The city of Rome, Georgia, which was seeking to remove itself from coverage under section 5 of the act, argued that the special provisions of the Voting Rights Act had “outlived their usefulness by 1975, when Congress extended the act for another seven years.”²⁹

The Court rejected the city’s argument, stating that the judgment of the Congress was based on evidence showing that minorities continued to be seriously underrepresented in most elective positions, that recent gains were only due to the act’s preclearance requirement, and that the preclearance requirement prevented jurisdictions from devising new ways of discriminating against minority citizens.³⁰ The Court further stated:

It must not be forgotten that in 1965, 95 years after ratification of the Fifteenth Amendment extended the right to vote to all citizens regardless of race or color, Congress found that racial discrimination in voting was an “insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution.”³¹ In adopting the Voting Rights Act, Congress sought to remedy this century of obstruction by shifting “the advantage of time and inertia from the perpetrators of the evil to its victims.”³² Ten years later, Congress found that a seven-year extension of the Act was necessary to preserve the “limited and fragile” achievement of the Act and to promote further amelioration of voting discrimination. When viewed in this light, Congress’ considered

²⁸ 446 U.S. 156 (1980). In 1966, the city of Rome, Georgia, made several changes in its method of electing members both to its city commission and board of education. Before 1966 the city had a nine-member city commission and a five-member board of education. Members of both bodies were elected at large by a plurality of the vote. Members of the city commission had to reside in one of nine wards even though they were to be elected on an at-large basis. There was no residency requirement for members of the board of education. In 1966 Rome’s new city charter changed the method of electing members to the city commission by (1) decreasing the number of wards from nine to three; (2) providing for three numbered posts in each of the three new wards; (3) establishing a majority vote with a runoff requirement; and (4) providing for staggered terms for the three commissioners in the new wards. The city charter changed the method of electing members to the board of education by (1) increasing the size of the board from five to six members, (2) creating three wards with two numbered posts, (3) establishing a residency requirement and (4) providing for staggered terms. In addition to the changes in the method of electing members to the city commission and the board of education, the city made 60 annexations between Nov. 1, 1964, and Feb. 10, 1975.

None of the election changes made by the city of Rome was submitted to the Department of Justice for preclearance until 1974. When they were submitted, the Attorney General objected to the use of numbered posts, majority vote, and staggered terms for electing members to the city commission. It objected to these same voting rules and to the residency requirement for electing members of the board of education. In addition, the Attorney General objected to 13 of the 60 annexations made by the city. (The 13 annexations were subsequently precleared for school board elections, but not for city elections.) The Attorney General determined that the city had not met its burden of proving that the changes were not discriminatory in purpose or effect. To support its conclusion it noted that the city’s use of an at-large election system where racial bloc voting existed prevented blacks from electing candidates of their choice.

After the Attorney General objected, the city sought a declaratory judgment in the U.S. District Court for the District of Columbia that its election changes were not discriminatory, but the court granted summary

determination that at least another seven years of statutory remedies were necessary to counter the perpetuation of 95 years of pervasive voting discrimination is both unsurprising and unassailable. The extension of the Act, then, was plainly a constitutional method of enforcing the Fifteenth Amendment.³³

The city of Rome also argued that it was a “political subdivision” that could seek to “bail out” despite the fact that the coverage formula included the entire State of Georgia. The formula for determining which jurisdictions are subject to the special provisions can include an entire State or a political subdivision within a State even though the entire State is not covered. Specifically, the coverage formula can include “any State or . . . any political subdivision of a State”³⁴ that meets the criteria described in the formula.

The Supreme Court of the United States stated that the issue is whether the city of Rome is defined as a State or a political subdivision under the act. The Court held that neither definition applied to the city since “the coverage formula. . . has never been applied to it.”³⁵ Thus, the city could not seek to bail out independent of the State. The Court stated:

. . . [T]he city comes within the act because it is part of a covered State. Under the plain language of the statute, then, it appears that any bailout action to exempt the city must be filed by, and seek to exempt all of, the State of Georgia.³⁶

judgment to the United States. The city then appealed the district court’s decision to the Supreme Court of the United States, and the Supreme Court of the United States affirmed the district court’s decision. The city made several arguments on appeal, major ones of which are discussed in this chapter.

²⁹ *Id.* at 180.

³⁰ *Id.* at 180–181.

³¹ *South Carolina v. Katzenbach*, 383 U.S. 301 at 309.

³² *Id.* at 328.

³³ 446 U.S. at 181–182.

³⁴ 42 U.S.C. §1973b(b) (1976).

³⁵ 446 U.S. at 167.

³⁶ *Id.* During the 1965 House and Senate consideration of the Voting Rights Act of 1965, the issue of why a political subdivision within a covered State should not be permitted to bail out independently of the State was also addressed. Several reasons were given for the act’s denying a political subdivision within a covered State the right to seek individual exemption from the Voting Rights Act. First, “where the discriminatory use of tests and devices is a matter of State policy it is appropriate that suspension of these tests and devices be statewide.” H.R. Rep. No. 439, 89th Cong., 1st sess., reprinted in [1965] U.S. Code Cong. & Ad. News 2437, 2446. Second, because of the relationship between political subdivisions and State government, a political subdivision may be required to implement State laws or policies which discriminate against minorities irrespective of its own inclinations or intent. This was specifically noted in the Senate Judiciary Committee report on the proposed Voting Rights Act:

[I]n most of the States affected by section 4 [bailout] local boards of registration are so closely and directly controlled by and subject to the direction of State boards of election—and, indeed, the State legislature—that they would be required to misapply tests and devices, irrespective of their own inclinations, if this suited the general policy of the State government. S. Rep. No. 162, 89th Cong., 1st sess., (Joint Views of 12 Members of the Judiciary Committee Relating to the Voting Rights Act of 1965, reprinted in [1965] U.S. Code Cong. & Ad. News 2508, 2554).

Preclearance

A State or political subdivision covered by one of the criteria in section 4 is subject to the requirements of section 5 of the act. Section 5 requires a covered jurisdiction to submit ("preclear") any proposed change in its voting laws, practices, or procedures to the U.S. Attorney General or to the U.S. District Court for the District of Columbia.³⁷ The submitting jurisdiction has the burden of proof in establishing that the proposed change does not have a racially discriminatory purpose or effect.³⁸ The jurisdiction may not enforce or administer the change if the Attorney General objects to it.³⁹ The new qualification or procedure may be enforced 60 days after the submission is completed if the Attorney General does not issue an objection.⁴⁰ The submitting jurisdiction still may seek a declaratory judgment in the U.S. District Court for the District of Columbia that the proposed change is not discriminatory in purpose or effect if the Attorney General objects.⁴¹

The scope of changes that must be submitted for preclearance is broad, including changes that appear to be minor. Legislation and administrative actions within the scope of section 5 review include, but are not limited to, the following types of changes:

- (1) Any change in qualifications or eligibility for voting;
- (2) Any change in procedures concerning registration, balloting, or informing or assisting citizens to register and vote;
- (3) Any change in the constituency or boundaries of a voting unit (e.g., through redistricting, annexation, or reapportionment), the location of a polling place, change to at-large elections from district elections or to district elections from at-large elections;
- (4) Any alteration affecting the eligibility of persons to become or remain candidates or obtain a position on the ballot in primary or general elections;

Not allowing each political subdivision within a covered State to bail out independently of the State also would remedy the problem of discrimination on a statewide level and would place the responsibility for eliminating discrimination both with the State and its political subdivisions.

The 1965 House committee report on the proposed Voting Rights Act (H.R. 6400) also stated that allowing each political subdivision within a covered State to bail out independently of the State "would impose a continuation of the burdensome county-by-county litigation approach which has been shown to be inadequate." H.R. Rep. No. 439, 89th Cong., 1st sess., reprinted in [1965] U.S. Code Cong. & Ad. News 2437, 2446.

³⁷ 42 U.S.C. §1973c (1976).

³⁸ *Procedures for the Administration of Section 5 of the Voting Rights Act of 1965*, 28 C.F.R. §55.2 (1980).

³⁹ 42 U.S.C. §1973c (1976).

⁴⁰ *Id.*

- (5) Any change in the eligibility and qualification procedures for independent candidates;
- (6) Any action extending or shortening the term of an official or changing the method of selecting an official (e.g., a change from election to appointment);
- (7) Any change in the method of counting votes.⁴²

The requirement that jurisdictions submit all changes in their voting laws, practices, and procedures is an effective device for preventing new or subtle forms of discriminatory practices in voting.⁴³ The importance of section 5 was discussed by Assistant Attorney General J. Stanley Pottinger during the 1975 hearings on extension of the Voting Rights Act:

In summary, there have been significant improvements in the political role of blacks since the passage of the Voting Rights Act. . . . The number of objections which the Attorney General has made to changes in voting laws submitted to him under section 5 shows that there is still a potential for the passage of legislation which has either as its purpose or effect the exclusion of black voters from their rightful role. This potential could become reality in the absence of some objective control at the Federal level.⁴⁴

In *City of Rome v. United States*,⁴⁵ the city, which was attempting to exempt itself from coverage under the act, argued that section 5 is unconstitutional since it requires jurisdictions subject to preclearance to prove that proposed changes in voting practices or procedures are not discriminatory in purpose or effect. The city alleged that section 1 of the 15th amendment only prohibits voting practices that have a discriminatory purpose and "that in enforcing that provision pursuant to section 2, Congress may not prohibit voting practices lacking discriminatory intent even if they are discriminatory in effect."⁴⁶

The Supreme Court of the United States upheld the constitutionality of section 5. It stated that the city was actually arguing that the Court reverse one of its earlier decisions upholding the constitutional-

⁴¹ *Id.* §1973b(a).

⁴² *Procedures for the Administration of Section 5 of the Voting Rights Act of 1965*, 28 C.F.R. §51.4 (1980).

⁴³ The Voting Rights Act establishes a broad definition of "voting," including all action needed to cast an effective ballot in any primary, special, or general election; this includes, but is not limited to, registering, casting a ballot, and having the ballot counted properly and included in the appropriate totals. 42 U.S.C. §19731(c)(1) (1976).

⁴⁴ U.S., Congress, House, Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, *Extension of the Voting Rights Act: Hearings on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501*, 94th Cong., 1st sess., 1975, p. 174.

⁴⁵ 446 U.S. 156 (1980).

⁴⁶ *Id.* at 173.

ty of the special provisions of the Voting Rights Act, *South Carolina v. Katzenbach*.⁴⁷ In that decision the Court stressed that section 2 of the 15th amendment gave Congress power to enforce the voting guarantees of section 1 of that amendment. It stated:

By adding this authorization [in §2], the Framers indicated that Congress was to be chiefly responsible for implementing the rights created in §1. "It is the power of Congress which has been enlarged. Congress is authorized to enforce the prohibitions by appropriate legislation. Some legislation is contemplated to make the [Civil War] amendments fully effective."⁴⁸ Accordingly, in addition to the courts, Congress has full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting.⁴⁹

In *City of Rome*, the Supreme Court of the United States again found that section 5 was appropriate for enforcing the 15th amendment.⁵⁰ The Court stated, "Congress could rationally have concluded that, because electoral changes by jurisdictions with a demonstrable history of intentional racial discrimination in voting create the risk of purposeful discrimination, it was proper to prohibit changes that have a discriminatory impact."⁵¹ The Supreme Court of the United States, therefore, affirmed the judgment of the district court that the city of Rome had failed to meet its burden of proving that certain electoral changes and annexations which were not precleared by the Attorney General did not have a discriminatory effect.⁵²

Federal Observers and Examiners

Another of the act's special provisions permits the appointment of Federal examiners.⁵³ These examiners may be authorized by the Attorney General if he receives 20 meritorious written complaints from citizens in a jurisdiction claiming that their right to vote has been denied on account of race, color, or inclusion in a minority language group.⁵⁴ Federal examiners may also be authorized if the Attorney General believes their appointment is necessary to enforce the voting guarantees of the 14th or 15th

amendments.⁵⁵ The selection and appointment of Federal examiners is handled by the U.S. Office of Personnel Management, formerly the U.S. Civil Service Commission.⁵⁶

Under the act, duties of Federal examiners include interviewing and listing people eligible to vote and, at least once a month, transmitting a list of eligible voters to the appropriate State or local election official for inclusion on the jurisdiction's official voting list.⁵⁷ Each qualified voter listed by a Federal examiner is issued a certificate of eligibility to vote.⁵⁸ Additionally, examiners are available during an election and within 48 hours after the polls close to receive complaints that qualified voters have been denied their right to vote.

The use of Federal observers is another way in which the special provisions of the act attempt to deal with obstacles to voting that may be imposed at the local level. The Attorney General may request the U.S. Office of Personnel Management to appoint Federal observers for elections in those jurisdictions designated for examiners.⁵⁹ Observers are usually civil servants who work with attorneys from the Department of Justice.⁶⁰ They are assigned to polling places and observe whether persons who are eligible to vote are allowed to vote. They may also observe whether votes cast by eligible voters are being properly counted.

The Attorney General considers three basic factors before making a determination that Federal observers will be sent to a jurisdiction. These factors are:

- (1) The extent to which those who will run an election are prepared so that there are sufficient voting hours and facilities, procedural rules for voting are adequately publicized, and nondiscriminatory selected polling officials are instructed in election procedures;⁶¹
- (2) The confidence of the minority community in the electoral process and the individuals con-

⁴⁷ 383 U.S. 301 (1966).

⁴⁸ *Ex parte Virginia*, 100 U.S. 339, 345 (1879); the Civil War Amendments were ratified in an attempt to provide newly freed slaves rights and privileges similar to those enjoyed by other citizens. The 13th amendment abolished slavery within the United States and its territories. The 14th amendment granted citizenship to the former slaves and prohibited State interference with a citizen's right to due process and equal protection of the laws. The 15th amendment gave the freedmen the right to vote.

⁴⁹ 446 U.S. at 174, citing *South Carolina v. Katzenbach* 383 U.S. at 325-26.

⁵⁰ 446 U.S. at 175.

⁵¹ *Id.* at 177.

⁵² *Id.* at 158.

⁵³ 42 U.S.C. §1973d (1976).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ 42 U.S.C. §1973f (1976).

⁶⁰ *Id.*; David Hunter, attorney, Litigation Unit, U.S., Department of Justice, telephone interview, July 24, 1981.

⁶¹ U.S., Congress, Senate, Committee on the Judiciary, Subcommittee on Constitutional Rights, *Hearings on Extension of the Voting Rights Act of 1965*, 94th Cong., 1st sess., 1975, S.407, S.903, S.1297, S.1409, and S.1443, p. 538. (testimony of J. Stanley Pottinger, Assistant Attorney General).

ducting the election, including the use of minorities as poll officials;⁶²

(3) The possibility of forces outside the official election machinery (such as racial violence, threats of violence, or a history of discrimination in other areas) interfering with the election.⁶³

Between January 1975 and December 1980, the Department of Justice sent examiners to two counties for purposes of listing people eligible to vote, Humphries and Madison Counties, Mississippi. The Department also sent 5,234 observers to 74 counties covered by the Voting Rights Act.⁶⁴ (See appendix C for the covered jurisdictions designated for examiners and observers.)

Applicability of the Special Provisions to Noncovered Jurisdictions

Although the coverage formula in the Voting Rights Act designates which jurisdictions are subject both to the special provisions requiring preclearance and permitting the appointment of Federal examiners and observers, these remedies can be used in any jurisdiction in the United States, even though the jurisdiction is not included in the coverage formula. They can be used in jurisdictions in which courts have found violations of the Voting Rights Act based on statutes enforcing the 14th and 15th amendments.⁶⁵

Under section 3(a) of the Voting Rights Act a court can authorize the appointment of Federal examiners in any jurisdiction (State or political subdivision) in the Nation if the Attorney General or an aggrieved person files suit to enforce the right to vote under the 14th and 15th amendments. Examiners may be appointed as part of any interlocutory

order⁶⁶ if the court determines that they are necessary to enforce voting guarantees or as part of any final judgment if the court determines that violations of voting rights justifying equitable relief have occurred.⁶⁷

Federal examiners have been appointed to three jurisdictions that were not included in the act's coverage formula: Thurston County, Nebraska;⁶⁸ Bartelme, Wisconsin;⁶⁹ and San Francisco, California.⁷⁰ The U.S. Department of Justice filed lawsuits against each of these jurisdictions seeking to enforce the voting guarantees of the 14th and 15th amendments. A consent decree or a preliminary injunction was entered in each of the cases.

Under section 3(c) of the Voting Rights Act the court may require preclearance by a State or political subdivision if the Attorney General or an aggrieved person files a suit under any statute to enforce the 14th or 15th amendments and the court finds that violations of voting rights have occurred.⁷¹ As an alternative to the court, the jurisdiction may preclear its proposed changes in voting practices or procedures with the Attorney General. Preclearance becomes retroactive to the date the suit was filed and lasts as long as the court deems necessary.⁷²

In *U.S. v. Thurston County, Nebraska*,⁷³ preclearance was one of the remedies stipulated in the consent decree between the county and the U.S. Department of Justice. The United States alleged that the county's at-large method of electing its county board of supervisors diluted the voting rights of American Indians, in violation of the 14th and 15th amendments and section 2 of the Voting Rights Act. A consent decree was entered in the case

Voting Rights Act of 1965 as amended and the 14th and 15th amendments. The United States alleged that the town of Bartelme, Wisconsin, and Shawano County, Wisconsin, denied Indian residents of the Stockbridge-Munsee Reservation the right to vote. The town signed a petition which the county approved severing the reservation from the town of Bartelme. Residents of the reservation, who formerly had voted and held elective office in the town, were not allowed to vote for town or county officials in Bartelme. A preliminary injunction was issued ordering the "new" town of Bartelme to allow residents of the Stockbridge-Munsee Reservation to vote at polling locations in Bartelme during the upcoming primary and general county elections.

⁶² *Id.*
⁶³ *Id.*
⁶⁴ Gerald W. Jones, Chief, Voting Section, U.S. Department of Justice, letter to Caroline Davis Gleiter, Assistant Staff Director for Program and Policy Review, U.S. Commission on Civil Rights, Mar. 12, 1981; 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.

⁶⁵ 42 U.S.C. §1973a(a) (1976).

⁶⁶ An interlocutory order is a temporary action by the court during the course of a lawsuit which decides an issue but is not a final determination of the entire controversy.

⁶⁷ *Id.* Section 3(a) also provides that examiners need not be authorized if incidents of denials of voting rights "(1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future."

⁶⁸ *U.S. v. Thurston County*, No. 78-0-380 (D. Neb. May 9, 1979) (consent decree) (see discussion of this case in the text).

⁶⁹ *U.S. v. Town of Bartelme*, No. 78-c-101 (E.D. Wisc. Feb. 17, 1978) (order granting preliminary injunction). This was an action to enforce the

⁷⁰ *U.S. v. City and County of San Francisco*, No. C-78 2521 CFP (N.D. Cal. May 8, 1980). This was an action to enforce the minority language provisions of the Voting Rights Act. The United States alleged that Chinese- and Spanish-speaking residents of the city and county were not receiving bilingual assistance in registration and voting, as required by the minority language provisions. (See the following section for a discussion of the minority language provisions.)

⁷¹ 42 U.S.C. §1973a(c) (1976).

⁷² *Id.*

⁷³ *United States v. Thurston County*, No. 78-0-380 (D. Neb., May 9, 1979) (consent decree).

requiring county commissioners to be elected from single-member districts.⁷⁴ As part of the decree, Thurston County was placed under sections 3(a) (i.e., Federal examiners will be appointed) and 3(c) (i.e., the jurisdiction must preclear its election changes) of the Voting Rights Act for 5 years.⁷⁵

Minority Language Provisions

The special provisions requiring assistance to language minorities were added to the Voting Rights Act in 1975. The act was expanded because the Congress determined that "voting discrimination against citizens of language minorities is pervasive and national in scope."⁷⁶ Congress found that such citizens have been effectively excluded from participation in the electoral process through various practices and procedures, including holding English-only elections.⁷⁷

Jurisdictions covered under sections 203(b) and 4(f)(4) of the Voting Rights Act as amended must comply with the special provisions requiring assistance to citizens of language minorities.⁷⁸ Specifically, these jurisdictions must provide:

...any 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 minority group as well as in the English language.⁷⁹

The provisions further state that where the language of the applicable minority group is oral or unwritten, or, in the case of Alaskan Natives, if the predominant language is historically unwritten, the jurisdiction only is required to furnish oral instructions, assistance, or other registration and voting information.⁸⁰ Over 100 counties and cities nationwide are covered by the minority language provisions. Table B.2 in appendix B lists those jurisdictions covered by the minority language provisions of the Voting Rights Act.

The Effect of the Voting Rights Act

Since passage of the Voting Rights Act, some impediments to registration and voting have been removed, and minority registration and voting have

increased substantially. The increase in registration and voting has also led to an increase in the number of minority elected officials, who rely substantially on minority voters to win election. The remainder of this chapter will discuss trends in the numbers of minority elected officials and minority registration in the jurisdictions that are covered under the preclearance provisions; that is, they meet one of the requirements in section 4 and are therefore required to preclear changes in voting practices and procedures in accordance with section 5 of the Voting Rights Act.

Minority Elected Officials

Black Elected Officials

The number of blacks elected to public office in the States covered by the preclearance provisions of the Voting Rights Act has been increasing steadily since the act was extended in 1975. In July 1980 a total of 2,042 blacks held public office in the Southern States under statewide coverage,⁸¹ according to data supplied by the Joint Center for Political Studies, a public interest research firm providing information and technical assistance to black elected officials, and the Virginia State Conference NAACP. The largest number of black elected officials was in Mississippi, where blacks held 387 elective offices. The State with the smallest number of black officeholders was Virginia, with 124. Table 2.1 shows the number of black elected officials, by type of position, in the Southern States covered by the Voting Rights Act. (Data in this and the following tables include all of North Carolina, although 60 of 100 counties are not subject to preclearance.)

In 1980 blacks held a wide variety of political positions. Ten State senators were black, as were 94 State representatives. The elective office that blacks held most frequently was membership on municipal governing bodies. Blacks also were often members of elected school boards. They were less frequently elected to county governing boards or to law enforcement positions (including sheriffs and judges).

"the jurisdiction to decide what materials must be provided in a minority language. A jurisdiction required to provide minority language materials is only required to publish in the language of the applicable language minority group materials distributed to or provided for the use of the electorate generally." 28 C.F.R. §55.19 (1980).

⁸⁰ 42 U.S.C. §§1973b(f)(4), 1973aa-1a(c) (1976).

⁸¹ This figure includes North Carolina which is not subject to statewide coverage under the preclearance provisions of the Voting Rights Act.

⁷⁴ *Id.* at 3.

⁷⁵ *Id.*

⁷⁶ 42 U.S.C. §1973b(f)(1) (1976).

⁷⁷ *Id.* §§1973b(f)(3), 1973aa-1a.

⁷⁸ *Id.* §1973aa-1a(e) (1976). The language minorities covered under the act are American Indians, Asian Americans, Alaskan Natives, and persons of Spanish heritage.

⁷⁹ 42 U.S.C. §§1973b(f)(4) and 1973aa-1a(c) (1976). The statute requires

TABLE 2.1 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 officials	Total
Alabama	0	0	2	13	18	40	23	9	16	110	2	5	238
Georgia	0	0	2	21	20	8	31	5	7	139	12	4	249
Louisiana	0	0	2	10	85	34	87	1	12	119	4	8	363
Mississippi	0	0	2	15	27	77	45	34	17	143	13	14	387
North Carolina ¹	0	0	1	4	18	7	42	2	13	136	16	3	247
South Carolina	0	0	0	14	34	20	47	5	13	86	9	1	238
Texas	0	1	0	13	5	18	77*	0	5	68	0	5	196
Virginia	0	0	1	4	34	5	—	3	5	71	—	1	124
Total	0	1	10	94	241	209	352	59	88	872	56	41	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.

The number of blacks holding public office in 1980 is especially striking when comparison is made with the number of blacks who held public office in 1974, before the act was extended. That year, according to data from the Joint Center for Political Studies, 964 blacks had been elected to public office in the 6 covered States in the South, plus North Carolina. (Texas was not covered at the time.) As table 2.2 shows, the number of blacks holding elective offices almost doubled in most of these States between 1974 and 1980. The largest percentage increase occurred in Louisiana, where the number of black elected officials rose 143.6 percent between 1974 and 1980. By contrast, the number of black officials elected in North Carolina rose 55.3 percent.⁸²

In most States covered under the preclearance provisions, the number of blacks increased in each type of office, and in some cases the gains were quite large. In South Carolina, for example, the number of black county and city school board members rose from 24 to 56. In Mississippi the number of blacks on county governing boards rose from 8 to 27, and the number of blacks on county and city local school boards rose from 27 to 58. The number of black mayors in Louisiana tripled, from 4 to 12, between 1974 and 1980.

These large numerical increases in the number of blacks elected to public office do not necessarily indicate that they are now achieving fair representation. Blacks remain seriously underrepresented as officeholders throughout the South. In Alabama and Georgia, for example, about one-quarter of the population is black, but 5.7 percent and 3.7 percent of the elected officials in those two States, respectively, were black in 1980. In Mississippi, over one-third of the population is black, but 7.3 percent of elected officials were black. In none of the Southern States covered under the preclearance provisions of the Voting Rights Act were blacks elected to public office at a rate approaching their proportion in the population. Table 2.3 provides data on the proportions of elected officials who are black and the black population in Southern States subject to the preclearance provisions.

The underrepresentation of blacks in public office is evident at every level, but is most obvious at the highest levels of government. Through July 1980,

few blacks had been elected to the U.S. Congress or to State senates in the Southern States covered by the preclearance provisions. Larger numbers of black elected officials, however, had been elected to municipal governing bodies or to local school boards.

Although the number of blacks elected to public office is increasing, they remain a very small percentage of all officials. For instance, over 40 percent of black officials were members of municipal governing bodies in all of the Southern States subject to preclearance, but in no Southern State did blacks constitute more than about 10 percent of municipal body members; and in most States blacks were a far smaller proportion, as can be seen in table 2.4. In Virginia, where 18.9 percent of the population is black, blacks constituted 5.2 percent of municipal governing bodies. In Georgia, where 26.8 percent of the citizens are black, 5.2 percent of municipal body members were black.

The underrepresentation of blacks as elected officials can also be seen in an analysis of elected county officials in counties with at least a 20 percent black population. Blacks were consistently underrepresented as elected county officials throughout the South in 1980. In Georgia, in 107 counties blacks constituted at least 20 percent of the population, as table 2.5 shows. Only 20 blacks served on county governing boards in those 107 counties as of July 1980. Almost half of the elected black county officials in those counties (30 of 62 officials) were school board members. Moreover, 74.8 percent of the counties that were at least 20 percent black had no black elected officials.

The same situation exists in other Southern States: most black county officials have been elected to local school boards, but not to the governing boards or to law enforcement positions; and in many counties with substantial black populations, there were no black elected county officials. The proportion of counties with at least a 20 percent black population that had no black elected county officials ranged from 15.2 percent (Louisiana) to 74.8 percent (Georgia). A list of all counties with a minimum black population of 20 percent, and the number of blacks elected to each type of county office, is shown in table D.1 in appendix D.

⁸² This report covers only changes occurring since 1975. Available data indicate, however, that there were fewer than 100 black elected officials in the 7 Southern States prior to the enactment of the Voting Rights Act in

1965. By 1968, 156 blacks had been elected to public office in these States. See U.S. Commission on Civil Rights, *Political Participation* (1968), p. 15.

TABLE 2.2 Change in Number of Black Elected Officials in Southern States Covered Under the Preclearance Provisions of the Voting Rights Act, April 1974—July 1980

State and Year	U.S. Congress		State legislature		County offices				Municipal offices				Percent increase	
	Senate	House	Senate	House	County governing board	Law enforcement officials	County school board	Other positions	Mayor	Governing body	City school board	Other elected officials		Total
Alabama														
1974	0	0	0	3	9	52	16	12	8	48	0	1	0	149
1980	0	0	2	13	18	40	23	9	16	110	2	5	0	238 + 59.7%
Georgia														
1974	0	1	2	14	8	6	26	3	2	69	5	1	0	137
1980	0	0	2	21	20	8	31	5	7	139	12	4	0	249 + 81.8
Louisiana														
1974	0	0	0	8	32	19	41	0	4	38	0	7	0	149
1980	0	0	2	10	85	34	87	1	12	119	4	8	1	363 + 143.6
Mississippi														
1974	0	0	0	1	8	41	24	19	7	62	3	23	3	191
1980	0	0	2	15	27	77	45	34	17	143	13	14	0	387 + 102.6
North Carolina ¹														
1974	0	0	0	3	7	2	29	0	8	105	5	0	0	159
1980	0	0	1	4	18	7	42	2	13	136	16	3	5	247 + 55.3
South Carolina														
1974	0	0	0	3	18	12	23	2	6	51	1	0	0	116
1980	0	0	0	14	34	20	47	5	13	86	9	1	9	238 + 105.2
Virginia														
1974	0	0	1	1	15	4	—	2	1	38	—	1	0	63
1980	0	0	1	4	34	5	—	3	5	71	—	1	0	124 + 96.8

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

Source: Joint Center for Political Studies, *National Roster of Black Elected Officials*, vol. 4 (1974), and vol. 10 (1981). Data on Virginia supplied by Virginia State Conference NAACP.

TABLE 2.3 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	12.0	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 2.4 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%
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.

Even in counties with a majority black population, blacks continue to have difficulty being elected, as table 2.6 shows. In Alabama, 10 counties had a majority black population. Two of these counties had no black elected county officials. In every covered Southern State except Texas (which has no majority black county) and Virginia, there is at least one predominantly black county with no black elected county officeholder in any position.

Hispanic Elected Officials

Data on the number of Hispanics elected to public office, although not as complete as data on blacks, indicate that Hispanics are also underrepresented as elected officials. In 1979–1980, according to data supplied by the Mexican American Legal Defense and Educational Fund (MALDEF), there were 1,138 Hispanic elected officials in the two States covered under the preclearance provisions that have large Spanish-speaking populations, Arizona and Texas. Most of the Hispanic officials were school board members (575) or members of municipal governing bodies (372). As table 2.7 shows, few Hispanics were elected to the U.S. Congress (2) or to State legislatures (32).⁸³

The underrepresentation of Hispanics in elective offices is seen by comparing the percentage of Hispanics in these two States with the percentage of Hispanic officeholders, as shown in table 2.8. In Texas, Hispanics constituted 21.0 percent of the population but were 6.3 percent of all elected officials within the sample; in Arizona, Hispanics elected to public office constituted 13.3 percent of all elected officials within the sample, and their percentage in the population was 16.2 percent. Although these figures suggest that Hispanics are well represented in Arizona, further examination reveals that Hispanics were primarily municipal body and school board members; they were underrepresented on county governing boards, and in the

State house of representatives. The percentages of officials in each office who were Hispanic are shown in table 2.9.

Data for county elected officials in Texas show that Hispanics were also underrepresented in these positions. Texas has 54 counties in which Hispanics constitute at least 20 percent of the population.⁸⁴ In 1979 these counties had 77 Hispanic members of governing boards, an average of less than 1.5 per county.⁸⁵ These 54 counties had 9 elected Hispanic law enforcement officials (county judges), 430 local school board members, and 47 other elected county officials (including county clerk, tax assessor and collector, auditor, and county treasurer). In 8 of the 54 counties (14.8 percent) in which Hispanics constituted at least 20 percent of the population, there were no elected Hispanic county officials.⁸⁶

Most of the Hispanic elected officials in Texas were in the 25 counties in which Hispanics constituted a majority of the population. Of all elected Hispanic county officials in Texas, 64 of the governing board members (77.1 percent), 8 of the county judges (72.7 percent), 312 of the school board members (65.3 percent), and 43 of the other elected county officials (91.5 percent) were in these 25 predominantly Hispanic counties. For example, Hidalgo County, which was 81.3 percent Hispanic, had 3 Hispanic governing board members, 1 Hispanic law enforcement official, 84 Hispanic school board members, and 3 other Hispanic officials. A complete list of all counties in Texas with at least a 20 percent Hispanic population, and the number of elected Hispanic officials in those counties, is in table D.2 in appendix D.

Minority Registration

Data on minority registration in States covered by the preclearance provisions of the Voting Rights Act were collected by the Bureau of the Census in 1976.⁸⁷ These data, which remain the most recent on

⁸³ Although the States of California and Colorado are not covered under section 5, certain counties are covered by section 5 and section 203 of the Voting Rights Act and data for these States are included in tables 2.7, 2.8, and 2.9. These States also have relatively few Hispanic elected officials. (Table B.3 in appendix B lists jurisdictions covered by section 5 and section 203.)

⁸⁴ U.S., Department of Commerce, Bureau of the Census, *Census of Population and Housing: 1980*, PHC80-V-45, table 1, pp. 4–32.

⁸⁵ Counties in Texas have an average of 4.0 governing board members. U.S., Department of Commerce, Bureau of the Census, *Popularly Elected Officials*, No. GC77(1)-2 (1979), table 7; data on Hispanics in elected positions in Texas were compiled by the Southwest Voter Registration Education Project, "Texas Roster of Spanish Surname Elected Officials" (July 1980) (hereafter cited as "Texas Roster").

⁸⁶ "Texas Roster."

⁸⁷ This survey was conducted by the Bureau of the Census pursuant to the requirements of section 207 of the Voting Rights Act of 1965 as amended (42 U.S.C. §1973aa-5 (1976)). Section 207 was added to the Voting Rights Act in 1975. This section requires the Bureau of the Census to conduct a survey of registration and voting in jurisdictions covered by the preclearance provisions following every Federal election. It also allows the U.S. Commission on Civil Rights to designate jurisdictions to be surveyed after any election. Commission staff met with personnel from the Bureau of the Census on numerous occasions following passage of the 1975 amendments, to discuss plans for a survey of registration and voting in all counties covered by the preclearance provisions. In 1976 the Bureau of the Census conducted a limited survey, which did not include data on a county-by-county basis for States under statewide coverage. After completion of this

TABLE 2.5 Black Elected County Officials in Southern States Covered Under the Preclearance Provisions of the Voting Rights Act, in Counties with 20 Percent or More Black Population, July 1980

State	Counties at least 20 percent black 1980	County governing board	Law enforcement officials	Local school board	Other county positions*	Counties with no black county elected officials	
						Number	Percent
Alabama	37	18	39	23	9	22	59.5%
Georgia	107	20	7	30	5	80	74.8
Louisiana	46	76	32	81	0	7	15.2
Mississippi	65	27	75	44	34	37	56.9
North Carolina ¹	55	16	6	29	0	23	41.8
South Carolina	40	32	20	45	5	14	35.0
Texas	28	3	4	19**	0	13	46.4
Virginia	42	33	5	—	3	19	45.2

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

* Other county positions includes election commissioners, treasurers, tax assessors, etc.

** School board members elected in independent school districts in Texas.

— 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 2.6 Black Elected County Officials in Southern States Covered Under the Preclearance Provisions of the Voting Rights Act, in Counties with 50 Percent or More Black Population, July 1980

State	Counties at least 50 percent black 1980	County governing board	Offices held			Counties with no black county elected officials	
			Law enforcement officials	Local school board	Other county positions*	Number	Percent
Alabama	10	16	26	20	9	2	20.0%
Georgia	19	9	7	9	5	9	47.4
Louisiana	6	13	8	18	0	1	16.7
Mississippi	21	21	61	37	29	4	19.0
North Carolina ¹	7	2	0	7	0	3	42.9
South Carolina	12	16	12	8	4	2	16.7
Texas	0	0	0	0**	0	0	0.0
Virginia	5	11	3	—	3	0	0.0

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

* Other county positions include election commissioners, treasurers, tax assessors, etc.

** School board members elected in independent school districts in Texas.

— 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 2.7 Hispanic Elected Officials, by State, 1979–1980

State	U.S. Congress	State legislature		County governing board	County judges	School board members	Mayor	Municipal governing body	Total
		Senate	House						
Arizona	0	5	6	4	—	97	14	79	205
California ¹	1	3	3	16	—	319	20	134	496
Colorado ²	0	3	5	10	—	49	11	94	172
Texas	2	4	17	83	11	478	45	293	933
Total	3	15	31	113	11	943	90	600	1,806

— Not an elective position.

¹ Statewide data, including the three counties subject to preclearance.

² Statewide data, including one county subject to preclearance.

Source: Mexican American Legal Defense and Educational Fund, "Chicano Political Participation in the Southwest, 1979–80" (1980). Data on Texas from Southwest Voter Registration Education Project, "Texas Roster of Spanish Surname Elected Officials" (July 1980).

TABLE 2.8 Hispanics as Percentage of Population and Elected Officials, by State, 1979–1980

State	Population percent Hispanic, 1980	Elected officials ³		
		Total officials	Hispanic officials	
			Number	Percent of total
Arizona	16.2%	1,547	205	13.3%
California ¹	19.2	7,595	496	6.5
Colorado ²	11.7	3,143	172	5.5
Texas	21.0	14,880	933	6.3

¹ Statewide data, including the three counties subject to preclearance.

² Statewide data, including one county subject to preclearance.

³ Totals exclude most elected judicial offices and elected positions in special district governments. Data on Hispanic representation in these offices are not available.

Source: Mexican American Legal Defense and Educational Fund, "Chicano Political Participation in the Southwest, 1979–80" (1980). Data on Texas from Southwest Voter Registration Education Project, "Texas Roster of Spanish Surname Elected Officials" (July 1980).

Table 2.9 Hispanic Elected Officials, as Percentage of all Elected Officials, by State, 1979–1980

State	U.S. Congress	State legislature		County governing board	Local school board	Municipal governing body	Population percent Hispanic, 1980
		Senate	House				
Arizona	0	16.7%	10.0%	9.3%	10.2%	18.9%	16.2%
California ¹	2.2%	7.5	3.8	5.7	5.9	6.1	19.2
Colorado ²	0	8.6	7.7	5.4	4.8	5.7	11.7
Texas	7.7	12.9	11.3	8.1	6.1	5.9	21.0

¹ Statewide data, including the three counties subject to preclearance.

² Statewide data, including one county subject to preclearance.

Sources: U.S., Department of Commerce, Bureau of the Census, *Popularly Elected Officials*, vol. 1, no. 2 (1979), GC77 (1)-2; and Mexican American Legal Defense and Educational Fund, "Chicano Political Participation in the Southwest, 1979–80" (1980). Data on Texas from Southwest Voter Registration Education Project, "Texas Roster of Spanish Surname Elected Officials" (July 1980).

TABLE 2.10 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.

TABLE 2.11 Estimated Voting Age Population and Registered Voters, by State and Race, 1980

	Voting age population (1980 estimates)		Registered voters		Percent registered		Difference
	Black	White	Black	White	Black	White	
Louisiana	759,000	2,007,000	463,648	1,533,566	61.1%	76.4%	15.3%
North Carolina	796,000	3,216,000	439,713	2,313,722	55.2	71.9	16.7
South Carolina	573,000	1,483,000	319,826	914,363	55.8	61.7	5.9

Sources: U.S., Department of Commerce, Bureau of the Census, *Projections of the Population of Voting Age for States: November 1980*, series P-25, no. 879 (1980), table 1; State of Louisiana, Secretary of State, Dec. 31, 1980; State of North Carolina, State Board of Elections, Oct. 6, 1980; State of South Carolina, State Election Commission, Oct. 24, 1980. Data for other covered States not available.

registration by race or ethnicity in all jurisdictions subject to preclearance, are summarized in table 2.10.⁸⁸ This table shows that substantial disparities in registration rates between whites and minorities continued in virtually every covered State. In all States, approximately two-thirds to three-fourths of the white voting age population was registered in 1976, but a far smaller percentage of minorities were registered. In Louisiana, for example, 78.8 percent of the whites were registered to vote, but 63.9 percent of the blacks. In Alabama 75.4 percent of the whites were registered, but 58.1 percent of the blacks. In the two covered counties in South Dakota, 77.3 percent of the whites were registered, but 52.7 percent of the American Indians. In Arizona 71.5 percent of the whites, but 48.0 percent of the American Indians and 60.9 percent of the Hispanics were registered. In Alaska 62.8 percent of the Alaskan Natives were registered, compared to 73.0 percent of the whites. In covered counties in New York two-thirds of the whites (69.8 percent), but about half of the Hispanics (51.4 percent) were registered in 1976.

Statewide registration statistics for the 1980 election are available for only three of the States studied: Louisiana, North Carolina, and South Carolina. (Other Southern States subject to preclearance do

survey the Commission requested that the next survey, following the 1978 Federal election, include these data, but funds needed to complete it were not approved by the Congress, and no further surveys were done. The 1976 survey was completed in 78 jurisdictions covered by section 4(a) and in the 9 States under statewide coverage. The data are for registration as reported in personal interviews; actual registration figures may be lower.

⁸⁸ This is the only survey of registration by race in all jurisdictions covered by the preclearance provisions; similar data from other years are not available for comparison. Estimates of registration prior to the enactment

not collect voter registration statistics by race, except for the State of Georgia, which has recently begun to do so.) In each of these three States, the black registration rate is substantially lower than the white, as shown in table 2.11. In Louisiana 76.4 percent of the white voting age population was registered, in contrast to 61.1 percent of the black voting age population. Statewide figures for North Carolina show that 71.9 percent of the whites were registered, compared with 55.2 percent of the blacks. In South Carolina, 61.7 percent of the whites and 55.8 percent of the blacks were registered.

Conclusion

The figures presented in this chapter show that minorities are still considerably underrepresented as elected officials, despite progress that has been made since the Voting Rights Act was extended in 1975. Moreover, minority registration rates in 1976 continued to lag well behind the rates of whites in virtually every jurisdiction covered under the original special provisions; more recent surveys are not available. These data indicate that minorities still face numerous barriers in registering, voting, and running for office. The problems that they continue to encounter are discussed in the following chapters.

of the Voting Rights Act, however, indicated that the percentage difference in registration rates for blacks and whites ranged from about 23 percent to about 63 percent in the States under statewide coverage. In 1965, for instance, it was estimated that in Louisiana 80.5 percent of the white voting age population was registered, and about 31.6 percent of the black voting age population, a difference of 48.9 percentage points. U.S., Commission on Civil Rights, *The Voting Rights Act: Ten Years After* (1975), table 3, p. 43.

Registration

The Voting Rights Act of 1965, as amended, prohibits registrars from refusing to allow minorities to register.¹ It also bans the use of literacy tests that were formerly used to prevent minorities from registering and voting.² Although minority registration rates have increased substantially since 1965,³ minorities nevertheless experience disproportionately low registration rates compared to whites, as chapter 2 showed.

Low registration rates have been attributed to a combination of inconveniences and obstacles⁴ that have made it very difficult for minorities to register. The Washington Research Project, a private interest research organization, and the League of Women Voters Education Fund, have summarized in separate reports some of these problems: Registration offices are usually located in courthouses and typically have been open only during business hours; public transportation to registration offices, especially for those who live in rural areas, has usually been unavailable; minority deputy registrars, who could facilitate registration in minority communities, have rarely been appointed.⁵

In its 1972 report, *The Shameful Blight*, the Washington Research Project explained why these obstacles have disproportionately affected registration rates for blacks in the South:

These barriers are doubly burdensome to blacks in the South. First, because blacks in the past were not allowed to vote, the initial process of registration has not yet been completed for them. Secondly, inconvenient hours are more burdensome for blacks, whose economic situation frequently does not allow them the flexibility [of] many whites. . . . In addition, lower educational levels—also the result of discrimination—and the memory of past discrimination make complicated forms and unhelpful or discourteous [registration] staff a greater problem [for them].⁶

¹ 42 U.S.C. §§1971, 1973 to 1973bb-1 (1976).

² *Id.*

³ Washington Research Project, *The Shameful Blight: The Survival of Racial Discrimination in Voting in the South* (Washington, D.C.: 1972), p. 12 (hereafter cited as *Shameful Blight*); U.S., Commission on Civil Rights, *The Voting Rights Act: Ten Years After* (1975), pp. 52-58 (hereafter cited as *Voting: Ten Years After*).

In addition to these problems, there are other barriers that affect minority registration adversely. These include the “discriminatory closing of registration offices, physical and economic intimidation of [minority] registrants, interference with [minority] voter registration campaigns, and segregation in the registration process.”⁷ The purpose of this chapter is to determine whether conditions such as these continue to exist for minorities in jurisdictions studied by the Commission. Registration problems confronted by members of minority language communities are primarily addressed in chapter 7.

Harassment and Intimidation

In the past, minorities have reported that when they attempted to register, white registration officials were discourteous and intimidating towards them. One study, for example, reported that blacks in some areas had expressed fear of registering to vote, had experienced “economic reprisals” for registering, and had been harassed and intimidated by registration officials to the point that they refused to register.⁸ In some of the jurisdictions that the Commission studied, blacks continue to be discouraged from registering and participating in registration activities because white registrars reportedly are discourteous and harass minorities who come to register, and otherwise discourage their participation in registration activities. Instances of harassment and intimidation reported to the Commission are discussed below.

⁴ League of Women Voters Education Fund, *Administrative Obstacles to Voting* (1972) (hereafter cited as *Administrative Obstacles*).

⁵ *Shameful Blight*, ch. 2, and *Administrative Obstacles*.

⁶ *Shameful Blight*, p. 13.

⁷ *Ibid.*

⁸ *Ibid.*, pp. 18-19.

In 1980 a black 25-year-old female attorney went to the Greensville County courthouse in Emporia, Virginia, to register to vote.⁹ She reported that the attitude of the white person who registered her was “nasty” and that “the atmosphere was uncomfortable.”¹⁰ The registrar was very “noncongenial” towards the black applicant until she learned that the registrant was an attorney.¹¹ According to the respondent, “She [the registrar] became more congenial towards me.”¹² The respondent also noted that after asking about her occupation, the registrar then wanted to know the name of her employer.¹³ The Virginia registration form does not contain any specific question for the name of an employer.

The registrant said that this questioning could easily deter some blacks from registering, because “they are scared of whites asking them questions. They, especially some of the older population, still remember the way things used to be to register and having to go through a lot of questions reminds them of those times.”¹⁴

In Port Gibson, Mississippi, the city clerk, who is the registrar for city elections, described the registration process as being “simple and quick.”¹⁵ According to her, registration is an informal procedure whereby the registrant gives his or her name, address, and employment.¹⁶ According to Mississippi law, every person entitled to be registered shall sign his or her name in the registration book and “thereupon be registered. . . .”¹⁷ The Claiborne County tax assessor who lives in Port Gibson explained that the registration of a white may be a “simple” process, but that the registration of blacks may “take up to 1 hour” to complete.¹⁸ The respondent also noted, “Once the clerk hears of black registration efforts, she will start erratic registration [procedures].”¹⁹ For example, he ex-

plained that when a group of blacks comes into the office to register, “the registrar may come in at 9, take a break at 10, and then take a long lunch.”²⁰ He stressed that these practices have occurred since blacks have been registering to vote in Port Gibson.²¹

He also indicated that whites who come to register are treated differently from blacks, contrasting the registration procedure he once witnessed for a black person and a white person. The registrar was friendly and congenial²² towards the white person, but subjected the black person to “interrogation.”²³ The tax assessor said the questioning of black applicants by the registrar is “intimidating.”²⁴ The registrar asks blacks such unrequired questions as, “Do you own the house you’re staying in?” and “How many children do you have?”²⁵ Once he observed the clerk asking an elderly black woman such questions. “The woman became so nervous that she could not answer any of the questions.”²⁶

To register in Port Gibson, applicants have to give information on their employment.²⁷ The tax assessor thinks that asking persons, especially blacks, about their employment is a “form of harassment.”²⁸ Once he heard the registrar ask a black person, “Do you know if [your employer] knows you’re here registering?”²⁹ Questions about an individual’s employment can be more intimidating to older black persons because, according to the respondent, “To an older black, this [type of questioning] is fearful. The fear is that the white employer will find out. . . . For the older black, it’s a scare tactic. The older black person also feels that the employer knows who he or she is going to vote for.”³⁰

A community leader and former mayoral candidate in Port Gibson who gave a similar account stated that the registrar should show “common

⁹ Alda White, attorney for Emporia Legal Services, interview in Emporia, Va., Jan. 28, 1981.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid. For the response of Sarah Harris, city registrar for Emporia, Va., to these statements, see appendix G of this report.

¹⁴ Ibid.

¹⁵ Carole Brezeale, city clerk, interview in Port Gibson, Miss., Dec. 5, 1980 (hereafter cited as Brezeale Interview).

¹⁶ Ibid.

¹⁷ Miss. Code Ann. §23-5-31 (Supp. 1980). The Mississippi election statute does not require applicants to complete applications in the presence of the registrar. Miss. Code Ann. §25-5-303 (4) (Supp. 1980). The registrar in Port Gibson stated that there is no application form to fill out. Applicants must sign the registration book giving their name, address, and employment. Brezeale Interview.

¹⁸ Evan Doss, tax assessor, Claiborne County, interview in Port Gibson, Miss., Dec. 2, 1980 (hereafter cited as Doss Interview).

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid. Evan Doss’ discussion on registration practices in Port Gibson pertains to Carole Brezeale, the current clerk, and two former city clerks. Evan Doss, tax assessor, Claiborne County, telephone interview, June 4, 1981; Kathleen Cade served from 1944 to 1976, and Evelyn Segrest served from 1976 to 1980. Kathleen Cade, former city clerk, telephone interview, June 19, 1981. Both former clerks were interviewed by Commission staff on Dec. 5, 1980.

²² Ibid. Doss Interview.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Miss. Code Ann. §23-5-303 (Supp. 1980).

²⁸ Doss Interview.

²⁹ Ibid.

³⁰ Ibid.

courtesy and decency” when registering all persons.³¹ He noted that “hostile” questions discourage blacks from registering.³² Blacks also feel intimidated in Port Gibson if they go to register and the police chief is present. According to the community leader, “Sometimes the police chief [sits] in city hall if there is a known registration drive before an election.”³³ The respondent said that the police chief’s presence “makes black people afraid to register. . . .”³⁴ While Mississippi law permits the appointment of bailiffs for the purposes of keeping the peace at elections,³⁵ the police chief’s presence may have been intimidating to some blacks. One respondent indicated that since there is so much intimidation, registration of blacks would be more effective if conducted in black churches.³⁶

In Johnson County, Georgia, respondents in Wrightsville, the county seat, complained that blacks are intimidated when they register to vote because of the presence of the white sheriff. According to a black community and religious leader, the sheriff “was at the registration office during much of the time that voter registration was taking place.”³⁷ Blacks felt intimidated because they “are afraid of him.”³⁸ Some blacks who learned that the sheriff was in the registration office were discouraged from registering, because they did not want “the sheriff to see them in the courthouse.”³⁹ The community leader further explained that blacks feel that if the sheriff “thinks they are registering to get him out of office, there’s no telling what he might do to them.”⁴⁰

The fear that some blacks have of the sheriff also discourages them from taking other blacks to register. In 1980 an older black citizen, who lives in Wrightsville and who had been involved in registration drives before, drove two blacks to the courthouse so they could register to vote.⁴¹ She said that

while she waited for them, “the sheriff and three other men in a car drove next to her parked car.”⁴² According to the respondent, the sheriff “stared” at her. “The way he looked scared me to death.”⁴³ She said that the sheriff drove slowly around her car “a total of three times.”⁴⁴ As a result of this experience, the respondent stated, “I ain’t going back there [to the courthouse] anymore. . . .I’m too old to be beaten up.”⁴⁵

In Georgetown, South Carolina, one black community leader stated that the location of the registration office coupled with the hostile attitude of the former registrar has had an intimidating effect on blacks.⁴⁶ He noted that the location, behind the sheriff’s office, has helped to discourage blacks from coming there to register.⁴⁷ He also argued that blacks are not likely to come to the registration office because, in the past, blacks did not feel welcome and the registrar had a “nasty” attitude towards them.⁴⁸ He further explained that “when one black learns from another black about the atmosphere [at the registration office], that black is discouraged from going to register.”⁴⁹ This “word-of-mouth” communication about registration experiences adversely affects the number of blacks who register. The availability of alternative registration locations in Georgetown County during major registration drives, however, helped to make registration more accessible to blacks who may feel intimidated by the central registration location or who may be deterred from registering because of the attitude of the former registrar.

Access to Registration

Reports published since the passage of the Voting Rights Act have also indicated that one of the major

³¹ James Miller, Urban League field officer and community leader, interview in Port Gibson, Miss., Dec. 2, 1980.

³² Ibid. For the responses of Kathleen Cade and Evelyn Segrest, former city clerks in Port Gibson, to these statements, see appendix G of this report.

³³ Ibid. The police chief’s office is not located in city hall, Evan Doss, tax assessor, Port Gibson, Miss., telephone interview, June 4, 1981 (hereafter cited as Doss Telephone Interview).

³⁴ Ibid.

³⁵ Miss. Code Ann. §23-5-109 (1972). The police chief has never served as a bailiff for registration or voting. Doss Telephone Interview. For the response of Harvey Jones, the police chief of Port Gibson, to these statements, see appendix G of this report.

³⁶ Doss Interview.

³⁷ E.J. Wilson, community and religious leader and advisor, Johnson County Justice League, interview in Wrightsville, Ga., Nov. 18, 1980 (hereafter cited as Wilson Interview).

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Community leader, interview in Wrightsville, Ga., Nov. 18, 1980.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid. For the response of Roland Attaway, sheriff of Johnson County, Georgia, to these statements, see appendix G of this report.

⁴⁶ Morris Johnson, community leader, interview in Georgetown, S.C., Nov. 4, 1980. Events discussed in Georgetown occurred during the appointment of Gordon Miller, Jr., who served as registrar until his retirement in December 1980. For the response of Gordon Miller, Jr., former chairman, Georgetown County Board of Registration, S.C., to these statements, see appendix G of this report.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

problems faced by minorities in getting registered is access to registration sites.⁵⁰ Many of these problems stem from the fact that registration is an urban, business-hour process that is, for the most part, inaccessible to rural and low-income people either because they cannot afford transportation to the registration location (usually the county courthouse) or because the registration office is closed before they can get there to register.⁵¹ In 1977 over 44 percent of the black population in the South lived in nonmetropolitan areas and over 39 percent of this population was below the poverty level.⁵² If registration is to be accessible to them, registrars will have to take more affirmative steps toward making the registration process more flexible.

In many cases, this has been a serious problem. For example, in *Lodge v. Buxton*,⁵³ the U.S. Court of Appeals for the Fifth Circuit affirmed a ruling by the U.S. District Court for the Southern District of Georgia that the at-large method of electing county commissioners in Burke County, Georgia, was unconstitutional. In that case, the court of appeals affirmed the district court's finding that the county had been "unresponsive to the particularized needs of the black community."⁵⁴ This included their continued resistance to making registration accessible to black voters in the 54 percent black county. According to the court:

The county did, indeed, establish additional registration sites. But only after a pre-trial conference before and "friendly persuasion" by this court. The defendants' tepidity was further demonstrated by the fact that a period of 4 months was required to get the registration cards to the new sites, and that the new sites were operative only a short while before the registration period ended. Admittedly, the county commissioners recently approved a transportation system that should help solve access problems for some, but only after being prodded by the prosecution of this lawsuit. The commissioners' sluggishness in this respect is another example of their unresponsiveness to the black members of the community.⁵⁵

In jurisdictions that Commission staff visited this was also found to be a problem. Inaccessible regis-

tration was reported in Johnson County, Georgia, where the registration rate for whites exceeded that for blacks by 32 percentage points in 1980.⁵⁶ In Johnson County, persons who want to vote in county elections must register at the county courthouse in Wrightsville. The office is open Monday through Friday from 9 a.m. to 5 p.m.⁵⁷ One black community leader reported that the location of the office is not convenient for persons who work outside of Wrightsville.⁵⁸ According to the respondent, "Many people do not have transportation to get to the registrar. Either they don't have a car or the car is at work."⁵⁹ A large percentage of the blacks in Johnson County are poor and, thus, would have difficulty in affording transportation to the registrar's office. According to the 1970 census, 65 percent of all black families in the county were below the poverty level while the countywide average among all families was 32 percent.⁶⁰ As a result of limited access to registration, eligible black voters are less able to register to vote.⁶¹

Blacks in Johnson County have attempted to solve this situation by requesting that the registrar take affirmative steps to increase black registration. In preparation for the August 1980 primary elections, a community leader attempted to increase black registration between May and June 1980.⁶² He asked the county registrar to open the registration office on Saturdays and to appoint black deputy registrars.⁶³ The respondent stated that the county registrar "promised [to extend registration office hours to Saturdays] and then changed her mind."⁶⁴ According to the community leader, the registrar also said that there was no need to appoint black deputy registrars.⁶⁵ The respondent contacted the American Civil Liberties Union (ACLU) in Atlanta, Georgia, for assistance.⁶⁶ An ACLU attorney wrote to the registrar and called the Governor's office to obtain

⁵⁰ *Shameful Blight*, pp. 13-17; *Voting: Ten Years After*, pp. 71-78.

⁵¹ *Ibid.*

⁵² The black poverty rate is for all nonmetropolitan blacks. Most blacks (90.6 percent), however, who live in nonmetropolitan areas live in the South. The corresponding poverty rate for nonmetropolitan whites is 11.2 percent. U.S., Department of Commerce, Bureau of the Census, *Social and Economic Characteristics of the Metropolitan and Nonmetropolitan Population: 1977 and 1970*, series P-23, No. 75 (1978), table 3; U.S., Department of Commerce, Bureau of the Census, *Characteristics of the Population Below the Poverty Level: 1978*, series P-60, No. 124 (1980), table 4.

⁵³ *Lodge v. Buxton*, 639 F.2d 1376 (5th Cir. 1981).

⁵⁴ *Id.* at 1376.

⁵⁵ *Id.* at 1377, note 38.

⁵⁶ Registration rates were calculated on the basis of data supplied by the Office of Secretary of State, State of Georgia, and Office of Planning and Budget, Georgia State Data Center.

⁵⁷ Wilson Interview; Gail Bentley, county registrar, interview in Wrightsville, Ga., Nov. 20, 1980 (hereafter cited as Bentley Interview).

⁵⁸ Wilson Interview.

⁵⁹ *Ibid.*

⁶⁰ U.S., Department of Commerce, Bureau of the Census, *Census of Population: 1970*, vol. 1, part 12, pp. 518, 570. Where 1970 poverty figures are cited, 1980 census data are not yet available.

⁶¹ Wilson Interview.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.* Georgia law permits registrars to be appointed. Ga. Code Ann. §34-604(a) (Supp. 1978).

⁶⁶ Wilson Interview.

the necessary assistance for black citizens in Johnson County.⁶⁷ Subsequently, the registrar agreed to open the registration office for 2 half-days on Saturdays.⁶⁸ In addition, the registrar appointed three deputy registrars—two blacks and one white.⁶⁹ The function of the deputy registrars in Johnson County was limited, however. According to the registrar, their role was only to transport people to the county courthouse to register.⁷⁰ One community leader remarked that these persons “actually served no purpose,”⁷¹ since they were not allowed to register people. One reason given for the deputy registrars being excluded from the total registration process in Wrightsville was that they had not received training.⁷² In addition, the registration drive was nearly over when the deputy registrars were appointed.⁷³ The letter from the ACLU requesting the appointment of deputy registrars was written on June 2, 1980, but the board did not make the appointments until July 1980. This left almost no time for the deputy registrars to serve since the registration deadline for the August primary was July 7.⁷⁴

In Auburn, Alabama (Lee County), blacks complained that they did not have access to the registration process because deputy registrars had not been appointed. Alabama law permits the appointment of deputy registrars,⁷⁵ and in May 1980 Governor Fob James wrote to all boards of registrars asking them “individually and collectively. . . [to] appoint those citizens who apply to become Deputy Registrars, in keeping with the spirit and intent of the law.”⁷⁶ Prior to this, an NAACP official in Auburn had written letters to legislators requesting that the county registrar appoint deputy registrars.⁷⁷ The problem had been particularly acute since over 40 percent of all black families in this county are below the poverty level and often do

not have the time or resources to make the trip to the registration office in Opelika.⁷⁸ Currently, there is no public transportation between Auburn and Opelika.⁷⁹

In June 1980 the NAACP official and two other black citizens were deputized to conduct a registration drive in the black community.⁸⁰ According to one respondent, however, these drives have been sporadic and often terminated with little notice from the registrar.⁸¹ In general, the respondent stressed that “registration is kept a very closed process.”⁸²

The overall result of this lack of access has been low black registration rates. Although it is impossible to calculate precisely registration rates by race, since Lee County does not tabulate this information, Margaret Latimer, professor of political science at Auburn University, has estimated that the black registration rate continues to trail that of whites.⁸³ In fact, she has estimated that in 1970, after a period of major increases in black registration, the white rate still surpassed the black rate by 25 percent.⁸⁴

Butts County, Georgia, is a sparsely populated county in which 35 percent of the black families are below the poverty level.⁸⁵ Efforts to establish affirmative measures to boost registration among the predominantly poor black population have met with resistance from local registration officials. In March 1980 a black community leader requested assistance from the American Civil Liberties Union (ACLU) in his efforts to obtain greater access to registration.⁸⁶ According to the complaint, registration in the county is “only allowed at the tax commissioner’s office located at the courthouse” in Jackson.⁸⁷ The community leader’s concern was that many potential black voters work outside of Butts County and are

⁶⁷ Christopher Coates, ACLU Foundation, Southern Regional Office, Atlanta, letter to Raymond Carter, Board of Registrars of Johnson County, Ga., June 2, 1980 (hereafter cited as Coates Letter).

⁶⁸ Wilson Interview.

⁶⁹ Bentley Interview.

⁷⁰ Ibid.

⁷¹ Wilson Interview.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Coates Letter; Wilson Interview.

⁷⁵ Ala. Code §17-4-136, 17-4-158 (Supp. 1980).

⁷⁶ Fob James, Governor of Alabama, letter to all boards of registrars, May 6, 1980.

⁷⁷ Barbara Pitts, community leader and officer in the Auburn, Ala., NAACP, interview in Auburn, Ala., Sept. 12, 1980 (hereafter cited as Pitts Interview); Barbara Pitts, president, Auburn Alumnae Chapter, Delta Sigma Theta Sorority, Inc., letter to Bill Nichols, U.S. Congressman, Auburn, Ala., Sept. 20, 1979; Barbara Pitts, chairperson, Auburn political and social action committee, letter to Ted Little, State senator, Auburn, Ala., Feb. 20, 1980.

⁷⁸ Pitts Interview; U.S., Department of Commerce, Bureau of the Census, *Census of Population: 1970*, vol. 1, part 2, pp. 377, 401.

⁷⁹ Pitts Interview.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Margaret Latimer, assistant professor of political science, Auburn University, telephone interview, May 28, 1981.

⁸⁴ Margaret Latimer, “Voter Participation in the Rural South: Before and After the Voting Rights Act” (preliminary research report delivered at the 1976 annual meeting of the Southern Political Science Association, Atlanta, Nov. 4-6, 1976), p. 4.

⁸⁵ U.S., Department of Commerce, Bureau of the Census, *Census of Population: 1970*, vol. 1, part 12, pp. 512, 565.

⁸⁶ Christopher Coates, American Civil Liberties Union, Southern Regional Office, Atlanta, Ga., letter to A.L. Weavers, chief registrar, Butts County, Ga., Mar. 14, 1980 (hereafter cited as Coates Letter).

⁸⁷ Ibid.

unable to come to the courthouse to register during workdays.⁸⁸ He requested that "the Board of Registrars appoint some deputy registrars who would be authorized to register people at a designated site(s) located in the predominantly black residential area."⁸⁹ Under Georgia law, the board may appoint deputy registrars and designate alternate locations for registration.⁹⁰

In response to a letter from the ACLU, the Butts County Board of Registrars, which consists of one black and two whites, maintained that the office at the courthouse "is adequately staffed" to handle registration responsibilities.⁹¹ The board agreed, however, to extend the office's operation to "two Saturdays before the final day to register for the primary election and two Saturdays before the final day to register for the general election, from 8:00 a.m. to 4:00 p.m."⁹² In addition, the board said that it would place "a special table" for registration "in the hallway" of the courthouse on these four Saturdays.⁹³ The board has planned to appoint another black deputy registrar who "will be teamed" with the present black registrar, and the two will operate the special table.⁹⁴ The board has also promised "suitable advance advertisement" of these "special" registration procedures.⁹⁵

Despite these proposed remedies, Butts County still lacks any registration activities outside the county courthouse. In November 1980 the black registration rate trailed the white rate by over 37 percent;⁹⁶ 73.7 percent of voting age whites were registered, but only 36.2 percent of voting age blacks were registered.⁹⁷

Purging and Reregistration

Problems related to purging and reregistration occur when the names of persons are removed without their knowledge from the registration list, or when voters have not been notified adequately that they must reregister to vote. Unless all of the technical provisions of these two procedures are

⁸⁸ A.L. Weaver, Zella Mae Taylor, and Levi Ball, Butts County Board of Registrars, letter to Christopher Coates, American Civil Liberties Union, Southern Regional Office, Atlanta, Ga., Mar. 25, 1980 (hereafter cited as Weaver Letter).

⁸⁹ Coates Letter.

⁹⁰ Ga. Code Ann., §§34-604(a) 34-613(b), and 34-610(a)(d) (Supp. 1978).

⁹¹ Weaver Letter.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Registration rates were calculated on the basis of data supplied by the Office of Secretary of State, State of Georgia, and Office of Planning and Budget, Georgia State Data Center.

communicated to all citizens, and the participation in them by minorities is encouraged, purging and reregistration activities can be discriminatory in effect.

In 1975 the State of Texas submitted a bill requiring purging and reregistration to the Department of Justice for preclearance under section 5 of the Voting Rights Act.⁹⁸ The bill required a purge of all currently registered voters and terminated the registration of those who failed to reregister by March 1, 1976.⁹⁹

The Attorney General objected to the change. Although he found "nothing to suggest a discriminatory purpose to the purge,"¹⁰⁰ he did find a potentially discriminatory effect:

With regard to cognizable minority groups in Texas, namely, blacks and Mexican-Americans, a study of their historical voting problems and a review of statistical data, including that relating to literacy, disclose that a total voter registration purge under existing circumstances may have a discriminatory effect on their voting rights. . . . Moreover, representations have been made to this office that a requirement that everyone register anew, on the heels of registration difficulties experienced in the past, could cause significant frustration and result in creating voter apathy among minority citizens. . . .¹⁰¹

Given these circumstances, the Attorney General stressed that "we are unable to conclude. . . that implementation of such a purge in Texas will not have the effect of discriminating on account of race or color and language minority status."¹⁰²

In February 1977 officials in Lee County, Mississippi, submitted to the U.S. Attorney General, pursuant to section 5 of the Voting Rights Act, a request to change its reregistration procedures.¹⁰³ The Department of Justice objected to the submission because Lee County could not prove that the proposed change would not be discriminatory in purpose or effect. The objection letter stated that "black residents were not involved in the formulation of the reregistration plans; there are no black deputy registrars in the county, nor are blacks in any

⁹⁷ Ibid.

⁹⁸ J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Mark White, secretary of state, State of Texas, Dec. 10, 1975.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to W.P. Mitchell, attorney at law, Tupelo, Miss., Apr. 1, 1977.

other way intended to be involved in the conduct of the reregistration.”¹⁰⁴ The county officials did not propose to send, by mail, a notice of the need for reregistration and planned to require “personal reregistration.”¹⁰⁵ Reregistration would be made available at the county courthouse “only during regular work hours” and on “a small number of Saturdays.”¹⁰⁶

Conclusion

Registration for minorities should be no more difficult than it is for whites. However, given the depressed economic status of many minority communities, restrictive registration practices are especially burdensome. Because of past discrimination against minorities and the continuing economic dependence of minority communities, restrictive registration practices ensure limited minority access to the electoral process. If the registration process does not increase the percentage of minority voters, then minorities will remain permanently at a disadvantage. Their past exclusion from the election process, therefore, warrants additional consideration on the part of officials in providing flexible registration procedures.

The Commission found that the depressed economic status of minority communities coupled with other obstacles to registration continues to retard minority registration in jurisdictions subject to pre-clearance. In Emporia, Virginia; Port Gibson, Mis-

issippi; and Johnson County, Georgia, minority respondents reported harassment during registration.

In addition, minority organizations and private citizens who have attempted to secure more flexible registration procedures reported lack of cooperation or hostility on the part of registration officials. In Johnson County, Georgia; Lee County, Alabama; and Butts County, Georgia, minority respondents reported problems in implementing more flexible registration procedures even though the appropriate State laws permitted these changes. In these jurisdictions, registrars have been reluctant to remedy problems of transportation and intimidation. Those organizations and persons that succeeded in getting alternative registration procedures had a difficult time convincing authorities of the need for them, and when changes were implemented, they did not fully satisfy minorities' concerns.

Some of these kinds of problems have been remedied by sections of the Voting Rights Act. Section 5 of the Voting Rights Act, for example, has been instrumental in preventing the implementation of registration practices and procedures that could discriminate against minorities in purpose or effect. In the case of purging and reregistration, for example, objections by the Attorney General to proposed purging procedures in Mississippi and Texas have forestalled implementation of devices that could potentially discriminate against minority registrants.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

Voting

The Voting Rights Act of 1965¹ prohibits the use of barriers to voting such as literacy tests and provides for appointing Federal observers to monitor elections so that all persons can exercise their right to vote. As chapter 2 reported, the number of minorities who register, vote, and run for office has increased since passage of the act. Although it has been instrumental in helping to protect minorities' right to vote, practices implemented at the local level that serve to prevent minorities from voting have been reported. Such practices have included omission of the names of registered minorities from voter lists, failure to provide sufficient and convenient polling places that are accessible to minority citizens, harassment of minority voters by election officials, refusal to assist minority voters, inadequate instructions to minority voters, and discriminatory use of absentee ballots and other procedures.² In this study, the Commission was concerned whether the right to vote continues to be denied to minorities in such ways.

Polling Places

The location of the polling place is an important factor in determining whether minorities exercise their right to vote. When polling places are located

in white communities, minorities have been extremely reluctant to vote because of their fear of harassment and intimidation at the polls.³ The Commission was concerned whether polling place locations in the jurisdictions subject to preclearance continued to be inconvenient, inaccessible, or intimidating to minorities.

In Hopewell, Virginia, blacks are concerned about voting at the Veterans of Foreign Wars (VFW) Hall located in the white community. According to the president of the Virginia chapter of the Southern Christian Leadership Conference, there are no voting places in the black community.⁴ Blacks are now voting in an organization's building whose membership is all white.⁵ He said, "It's like having the polls at a country club."⁶ He additionally alleged that the location of the polling place has had a negative effect on the black voter turnout.⁷ According to the respondent, "If one precinct was in the black community, then black people might become more accustomed to voting."⁸

In February 1977 officials in Raymondville, Texas, submitted changes in the location of two polling places to the Attorney General pursuant to section 5 of the Voting Rights Act of 1965.⁹ Although the Department of Justice did not object

¹ 42 U.S.C. §§1971, 1973 to 1973bb-1 (1976).

² U.S., Commission on Civil Rights, *Political Participation* (1968), p. 60; U.S., Commission on Civil Rights, *The Voting Rights Act: Ten Years After* (1975), p. 97 (hereafter cited as *Voting: Ten Years After*).

³ Washington Research Project, *The Shameful Blight: The Survival of Racial Discrimination in Voting in the South*, (Washington, D.C.: 1972), pp. 80-82; *Political Participation*, pp. 67-69.

⁴ Rev. Curtis Harris, president, Virginia chapter of the Southern Christian Leadership Conference, interview in Hopewell, Va., Jan. 12, 1981 (hereafter cited as Harris Interview).

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ Drew S. Days III, Assistant Attorney General, Civil Rights Division, Department of Justice, objection letter to Jerry Jacobs, superintendent, Raymondville Independent School District, Raymondville, Tex., Mar. 25, 1977, pp. 1-4.

to one of the polling place changes, it objected to the other change in location.¹⁰ According to the Department, it “received un rebutted representations indicating that the change in the location of the Precinct 1 polling place from City Hall to the American Legion Hall may have the purpose or effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.”¹¹ The Department reported that the polling place change “will result in a significant inconvenience for many Mexican American voters” who reside in portions of that precinct.¹² In its objection, the Department additionally wrote that “the American Legion Hall appears to be a place where many Mexican Americans feel unwelcome. Thus it is likely that the use of the American Legion Hall will have the effect of deterring participation by Mexican Americans. . . .”¹³ The Attorney General objected to the proposed change since he was “unable to conclude, as he must under the Voting Rights Act, that. . . the use of the American Legion Hall as the polling place for Precinct 1 will not have the effect of discriminating on account of race, color, or membership in a language minority group.”¹⁴

In April 1978 the city of New Orleans, Louisiana, submitted changes in five polling locations to the Department of Justice for preclearance under section 5 of the Voting Rights Act.¹⁵ According to the Department, one of the changes was a polling place located in a precinct where 92 percent of the registered voters are black.¹⁶ According to the Department of Justice, the new polling place was “approximately 16 blocks from the old polling place” and “located in another precinct.”¹⁷ The Department further noted that many of the voters, particularly the elderly, did not have automobiles and that there was “no convenient public transportation” to get to the new polling place.¹⁸ Proof of the polling place’s inaccessibility to minority voters occurred when city officials changed the polling place in this precinct prior to preclearing it and used

the new polling place for a local election.¹⁹ Persons were given only 2 weeks’ notice of the polling place change, and the newspaper “contained the address of the old polling place for that precinct up until the day before the election.”²⁰ The Department noted that, as a result of these factors, “a number of black registered voters who would otherwise have voted were unable to vote” in the April 1978 city election.²¹ It concluded that “in this instance we have some evidence of actual rather than just potential [discriminatory] effect.”²² Although the Department of Justice precleared changes in four of the precincts, it was unable to conclude that the polling place change in the majority black precinct “does not adversely affect minority participation in the political process.”²³

In October 1979 the board of commissioners submitted a polling place change in the city of Taylor in Williamson County, Texas, to the Attorney General.²⁴ According to the Department of Justice, the polling place would be moved from the “centrally located” City Hall to the National Guard Armory which is located “approximately ten to twelve blocks north of City Hall in a predominantly white area.”²⁵ The Department concluded that the new polling place would be “a significant inconvenience to the city’s minority voters who appear to be concentrated in the southern and southwestern portions of the city. . . [and] may have. . . the effect of deterring participation by some minority voters in elections. . . .”²⁶ The Attorney General was unable to conclude that the polling place change would not have the effect of discriminating against minorities.²⁷

In September 1980 a Hispanic city councilman, who represents a district in the Bronx, New York, that has a Hispanic population of over 50 percent, wrote to the executive director of the Bronx Board

¹⁰ Ibid., p. 1.

¹¹ Ibid., p. 2.

¹² Ibid.

¹³ Ibid. The Department of Justice did not object to the use of the American Legion Hall, if another polling place which would be more convenient to the Mexican Americans living in portions of the precinct were established.

¹⁴ Ibid., pp. 2-3.

¹⁵ Drew S. Days III, Assistant Attorney General, Civil Rights Division, Department of Justice, objection letter to Ernest L. Salatich, assistant city attorney, New Orleans, La., May 12, 1978, pp. 1-3.

¹⁶ Ibid., p. 2.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid. pp. 1-2.

²⁰ Ibid.

²¹ Ibid., p. 2.

²² Ibid., p. 1.

²³ Ibid., p. 2.

²⁴ Drew S. Days III, Assistant Attorney General, Civil Rights Division, Department of Justice, objection letter to Weldon C. Berger, chairman, Board of Commissioners, Taylor, Tex., Dec. 3, 1979, pp. 1-3.

²⁵ Ibid., p. 1.

²⁶ Ibid. The Department noted that in the 1972 election held at City Hall, three minority candidates ran for office and 2,231 votes were cast. In 1973, when the Armory was used, there were no minority candidates and only 717 votes were cast.

²⁷ Ibid., p. 2.

of Elections inquiring about the change of the polling location in his district.²⁸ The councilman wrote that the new polling place is “nine blocks away” from the old one.²⁹ He further explained to Commission staff that some of the Puerto Rican and black “senior citizens” had complained to him that they would be unable to vote because of transportation problems in getting to the new location.³⁰ In a letter to the councilman, the executive director explained that the polling place could not be changed back to the old location because of the “time element involved with the coming local registration in October and the November [1980] election.”³¹ She also wrote that “due to the 1981 reapportionment, we will make every effort to change it next year.”³²

The location of the polling place is an important facet of the voting process. If minorities do not have access to a polling place because of lack of transportation or if they feel uncomfortable or intimidated there, they will be unable to vote. Voting becomes a burden for minorities when they must vote outside their community, especially when feasible alternatives exist. Minorities are also reluctant to vote in a building that symbolizes exclusion to them. The failure of white officials to provide a voting environment that is acceptable and accessible to all citizens has helped to discourage minorities from voting.

Assistance at the Polls

For many minority voters, the kind of assistance that they receive at the polls determines whether they will vote. If minority voters who do not speak English or who are illiterate receive inadequate assistance, they may become too frustrated and discouraged to vote or they may mark their ballots in such a way that they will not be counted. Before the Voting Rights Act of 1965 was amended, most States required that elections be conducted only in English.³³ The minority language provisions, which were added to the act in 1975, require that voting assistance be given in the applicable minority lan-

guage.³⁴ In this study, the Commission was concerned whether minorities who needed assistance were able to vote, and if they received adequate assistance at the polls.

According to Texas State law, a person who either is on the registration list or has a registration card at the polls can vote.³⁵ In some jurisdictions in Texas, however, minorities are challenged or denied the ballot even though they meet the requirements of the law. In one instance, a minority poll watcher in the city of Hondo, in Medina County, Texas, alleged that the election judge's decision to challenge a voter's eligibility or deny the ballot to a voter was based on the race and ethnicity of the voter. According to her, more Hispanics are challenged at the polls than whites.³⁶ The respondent alleged that in 1979 when she served as a poll watcher, the election judge at her precinct would “challenge more Mexican American voters, especially those who ran for office.”³⁷ She cited an example, however, of how an Anglo was treated differently even though there was uncertainty about his residency:

An Anglo had been living in San Antonio (after moving from Hondo). He came back to Hondo to vote because he said his parents still lived here (in Hondo). He did not have a registration card but he remained on the voter list. He was allowed to vote despite the question over his residence.³⁸

In one instance, a well-known Hispanic community leader in Medina County explained how he was challenged by election officials:

When I went to vote I didn't have my registration card but my name was on the list. One [official] man knew me and knew my name was on the list. Another man kept asking him, “Are you sure? Are you sure?”³⁹

He continued, “They [the election officials] don't bother me, but a lot of people can be scared off easily. It's those. . .hassles you go through and unless you are persistent. . .[you] are scared off.”⁴⁰

In Bexar County, Texas, a voter at Precinct 356 was told during the November 4, 1980, election that

²⁸ Gilberto Gerena-Valentin, councilman, New York City, letter to Bea Berger, executive director, Bronx Board of Elections, Sept. 10, 1980 (hereafter cited as Gerena-Valentin Letter); Gilberto Gerena-Valentin, councilman, telephone interview, May 21, 1981.

²⁹ Gerena-Valentin Letter.

³⁰ Ibid.; Gilberto Gerena-Valentin, councilman, telephone interview, May 21, 1981.

³¹ Beatrice Berger, chief clerk, Bronx Borough Office, letter to Gilberto Gerena-Valentin, councilman, New York City, Sept. 16, 1980. The old polling place had been used since June 1979.

³² Ibid. For the response of Beatrice Berger, chief clerk, Bronx Borough Office, to these statements, see appendix G of this report.

³³ *Voting: Ten Years After*, p. 117.

³⁴ 42 U.S.C. §§1971, 1973-1973bb-1 (1976) at 1973b(f)(1). A complete discussion of the provisions can be found in chapter 7.

³⁵ Tex. Elec. Code Ann. arts. 8.07, 8.08, 8.09 (Vernon Supp. 1980).

³⁶ Irma Torres, community leader and former poll watcher, interview in Hondo, Tex., Dec. 18, 1980 (hereafter cited as Torres Interview).

³⁷ Ibid.

³⁸ Ibid.

³⁹ Lucio Torres, community leader, interview in Hondo, Tex., Dec. 18, 1980.

⁴⁰ Ibid. For the responses of Henry Stiegler and V.H. Neumann, election judges, Hondo, Tex., to these statements, see appendix G of this report.

the marked sample ballot he was carrying could not be taken into the voting booth.⁴¹ The voter insisted that doing so was his right and asked that the election official call the Texas Secretary of State's office for clarification. Staff there confirmed that a self-marked ballot may be taken into the voting booth. The voter was only allowed to vote after signing a sworn statement that the sample ballot was self-marked.⁴²

An incident such as that reported in Bexar County might have discouraged a less well-informed person from voting. Testimony presented by State Representative Paul Moreno of El Paso, Texas, at a hearing on voting irregularities supports this conclusion. Representative Moreno testified that he knew of many cases in which voters with marked sample ballots were not allowed to vote.⁴³ He stated that the potential voters "have their ballots in their pockets and at times they are searched. . . and if something is found. . . they are ejected."⁴⁴ In response to Representative Moreno's statement, Shad Jefferies, director of special projects for the secretary of state's election division, stated the position of the secretary of state's office:

. . . those people who were ejected. . . if they had themselves marked those sample ballots or whatever, then they are entitled to keep that with them as long as they marked it themselves. They should not be thrown out, or turned away from the polls for that reason.⁴⁵

According to an Arizona State representative, in Maricopa County, "[e]lection officials are not trained to explain to [Mexican American] people who are not on the registration list that they may be assigned to another precinct."⁴⁶ He said, "They just tell them they are not on their list and the people

leave."⁴⁷ Election day observers also reported that on November 4, 1980, Hispanic voters at one precinct in Phoenix, Arizona, were not told what their alternatives were if they were not on the registration list.⁴⁸

Many [Hispanic] voters were turned away because they were not on the registrar's list. . . . People were not told what they could do to vote, only that they could not vote. . . . [The] Election judge was not attentive and did not try to explain to minority voters who were not on the registrar's list what they could do. . . .⁴⁹

Problems related to bilingual assistance at the polls also were reported. A community leader in Atascosa County, Texas, observed that when Mexican Americans who could not read or write went to vote in the primary election, the election judges refused to let the two Hispanic clerks at Precinct 20 assist them.⁵⁰ One Hispanic clerk who served as an election clerk at Precinct 20 during the May 3 Democratic primary said, "No attempt is made to try to assist them, unless. . . I just take it upon myself to get up and go help them regardless of whether [the election judge] like[s] it or not."⁵¹ She continued:

When we are allowed to help somebody, they will send somebody with us, an Anglo. Then they will stand there and say, "Well, you are supposed to read the ballot in English." If the person doesn't understand, how can you possibly read the ballot in English. . . .⁵²

The other Hispanic election clerk, who was assigned to record the voters' names on the poll list, also noted that there were only two bilingual clerks at Precinct 20 to assist "the Mexican American people coming up to vote. . . . A lot of them did not

⁴¹ Election day observation by the U.S. Commission on Civil Rights' Southwest Regional Office staff, Precinct 356, Lion's Field Center, 2900 Broadway, San Antonio, Tex., Nov. 4, 1980.

⁴² Ibid.

⁴³ Southwest Voter Registration Education Project, *An Inquiry Into Voting Irregularities in Texas*, hearing, Austin, Tex., Oct. 22, 1980, p. 51. (hereafter cited as *An Inquiry Into Voting Irregularities in Texas*).

⁴⁴ Ibid.

⁴⁵ Ibid., p. 52. For the response of Beverly B. Wallace, election judge, Precinct 356, Bexar County, Tex., to these statements, see appendix G of this report.

⁴⁶ Earl Wilcox, State representative, interview in Phoenix, Ariz., Nov. 4, 1980.

⁴⁷ Ibid. According to the instructions provided election workers in Maricopa County, "No person shall be allowed to vote in your precinct polling place unless he is qualified in one of the following ways: (1) His name appears on the Precinct Register; (2) He surrenders a County Recorder's Certificate authorizing the addition of his name to the Precinct Register; or (3) He qualifies to vote a Questioned Ballot as detailed in the Questioned Ballot Voter section of these instructions. When a person's name is not found on your precinct register, direct this person to the 1980 Maricopa County Precinct Map and Election Information Guide to locate

the proper precinct of his residence. If he is at the wrong polling place, give him the address of the polling place in his precinct from the list of polling place addresses furnished in your precinct supplies. If he resides in your precinct and qualifies to vote a Questioned Ballot, follow the Questioned Ballot Voter instructions. If a solution is not found in any of these ways, refer this person to the Elections Department. . . ." *Precinct Election Board Instructions, 1980*, Maricopa County Department of Elections, pp. 2-3.

⁴⁸ Election Day observations by U.S. Commission on Civil Rights staff at Lincoln School, Precinct No. 1251, Phoenix, Ariz., Nov. 4, 1980 (hereafter cited as *Election Day Observations-Phoenix*). The observers visited a predominantly Hispanic precinct. While they were present, the only voters to come to the precinct were Hispanics.

⁴⁹ *Election Day Observations-Phoenix*. For the response of David J. Nicol, director of elections, Maricopa County, Ariz., to these statements, see appendix G of this report.

⁵⁰ Abraham Saenz, Jr., community leader, interview in Pleasanton, Tex., Dec. 17, 1980 (hereafter cited as *Saenz Interview*).

⁵¹ Minnie B. Leal, testimony, *An Inquiry Into Voting Irregularities in Texas*, p. 167 (hereafter cited as *Leal Testimony*).

⁵² Ibid., p. 168.

understand the English language and they were asking for assistance.”⁵³ Realizing that it was difficult to carry out her assigned duties as well as assist the Hispanic voters, the clerk approached the election judge about more bilingual help. According to the clerk, the judge “kind of got upset and . . . made the comment . . . that as far as she was concerned, if they did not speak the English language, if they didn’t understand it, they didn’t have the right to vote.”⁵⁴

In Medina County, Texas, a former poll watcher at the last city election in Hondo (April 1980) noticed that some of the Mexican American voters were not being assisted.⁵⁵ When she brought it to the attention of the election worker, he warned her that, as a poll watcher, she could say nothing.⁵⁶ She said that the election worker told her, “I don’t care what you people want. You [Mrs. Torres] are not supposed to say anything.”⁵⁷

Parts of New York City are covered by section 5 of the Voting Rights Act. One councilman indicated that more bilingual workers are needed to assist Spanish-speaking voters in the Williamsburg section of Brooklyn, New York (District No. 27).⁵⁸ Another Hispanic councilman in a Bronx, New York, district (no. 11) stressed that there are seldom bilingual election officials who work at the polls.⁵⁹ The Hispanic director of a Bronx housing clinic concurred that in his Bronx district (no. 6), “There were no Spanish-speaking election officials working at the polling places”⁶⁰ to provide assistance to non-English-speaking persons.

Although many formal barriers to voting (such as tests or devices)⁶¹ have been eliminated, lack of adequate assistance can act as a barrier to illiterate voters.⁶² The quality of that assistance is one of the major factors that determines whether illiterate minority voters may vote.⁶³ Minority persons who

are illiterate cannot vote or vote effectively if they receive assistance from an intimidating, insensitive poll worker, or if there are restrictive rules that govern the assistance procedure.

In 1979, according to the Department of Justice, House Bill No. 854 was passed by the Mississippi Legislature.⁶⁴ It proposed to change the State’s system of providing assistance to voters.⁶⁵ Under the old law, illiterate voters could receive assistance from the person of their choice, whether or not that person was a registered voter in the same precinct. One individual could assist any number of voters, and no other person was permitted or required to be present when assistance was given.⁶⁶ The bill required that the person giving assistance be a registered voter of the same precinct of the persons receiving assistance, that one person could assist no more than five others, and that the poll manager must be present while assistance was given.⁶⁷

In May 1979 the bill was submitted to the Department of Justice for preclearance under section 5 of the Voting Rights Act.⁶⁸ In July 1979 the Attorney General wrote that he was “unable to conclude that the proposed system of assistance 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.”⁶⁹ The Department also noted that it is common for more than five black voters to receive assistance from the same person and that there is no need for the person giving assistance to reside in the same precinct as the voters receiving assistance.⁷⁰ The Department of Justice noted that the vast majority of voters who have requested voting assistance in Mississippi are black and their voting

⁵³ Maria Elena Reyna, testimony at *An Inquiry Into Voting Irregularities in Texas*, p. 170 (hereafter cited as Reyna Testimony).

⁵⁴ *Ibid.*, p. 172. The minority language provisions of the Voting Rights Act require that assistance should be given to persons who do not speak English. The official’s insensitivity to that need was not in accord with the spirit of the law. 28 C.F.R. §55, 20(b) (1980).

⁵⁵ Torres interview.

⁵⁶ *Ibid.* Under Texas law, the poll watcher is only at the polling place to observe the election and is not to give any advice to voters or hold any conversation with any voter. The poll watcher is not permitted to converse with the judges or clerks regarding the election as it progresses except for the purpose of calling to the attention of the election officers fraud, mistake, or irregularity. Tex. Elec. Code Ann., art. 3.07 a–h (Vernon Supp. 1980).

⁵⁷ Torres interview. For the response of Henry Stiegler, election judge, Hondo, Tex., to these statements, see appendix G of this report.

⁵⁸ Luis Olmedo, councilman, Brooklyn, interview in New York City, Mar. 3, 1981.

⁵⁹ Gilberto Gerena-Valentin, councilman, New York City, interview in New York City, Mar. 5, 1981.

⁶⁰ Jose Espinosa, director, East Tremont Housing Clinic, Bronx, interview in New York City, Mar. 3, 1981.

⁶¹ 42 U.S.C. 1973a(b) (1976).

⁶² *Voting: Ten Years After*, p. 121.

⁶³ *Ibid.*, pp. 121–24.

⁶⁴ Drew S. Days III, Assistant Attorney General, Civil Rights Division, Department of Justice, objection letter to A.F. Summer, attorney general, Mississippi, July 6, 1976, p. 1 (hereafter cited as Mississippi Letter).

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*, p. 2.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*, p. 1.

⁶⁹ *Ibid.*, pp. 1–2. In June 1979, the Attorney General did not initially object to the proposed change in Mississippi’s voter assistance law. After reexamining the proposal, the Attorney General found the bill unacceptable.

⁷⁰ *Ibid.*

rights would be adversely affected by the bill's requirements.⁷¹

In November 1979 Louisiana enacted a law that requires illiterate persons who want assistance at the polls to present an affidavit to the registrar (in person or by mail) explaining the reasons for the assistance.⁷² Without the affidavit on record, these voters cannot receive assistance at the polls. The law does not permit them to file an affidavit at the polling location if they have not filed previously. The inflexibility of the law places a great burden on voters who wish to obtain assistance to vote, by requiring them to understand a legal procedure and then penalizing them if they do not understand it.

In St. Landry Parish, Louisiana, a respondent explained that many blacks who needed assistance in the November elections were not aware of the new requirement.⁷³ When they went to vote and asked for assistance, they were not allowed to vote because they did not have the affidavit on file.⁷⁴ According to another respondent, such voters did not have transportation to get to the courthouse to find out more about the new procedure.⁷⁵ Indirectly, the new law prevented "a lot of [black] people from voting."⁷⁶ The Louisiana law has had the effect of preventing minority voters who are elderly or illiterate from voting because they are unable to understand it or because it is difficult for them to comply with it.

Harassment and Intimidation

Harassment and intimidation at the polls—blatant activities aimed at deterring people from voting—also prevent many minorities, especially those who are elderly and less educated, from exercising their right to vote. In some jurisdictions that were studied, minorities have been threatened with economic and physical reprisals for voting or for assisting others to vote, or they have been intimidated by insensitive white election workers. Such conditions discourage minorities from voting, undermining the intent of the Voting Rights Act.

⁷¹ Ibid. The Department reported that, according to the 1970 census, blacks constituted 31 percent of Mississippi's residents aged 25 and over. Seventy-one percent of these persons had completed less than 5 years of formal education.

⁷² La. Rev. Stat. Ann. §18.564 (West Supp. 1981).

⁷³ James Bush, community leader, interview in LeBeau, La., Dec. 11, 1980 (hereafter cited as Bush Interview).

⁷⁴ Ibid.

⁷⁵ Ron Gilbert, community leader, interview in LeBeau, La., Dec. 11, 1980.

Intimidation of voters was reported in Johnson County in Wrightsville, Georgia. A well-known black community leader who assisted black voters reported an incident in which blacks were accused by the election official of "blocking the entrance to the courthouse," which is the polling place.⁷⁷ When he explained that he and the other blacks were standing an acceptable distance from the polling place, the election official called the State troopers to get them to leave. The respondent continued standing in front of the courthouse, and the election official called the sheriff and State troopers again. The respondent said that Federal observers from the Department of Justice who were monitoring the activities told the official that he was not breaking the law. "Later, some white men in a truck stopped in front of the polling place. Guns were visible in the truck."⁷⁸ They began heckling black people at the polls. The blacks left the scene (some of them potential voters) while whites were not harassed by the official or the white men.⁷⁹ An incident such as the one in Wrightsville discourages minorities from voting.

In Atascosa County, Texas, two former Hispanic candidates for county positions said that Mexican Americans had reason to fear economic reprisal. According to one of the candidates, "People are just too scared. I don't blame them. If they vote for someone that their boss doesn't want them to [and he finds out], they will lose their jobs."⁸⁰ According to one of the two Hispanic election workers in Atascosa County, "the attitude among the personnel working towards the Mexican Americans is bad. They treat them bad."⁸¹ Another community leader said, "Some [Mexican Americans] don't vote because there are not enough [Mexican American] clerks to help. If we had more Mexican American clerks and [election] judges, Mexican Americans would feel more comfortable about voting."⁸²

In the city of Pearsall in Frio County, Texas, an official stressed that one white election judge at Precinct 2 makes things more difficult for the

⁷⁶ Bush Interview.

⁷⁷ Rev. E.J. Wilson, community and religious leader and advisor, Johnson County Justice League, interview in Wrightsville, Ga., Nov. 18, 1980 (hereafter cited as Wilson Interview).

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Saenz Interview.

⁸¹ Leal Testimony, p. 167.

⁸² Jose Torres, president, Atascosa County Council-League of United Latin American Citizens, interview in San Antonio, Tex., Dec. 17, 1980.

Hispanics voting and as a result they are not comfortable at the polls.⁸³ The official stated that the negative attitude of election judges easily discourages people from voting.⁸⁴ According to a paralegal in Frio County, "Mexican Americans want more Mexican American election judges. They do not feel at ease at the polls."⁸⁵ A county commissioner reiterated that there have been complaints that "they [election judges] were being sarcastic to the [Mexican American] voters and [have] tried to discourage them [from voting]."⁸⁶ In addition, an Hispanic justice of the peace explained:

[One of the] biggest obstacles was intimidation at the polls. It is hard for people with little education. . . They are easily scared or discouraged. . . .⁸⁷

Minority Election Officials

Minorities believe that more minority election workers would decrease the amount of intimidation.⁸⁸ In 1980, however, the number of minority election workers was inadequate in some areas with a large minority population. According to one of the Hispanic poll workers at Precinct 20 in Atascosa County, Texas, there were only 2 Hispanic poll workers out of 14 at this precinct where "half of the people that come to the polls are Mexican American."⁸⁹ For the primary and general elections in 1980, Atascosa County had 17 election judges; none was Hispanic.⁹⁰ In Medina County, Texas, from 1954 to 1980 there were a total of 351 presiding judges appointed to conduct elections by the county commissioners' court; only 5 (1.4 percent) were Hispanic, even though they are nearly 50 percent of the county population.⁹¹ In Frio County, Texas, a justice of the peace commented that at one precinct that is predominantly Hispanic there was not one Hispanic or bilingual poll worker during the November 1980 election.⁹² At another predominantly Hispanic precinct, there was only one bilingual clerk.⁹³ One of the county commissioners said, "Anglos from distant

areas were appointed to man voting boxes in predominantly Chicano areas."⁹⁴ According to 1980 census data, Port Gibson, Mississippi, has a black population of 63.4 percent. For the 1980 elections there were four poll managers chosen by the election commission, but only one was black.⁹⁵ The lack of minority election officials adversely affects the voting participation of blacks and Hispanics who become discouraged from voting when they believe that they will be treated in a discriminatory manner or assisted inadequately by white election workers at the polls.

Absentee Voting

Absentee voting is a procedure that enables persons in the military, students, and other people who may not be able to go to the polls to exercise their right to vote. The absentee ballot is supposed to be a viable alternative to voting at the polls, but in some jurisdictions, it has been used to undermine the intent of the Voting Rights Act.

In 1980 the *Atlanta Constitution* published a series of articles on the Voting Rights Act. In one article, absentee ballot abuse in Taliaferro County, Georgia, was reported.⁹⁶ The county has a 71.6 percent black population, but there are no blacks on the county commission.⁹⁷ Blacks have been candidates for positions in the county, but have lost because of the "apparent abuse of absentee ballots."⁹⁸ According to the article:

Here in Taliaferro County, the use and apparent abuse of absentee ballots have been the major tool of the dominant white political establishment to dilute the impact of the black vote ever since voter registration drives and the first attempts by blacks to gain public office more than a decade ago.⁹⁹

The article noted that in the 1980 primary election, "absentee ballots accounted for more than one-third of the 1,545 votes cast."¹⁰⁰ The article reported abuse of absentee voting by white candidates who "regularly hand-deliver absentee ballots to poor and

⁸³ Frank Robledo, justice of the peace, Precinct 1, interview in Pearsall, Tex., Dec. 16, 1980 (hereafter cited as Robledo Interview).

⁸⁴ Ibid. For the response of Mrs. John Stacy, election judge, Precinct 1, to these statements, see appendix G of the report.

⁸⁵ Anita Garza, paralegal, Texas Rural Legal Aid, interview in Pearsall, Tex., Dec. 17, 1980.

⁸⁶ Adolfo Alvarez, county commissioner, interview in Pearsall, Tex., Dec. 16, 1980 (hereafter cited as Alvarez Interview).

⁸⁷ Robledo Interview.

⁸⁸ Saenz Interview.

⁸⁹ Leal Testimony, p. 166.

⁹⁰ Elidia Sugura, county clerk, Atascosa County, Tex., telephone interview, Feb. 6, 1981; May 1, 1981. For the response of O.B. Gates, county judge, Atascosa County, Texas, to these statements, see appendix G of this report.

⁹¹ Statistics were provided by the Mexican American Legal Defense and Educational Fund, San Antonio, Tex., Apr. 20, 1981.

⁹² Robledo Interview. The precinct that is discussed is Voting Box 1.

⁹³ Ibid. The precinct that is discussed is Voting Box 8.

⁹⁴ Alvarez Interview.

⁹⁵ Carole Brezeale, city clerk, interview in Port Gibson, Miss., Dec. 5, 1980.

⁹⁶ "Trouble in Taliaferro County: Absentee Ballot Abuse Keeps Whites in Office," *The Atlanta Constitution*, Dec. 9, 1980, pp. 1-A-10-A (hereafter cited as "Trouble in Taliaferro.")

⁹⁷ Ibid., p. 1-A.

⁹⁸ Ibid., p. 10-A.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

illiterate black voters and stand by the voters while the ballots are filled out.”¹⁰¹ According to the newspaper:

The candidate or a helper brings along applications for absentee ballots on visits to households. Potential voters are asked whether they wouldn't like the candidate or a helper to deliver the ballot later. The form then is filled out so that the absentee ballot is mailed not to the voter, but to the candidates and their helpers. Then the candidate or an aide drives the ballot out to the voter and, if possible, waits while it is filled out—or in the case of illiterates, offers assistance.¹⁰²

Georgia law requires that a person wishing to vote absentee must apply for an absentee ballot (either by mail or in person) with the registrar and write on the application the address where the ballot should be mailed.¹⁰³ One white law enforcement official mailed the absentee ballot applications to the registrar and placed his address on them. He then delivered the ballots to the black voters.¹⁰⁴ In most cases, he filled out the ballots for black illiterate voters.¹⁰⁵

The *Constitution* also noted that after 1966 a “greater number” of absentee ballots have been filed by persons—mostly whites—who live outside the county.¹⁰⁶ This maneuver has been possible because of the Georgia law which states that if a voter is out of the county temporarily, a relative 18 years of age or older living in the county “upon satisfactory proof of relationship” can apply for the absentee ballot.¹⁰⁷ However, the law does not define “temporary.”¹⁰⁸ This has allowed persons who have moved out of the county, “temporarily,” to receive absentee ballots and still vote in Taliaferro elections.¹⁰⁹ The article concluded:

To the extent that whites outside the county continue to vote there, the black voting majority is diluted. . . and everyone here says that white incumbents have been effective at winning black votes by delivering absentee ballots and offering assistance to poor and illiterate voters.¹¹⁰

According to Texas law,

Qualified voters. . . make application for an absentee ballot on the ground of expected absence from the county of their residence on election day, and who expect to be absent from the county during the clerk's regular office hours. . . Applications made. . . may be mailed either from within or without the county of the voters'

residence, but in every case the ballot must be mailed to the voter at an address outside the county. . . .¹¹¹

In the city of Pearsall, in Frio County, Texas, there is a large number of Mexican American migrant or seasonal workers who may not be able to vote in person on election days. Some of these workers have applied for absentee ballots. A Hispanic county commissioner reported, however, that “in absentee voting, the registrar has been very derelict in sending out the [absentee] ballot[s]. [F]or Mexican Americans [the seasonal workers] they are sent out very slowly.”¹¹² He said that the registrar is not derelict “in mailing out absentee ballots to Anglos.”¹¹³

Before the general election in November 1980, an Hispanic county commissioner said that he knew personally that two Mexican American seasonal workers applied for absentee ballots with the registrar, because they would be out of Pearsall (Frio County) on election day.¹¹⁴ One of the applicants, who would be in Minnesota on election day, had not received his absentee ballot. Persons related to the applicant brought the ballot, which was mailed to his Pearsall, Texas, address, to the commissioner and his wife. The commissioner's wife said, “I took the sealed envelope, made a copy of the [front side of the] envelope, and put the date on it. I sent it to Minnesota by registered mail.”¹¹⁵ When the commissioner called the registrar and asked her why the absentee ballot was mailed to Pearsall instead of Minnesota, she told him that there had been a mistake (in the mailing). The commissioner said “that this is the kind of response that Mexican Americans hear when something like that happens.”¹¹⁶

The use of absentee ballots is supposed to be a viable alternative for persons who want to exercise their right to vote *in absentia*. But the abuse of the absentee ballot in Taliaferro County, Georgia, and the inflexibility of its use as a voting alternative in Frio County, Texas, renders the absentee ballot a procedure that can deny minorities access to the political process.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ Ga. Code Ann. §34-1402(a) (Supp. 1978).

¹⁰⁴ “Trouble in Taliaferro,” p. 10-A.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ Ga. Code Ann. §34-1402(a) (Supp. 1978); “Trouble in Taliaferro,” p. 10-A.

¹⁰⁸ *Id.*

¹⁰⁹ “Trouble in Taliaferro,” p. 10-A.

¹¹⁰ *Ibid.*

¹¹¹ Tex. Elec. Code Ann. art. 5.05, subd. 1(c)(ii) (Vernon Supp. 1980).

¹¹² Alvarez Interview.

¹¹³ Adolfo Alvarez, county commissioner, Frio County, Texas, telephone interview, May 25, 1981 (hereafter cited as Alvarez Telephone Interview).

¹¹⁴ *Ibid.* The workers planned to be in Minnesota and New York City, respectively.

¹¹⁵ Lupe Alvarez, community leader, Telephone Interview, May 25, 1981.

¹¹⁶ Alvarez Telephone Interview; for the response of Mona Hoyle, county clerk, Frio County, Tex., to these statements, see appendix G of this report.

Vote Buying

In 1976 a black candidate, Gilbert Austin, ran for a position on the St. Landry Parish, Louisiana, School Board, representing a predominantly black district. Mr. Austin ran against another black and a white candidate. The outcome showed that the white candidate won the election. Mr. Austin was told, however, that many blacks had been bribed into voting for the winner.¹¹⁷ After securing further evidence of "vote buying," the U.S. Department of Justice filed suit against the St. Landry Parish School Board.¹¹⁸

In *U.S. v. St. Landry Parish*, Bobby Dupre, a former white school board member, and three poll commissioners resigned as a result of engaging in vote buying during the 1976 school board elections in St. Landry Parish.¹¹⁹ The district court stated that the defendants' conduct constituted "a violation of Sections 1971(a) and 1973 of Title 42 of the United States Code and the 14th and 15th amendments of the Constitution of the United States since said scheme had the purpose and effect of denying or abridging the right to vote on account of race."¹²⁰

To ensure his election, Mr. Dupre instructed drivers to bring certain blacks to the polls. These blacks then received assistance in voting from the three poll commissioners who were defendants in the case, despite the fact that the blacks neither needed assistance nor gave a preference for a candidate. The blacks were then given tokens, which were later redeemed for money.¹²¹

A consent decree was entered in the case. The district court declared the February 21, 1976, election null and void (Mr. Dupre resigned on November 27, 1979), and ordered a special election to be held on April 5, 1980. Mr. Austin won the special election.

¹¹⁷ Gilbert Austin, school board member, St. Landry Parish, La., interview in Opelousas, La., Jan. 30, 1981.

¹¹⁸ *United States v. St. Landry Parish School Board*, No. 76-1062 (W.D. La., Dec. 5, 1979).

Conclusion

The Commission found that in jurisdictions subject to preclearance, barriers and practices still exist which adversely affect minority access to the polls. In Hopewell, Virginia, and in Williamson County, Texas, the location of polling places was especially burdensome for minority voters. These polling places were either inaccessible to minority voters or located in places that may be intimidating to them.

In addition to the location of polling places, the lack of effective assistance at the polls may also deprive minorities of their right to vote. In jurisdictions in Texas and New York, language minorities reported inadequate assistance, which had the effect of discouraging them from voting. Furthermore, the States of Louisiana and Mississippi have enacted or attempted to enact legislation which places additional burdens upon minority voters who are illiterate.

The Commission also found that minority voters are still subject to intimidation at the polls. In Wrightsville, Georgia, Atascosa County, Texas, and Frio County, Texas, minority respondents reported incidents in which they were harassed or intimidated in their efforts to vote. Finally, the use of the absentee ballot in Taliaferro County, Georgia, and Frio County, Texas, also denied minorities access to the political process.

There are many facets of the Voting Rights Act, but one of the most important tests of its effectiveness is at the polls. If minorities go to the polls and find election workers who are unwilling to assist them, if they are forced to vote at inconvenient polling places, if they are intimidated and harassed at the polls, and if abuses in absentee voting and vote buying persist, they will be unable to exercise their right to vote.

¹¹⁹ *Id.*, slip op. at. 1-3.

¹²⁰ *Id.*, at 1.

¹²¹ *Id.*, at 3.

Fair Representation and Candidacy

Since passage of the Voting Rights Act, the number of minority elected officials has increased substantially. As chapter 2 noted, however, serious underrepresentation of minorities in elected positions persists. Chapters 3 and 4 showed that a variety of impediments prevent minorities from registering and voting. Underrepresentation of minorities in elected office can also be attributed to election systems, voting rules, and methods of redistricting, as well as to practices that minority candidates may confront such as harassment, intimidation, and lack of access to voters.

Boundary Formation

Both the method through which officeholders are elected and the exact boundaries of the jurisdictions they represent can affect the opportunities of minorities to be elected.¹ For example, in any town, city, or county, each member of the local governing body can be elected by all of the voters (elected at large) or by only the voters of a particular district (elected by single-member district). In a town of 10,000 registered voters with a governing body composed of 10 members, this would mean that all 10,000 voters could cast ballots for all 10 members of the governing body, or that the voters, grouped into 10 districts of approximately 1,000 voters each, would be able to elect one member of the governing body to represent their particular district.

In certain circumstances, the consequences for minority representation of these different voting methods can be significant. If, for example, the town contains a majority of white voters, who consistently refuse to vote for minority candidates (that is, there is racial bloc voting), an at-large election system has the effect of denying minority voters the opportunity to elect a minority to office. In contrast, elections from single-member districts, some of which contain more than 50 percent minority voters, would make minority representation on the governing body much more likely.

Combinations of these voting systems are also possible. Members of the town governing body could be elected from a mixed system, using at-large and district elections. For example, of the 10 members of the governing body, 2 could be elected at-large and 8 could be elected from single-member districts. Given racial bloc voting, the opportunity for minorities to be elected under this mixed system would depend upon the proportion of minority voters in each of the eight districts.

In addition, the town council could be divided into multimember districts in which more than one member of the town governing body is elected from each district. For example, two districts could elect five members each. Again, the opportunity for minorities to be elected would depend upon the percentage of minority voters in each of the two

¹ The following election systems and voting rules have also been explained in a similar format in U.S., Commission on Civil Rights, *The Voting Rights Act: Ten Years After* (1975), pp. 204-10.

districts. If each district reflected the overall racial proportions of the town (for example, 40 percent minority, 60 percent white), this opportunity would be limited. If one district, however, had 60 percent minority voters and the other 15 percent minority voters, the opportunities for minority representation, at least in the former district, would be enhanced.

When political officials are elected by districts, the opportunities for minority representation depend greatly on the way district lines are drawn. Jurisdictions have diluted minority voting strength through practices such as dividing a geographical concentration of minorities among several districts, all predominantly white, or overpopulating one district with minorities under circumstances in which more than one district could have had substantial minority populations. Although the districts may technically comply with the one-person, one-vote principle (that is, equalizing population among districts), the way the districts are drawn may raise questions as to the jurisdictions' intent, especially if they are neither compact nor contiguous. For example, with 10 districts in a hypothetical town of 10,000 that is 40 percent minority, district lines could be drawn so as to preclude the possibility of any minority representation.

Changing the boundaries of the jurisdiction also can affect the opportunities for minority representation. For example, by annexing predominantly white areas, a jurisdiction can increase its proportion of white voters. The consolidation of two jurisdictions also can have this effect. In the context of an at-large system and a high degree of racial bloc voting, these types of changes would reduce the opportunities for minority representation in the enlarged jurisdiction, since the minority percentage of the total population would decrease.

Voting Rules

Equally important in determining the opportunities of minorities to be elected are a variety of voting rules. In the context of a particular election system (for example, at-large, mixed, single-member, multi-member districts), there are also voting rules that govern the way candidates are elected and the way citizens may vote. For example, jurisdictions may require winning candidates to receive a majority rather than a plurality of the vote. If no candidate receives a majority, the top two candidates face one another in a runoff.

The effect of this rule upon minority candidates can be significant, especially in jurisdictions where whites are in a majority and consistently refuse to support minority candidates. In a jurisdiction with 4,000 minority voters and 6,000 white voters, a majority vote rule would inevitably force a minority candidate to rely upon white voters to be elected. If one minority candidate and several white candidates run, and if whites split their votes among the white candidates, the minority candidate may win a plurality of the votes. Without some white support, however, minority candidates would probably not receive a majority of the votes needed to win a runoff. Under a majority vote rule, a runoff with a white candidate in these circumstances would generally result in defeat.

Other voting rules, often found in conjunction with the majority vote rule, also can limit minority opportunities for elected office. When more than one member of a governmental body is elected at large, several voting rules can make it difficult for a minority community to target its votes in order to gain elected representation. For example, in a hypothetical town of 6,000 whites and 4,000 blacks, 4 council members are simultaneously elected at large. Each voter is able to cast 4 votes among a field of 10 white candidates and 1 black candidate. With all black voters targeting their votes for the black candidate and voting for no one else, and if the white voters split their votes among the 10 white candidates, the black candidate would probably be among the 4 winners. However, a number of rules, in effect, prevent this targeting or "single-shot" voting.

First, single-shot voting may be prohibited, by requiring voters to cast ballots for a full slate of candidates to make their ballots count. Under this prohibition, each black voter would have to vote for three white candidates in addition to the black candidate. In this situation, these black ballots probably would ensure the success of four white candidates.

Second, the four at-large positions could be distinguished from each other. Although candidates are all vying for the same at-large positions, there would now be four races for four distinct positions. Under this voting rule, particular at-large positions would be designated on the ballot with a numbered post or place. A candidate would declare for the particular post or place and run only against other candidates declared for that position. Black voters in

this hypothetical election would have no opportunity for single-shot voting. The one black candidate would face white opposition for a single position. With a black electorate of 40 percent or a white electorate that rarely votes for blacks, the black candidate's prospects for success would be severely limited. If there is also a majority runoff rule, his or her chances for election would be even further reduced.

Third, each of the four positions might have a residency requirement, but voting is done under an at-large system. In other words, candidates for at-large positions must reside in a specific district or section of the jurisdiction. This voting rule would make single-shot voting impossible by separating the four at-large positions into four races for four distinct positions. Again, the likelihood is increased that the opportunities for minority elected representation would be limited, especially where racial bloc voting prevails in a majority white jurisdiction.

Fourth, the terms of each of the four positions might expire in different years (that is, they are staggered). If each position has a 4-year term and one position is elected each year, single-shot voting would again be impossible. Each position would have been separated into a distinct race in which the opportunities for minority representation would be limited.

Election Systems, Voting Rules, and Opportunities for Minority Representation

Rarely do any of these election systems and voting rules appear in isolation. For example, at-large elections sometimes occur in conjunction with the majority vote, numbered post, and staggered term rules. Given other voting problems that minori-

ties routinely confront, the combination of these election systems and voting rules often places a significant added burden upon minorities running for office.

Although minority representation at virtually every level in States covered by the Voting Rights Act has increased over the last 5 years, minorities continue to be severely underrepresented in most elective offices.² The situation appears to be even more acute in jurisdictions with particular election systems and voting rules. At-large election systems appear to have a severe negative effect, and they are extensively used.³

For example, in the Southern States covered by the preclearance provisions of the Voting Rights Act, there were 29 municipalities in 1978 with a black majority and total population of 2,500 or more, but with no black representation. Of these, 22 (76 percent) have at-large elections.⁴ In 59 percent of all southern cities with a population of 2,500 or more, in which blacks comprise less than 50 percent of the population, and that employ at-large elections only, no blacks serve on city governing councils.⁵ This compares with 36 percent of cities using mixed or single-member district election systems.⁶

Multimember election systems also have been associated with minimal levels of minority representation. Where multimember election systems are employed, efforts of minority candidates to gain election are also made more difficult. For example, in the Southern States covered by the preclearance provisions of the Voting Rights Act, three State upper houses and three State lower houses employ multimember districts.⁷ In these legislative chambers, 31 blacks held office in 1980, 5.8 percent of the total number of legislators.⁸ The situation is most severe in States that employ multimember districts

² See chapter 2.

³ For example, of the 22 cities in Virginia with a total population of 5,000 or more and a black population of 15 percent or more, 19 (86 percent) employ at-large election systems. However, 41 percent of the black council members from these 22 cities are elected from the 4 cities with mixed or single-member districts. Timothy O'Rourke, "City and County At-large Elections and the Problem of Minority Representation," *The University of Virginia Newsletter*, vol. 55, no. 5 (February 1979), p. 2 (hereafter cited as "City and County At-Large Elections"). In Texas, of the 214 home rule cities, 179 (84 percent) employ at-large election systems and 31 (16 percent) use single-member districts or a mixed system. Of the 179 jurisdictions that use at-large elections, 12 (7 percent) have black representation on their municipal councils and 32 (18 percent) have Mexican American representation. However, of the 31 jurisdictions with mixed or single-member districts, 11 (35 percent) have black representation on their municipal councils and 8 (26 percent) have Mexican American representation. Texas Advisory Committee to the U.S. Commission on Civil Rights, *A Report on the Participation of Mexican Americans, Blacks and Females in the Political Institutions and Processes in Texas, 1968-1978*, prepared by Charles Cotrell

(1980), pp. 95-102; Joint Center for Political Studies, *National Roster of Black Elected Officials*, vol. 10 (1981); Southwest Voter Registration Education Project, "Texas Roster of Spanish Surname Elected Officials," July 1980. In Mississippi, there are currently 39 cities with populations over 2,500 with at-large city elections. Of those, 27 have no black representation. Of the 12 at-large cities with black representation, 7 are majority black. Frank Parker, director, voting rights project, Lawyers' Committee for Civil Rights Under Law, telephone interview, Feb. 20, 1981.

⁴ Paul Stekler, research associate, Harvard University, letter to Commission staff, Feb. 24, 1981 (hereafter cited as Stekler Letter).

⁵ Paul Stekler and Gary Orren, "Determinants of Black Electoral Success in Southern Municipalities: Preliminary Analysis" (paper delivered at the 1979 annual meeting of the Southern Political Science Association, Gatlinburg, Tenn., Nov. 1-3, 1979), p. 7.

⁶ *Ibid.*

⁷ Joint Center for Political Studies, *National Roster of Black Elected Officials*, vol. 9 (1980), pp. 1, 56, 94, 128, 169, 201, 217, 226.

⁸ *Ibid.* Joint Center for Political Studies, *National Roster of Black Elected Officials*, vol. 10 (1981), pp. 86, 202, 235, 250, 262.

extensively. In Virginia and North Carolina, where 82 of 162 legislative districts are multimember, blacks hold 10 seats, 3.2 percent of all legislative seats.⁹

Where certain election systems and voting rules have been abolished, minority representation has increased significantly. For example, in Texas during the period 1970 to 1978, 29 at-large or multimember systems were changed voluntarily or through litigation to single-member districts or mixed plans.¹⁰ Immediately prior to these changes, the 29 systems elected 9 blacks and 8 Hispanics to office.¹¹ Immediately after the respective changes, 26 blacks and 24 Hispanics were elected.¹²

In Louisiana, during the same period, 12 at-large or multimember systems were changed voluntarily or through litigation to single-member districts or mixed plans.¹³ Before these changes, there were three black elected officials in these jurisdictions.¹⁴ After these changes, there were 24.¹⁵

In Mississippi, as a result of an injunction preventing implementation of a 1972 State statute requiring at-large elections, 29 cities and towns returned to district systems for their 1977 municipal elections.¹⁶ In that year black city council members in Mississippi increased from 58 to 104.¹⁷

Election Systems, Voting Rules, and Minority Political Participation

The potential consequences of these election systems and voting rules for minority political participation are numerous. As discussed above, particular election systems and voting rules are associated with significant underrepresentation of minorities in elected office. There are, however, several additional consequences. For example, the opportunities for elected office influence the interest of minorities in becoming candidates. With few opportunities to be elected, the motivation to run is similarly restricted. When the opportunities for

elected office have increased, so has the number of minority candidates. For example, in San Antonio, Texas, the change from at-large districts to single-member districts in 1977, resulting from a Department of Justice objection to annexations to the city during the period 1972–74, increased the percentage of Mexican American candidates. In the 1973 and 1975 elections for city council 26.5 percent of all candidates were Mexican American, while in the 1977 and 1979 elections 40.6 percent were Mexican American.¹⁸

An increase in the number of black candidates has also occurred when a change from at-large to single-member districts bolstered black opportunities for elected office. For example, the redrawing of district lines in Hinds County, Mississippi, in 1979 and the creation of single-member districts in Montgomery County, Alabama, in 1980 increased significantly the number of black candidates who were then willing to run for offices that since the end of Reconstruction had been held exclusively by whites. In Hinds County, the number of black candidates for county supervisor increased from two to four,¹⁹ and in Montgomery County the number of black candidates for county commission increased from zero to seven.²⁰ Throughout many other areas covered by the preclearance provisions of the Voting Rights Act, there is evidence to suggest that increased opportunities for elected office brought about by changes in election systems and voting rules have produced an increase of minority candidates. As one black candidate in Hale County, Alabama, said, "To tell you the truth, what made me run was when they made the districts."²¹

In the following pages, case studies are presented that document the negative effect of particular election systems, boundary changes, and voting rules upon minority participation in the political process. Those election systems, boundary changes and voting rules that were established subsequent to the effective date jurisdictions were subject to the

⁹ *Ibid.*, pp. 202, 262.

¹⁰ U.S., Commission on Civil Rights, Southwest Regional Office, "Notes on Changes From At-Large Systems" (unpublished paper, 1979), p. 1. Of the 29 changes, 18 occurred in conjunction with litigation and 4 in conjunction with objections issued under section 5 of the Voting Rights Act.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ U.S., Commission on Civil Rights, "Notes on Changes From At-Large Systems," exhibit A.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Lawyers' Committee for Civil Rights Under Law, Mississippi Office, "Mississippi Office: 1978 Report—1979 Litigation Program, 1978 Docket, and 1978 Scorecard," October 1978, pp. 2–3.

¹⁷ *Ibid.*, p. 3.

¹⁸ Charles Cotrell and Arnold Fleischmann, "The Change From At-large to District Representation and Political Participation of Minority Groups in Fort Worth and San Antonio, Texas" (paper delivered at Annual Meeting of the American Political Science Association, Washington, D.C., Aug. 30–Sep. 3, 1979), p. 22.

¹⁹ Ally Mack, professor of political science, Jackson State University, telephone interview, Feb. 26, 1981.

²⁰ Frank Bray, Montgomery County commissioner, telephone interview, Feb. 20, 1981.

²¹ Bob Blalock, "Election Reflects Change," *Tuscaloosa News*, Nov. 9, 1980, p. 4–A.

special provisions are subject to review under section 5 of the Voting Rights Act. In those situations, the preclearance process under section 5 has been effective in preventing the implementation of election systems, boundary changes, and voting rules that have an adverse effect on minority political participation. In some situations where these changes were established prior to the effective date of coverage, suits have been brought under section 2 of the Voting Rights Act or the 14th or 15th amendment alleging discrimination in voting. As the case studies reveal, abolishing already existing election systems, boundary changes, and voting rules that adversely affect minority political participation under section 2 or the 14th or 15th amendment is not only more time-consuming, but it is also more difficult. In some cases these election systems, boundary changes, and voting rules which may violate section 2 or the 14th or 15th amendment have continued unchallenged since minorities either lack the resources or the expertise to initiate such efforts.

Local Election Systems and Voting Rules

Alabama

Opelika, Alabama—At-Large Elections

The Opelika City Commission is composed of three members who are elected at large. One of the commissioners also serves as mayor. The electoral system includes a majority vote rule and staggered terms for the commissioners.²²

Despite the fact that Opelika at one time had a near majority black population and in 1980 was 33 percent black, no black has ever been elected to the city commission. Between 1969 and 1978, four black candidates ran for places on the commission. All were defeated. Currently, all three members of the Opelika City Commission live in the predominantly white north side of the city.²³

The lack of opportunities for black candidates to gain election to the Opelika City Commission is related to the interaction of the city's election system

with the high degree of racial bloc voting. At-large elections, the majority vote rule, and staggered terms make it impossible for black candidates to be elected without white votes. No black candidate has ever won a single voting box (precinct) in the white community. The one black candidate who reached a runoff failed to attract the votes that had gone to white candidates defeated in the primary election.²⁴

The informal practice of filling commission vacancies arising from resignation or death through appointments by the remaining commissioners also has prevented black candidates from ever running in an election in which there was no incumbent. Although black individuals and organizations have attempted to influence the filling of these vacancies, their suggestions have been consistently ignored.²⁵ According to Rev. A.L. Wilson, pastor of the Thompson Chapel A.M.E. Church in Opelika, blacks are never asked to recommend candidates for these vacancies.²⁶

Blacks complain that the all-white city commission has not been responsive to their needs. They cite problems in employment as well as problems related to access to services. For example, they allege that in 1980, 4 of 31 employees at city hall were black. All four of these were in the two lowest paying classifications. In virtually all city departments, blacks were underrepresented or concentrated in the lowest paying jobs.²⁷ Blacks also claim that in 1978 twice as many black households were located on dirt streets than were white households.²⁸

Limited black opportunities in Opelika electoral politics have had severe consequences upon the level of minority political participation. In the last two municipal elections, held in 1979 and 1980, no blacks ran for city commission.²⁹ This undoubtedly has led to a further negative impact on the black community since, in the past, black candidacies almost always have generated a higher level of black participation.³⁰ Blacks in Opelika have been frustrated in all of their attempts to gain white support for black representation in elected office, and an increasing number of blacks may be convinced, as one

²² A.L. Wilson, pastor, Thompson Chapel A.M.E. Church, interview in Opelika, Ala., Sept. 12, 1980 (hereafter cited as A.L. Wilson Interview).

²³ *Ibid.* Population figures for jurisdictions discussed in this chapter are from the 1980 census. See U.S., Department of Commerce, Bureau of the Census, *1980 Census of Population and Housing*, series PHC80-V (1981).

²⁴ Post-trial Brief for Plaintiffs at 17-20, Lee County Branch of the NAACP v. City of Opelika, No. 78-13-E (M.D. Ala., filed Jan. 25, 1978) (hereafter cited as Post-trial Brief for Plaintiffs).

²⁵ *Id.* at 6-8; A.L. Wilson Interview.

²⁶ A.L. Wilson Interview.

²⁷ Plaintiffs' Supplemental Proffer of Evidence, Lee County Branch of the NAACP v. City of Opelika, at 4-5.

²⁸ Post-trial Brief for Plaintiffs at 48.

²⁹ A.L. Wilson Interview.

³⁰ Post-trial Brief for Plaintiffs at 4-5; Stephen J. Ellmann, attorney for plaintiffs, telephone interview, June 18, 1981.

black observer put it, that “the white attitude here is that black folks are not ready for leadership.”³¹

In January 1978 black plaintiffs sued the city of Opelika under the 14th and 15th amendments and section 2 of the Voting Rights Act.³² The plaintiffs alleged “because of past and present discrimination, black residents and voters of the city of Opelika have had less opportunities than whites to participate in the political process and to elect representatives of their choice.”³³ The case is currently pending in the district court.³⁴

Hurtsboro, Alabama—Annexation

In Hurtsboro, a five-member city council has consistently refused to annex an adjacent black community, Twin Gates.³⁵ Most recently, Mary Kate Stovall, the first and only black council member in the 56 percent black town, introduced a motion to annex the area.³⁶ Ms. Stovall argued that the annexation would increase the city’s tax base and bring in more Federal funds.³⁷ Despite the fact that services to the Twin Gates area already come from Hurtsboro and that the city has lost over 30 percent of its population since 1970, the majority argued that it would be too costly to provide services. The motion died for lack of a second.³⁸

Many in the black community are convinced that affordable housing for blacks is constructed only outside the city limits and that the city refuses to annex adjacent black areas because the city council wants to limit black access to city government.³⁹ In an article on Hurtsboro, the *Wall Street Journal* reported that “whites control the town politically because more of them vote than blacks and because the city government has refused to annex a nearby black section that would tip the racial balance.”⁴⁰

Respondents additionally claimed that black residents within Hurtsboro have been discriminated

against in terms of city services. People Concerned For Hurtsboro, a black citizens’ group, charged in its July 1980 complaint to the Office of Revenue Sharing of the U.S. Department of the Treasury that black citizens in Hurtsboro have received unequal provision of public services.⁴¹ Examples given included: Only 1 household in the white community but 126 households in the black community reside on unpaved roads; there are 19 storm sewers in the white community but only 1 in the black community; there are about 1,584 feet of sidewalks in the white community, none in the black community.⁴²

As a result of a previous complaint, the Office of Revenue Sharing found that the city of Hurtsboro had used revenue sharing funds to perpetuate discrimination in city employment and in the provision of sewer services and fire protection.⁴³

Georgia

Johnson County, Georgia—At-Large Elections

Since Reconstruction, Johnson County has never elected a black to its three-member county commission or to the offices of sheriff, clerk of court, probate judge, or tax commissioner.⁴⁴ All of these offices are elected at large or countywide. Currently, a black serves as one of the four county justices of the peace, who are elected by districts.⁴⁵ Commission staff could not find documentation of any other black elected county official from the 32 percent black county in this century.

Black candidates are equally scarce. With the exception of the successful black candidate for justice of the peace, there is no record of any other black candidate for county office in at least the last decade.⁴⁶ Although many in the black community have considered running for office, the at-large election system has discouraged them. As one

³¹ A.L. Wilson interview.

³² Complaint at 1, Lee County Branch of the NAACP v. City of Opelika, No. 78-13-E (M.D. Ala., filed Jan. 25, 1978).

³³ *Id.* at 3.

³⁴ Stephen J. Ellmann, attorney for plaintiffs, telephone interview, May 19, 1981. For the response of the city of Opelika to these statements, see appendix G of this report.

³⁵ Peter Martin, staff attorney, Legal Services Corporation of Alabama, interview in Opelika, Ala., Sept. 9, 1980 (hereafter cited as Peter Martin Interview); Fred Bankston, “Hurtsboro Council Rejects Twin Gates Annexation,” *Columbus Ledger-Enquirer*, Mar. 20, 1980, p. B-1 (hereafter cited as “Council Rejects Annexation”).

³⁶ Mary K. Stovall, city council member, Hurtsboro, interview in Hurtsboro, Ala., Sept. 8, 1980 (hereafter cited as Stovall Interview).

³⁷ *Ibid.*; Peter Martin Interview.

³⁸ Stovall Interview; “Council Rejects Annexation.”

³⁹ Peter Martin Interview.

⁴⁰ Neil Maxwell, “Minority Report,” *Wall Street Journal*, Nov. 17, 1980, p. 22.

⁴¹ People Concerned for Hurtsboro v. Town of Hurtsboro, Alabama, complaint mailed to U.S. Department of Treasury, Office of Revenue Sharing, July 22, 1980, p. 1.

⁴² *Ibid.*, p. 4.

⁴³ U.S., Department of Treasury, Office of Revenue Sharing, Hurtsboro, Ala., No. 012057001-001, filed Sept. 17, 1975. Subsequent to these findings, the city changed its recruitment procedures, built a sewer extension in the black community, and purchased an auxiliary fire truck. *Ibid.* For the response of the city of Hurtsboro to these statements, see appendix G of this report.

⁴⁴ John Martin, chairman, Johnson County Justice League, interview in Wrightsville, Ga., Nov. 18, 1980 (hereafter cited as John Martin Interview); Rev. E.J. Wilson, community and religious leader, and advisor, Johnson County Justice League, interview in Wrightsville, Ga., Nov. 17, 1980 (hereafter cited as E.J. Wilson Interview).

⁴⁵ John Martin Interview; E.J. Wilson Interview.

⁴⁶ John Martin Interview; E.J. Wilson Interview.

individual who briefly considered running for sheriff stated, "Black candidates are just wasting their money."⁴⁷

Blacks feel that the county has been unresponsive to their needs in terms of employment and services.⁴⁸ For example, a recent Office of Revenue Sharing investigation found that 3 of 28 full-time county employees in 1980 were black.⁴⁹ In 1979 Johnson County hired nine employees, all white.⁵⁰ In 1980 Johnson County hired six employees, two of whom were black (a male was hired as a laborer; a female was hired as a janitor).⁵¹ The only other black employee of the county is a "pipe drain supervisor," but he does not supervise anyone; and although he has been on the job for 7 years, he makes only a nominal amount more than the newly hired laborers.⁵² In terms of county services, the Office of Revenue Sharing also found starkly differential treatment for whites and blacks.⁵³ With few opportunities for participation in a county government that is perceived to be unresponsive to the needs of the black community, black apathy in Johnson County remains the norm.⁵⁴

Burke County, Georgia—At-Large Elections

Despite the fact that Burke County has a 54 percent black population, no black has ever been elected to the 5-member county commission.⁵⁵ Although two black candidates have run for the commission, they fared miserably in the countywide elections. Neither candidate received a majority of votes in any of the predominantly white precincts.⁵⁶

Black residents of the county filed a suit in district court in 1976, alleging that the at-large method of electing county commissioners unconstitutionally diluted their voting strength under the 14th and 15th amendments, and section 2 of the Voting Rights Act. The district court held in favor of the black

plaintiffs and the Court of Appeals for the Fifth Circuit affirmed.⁵⁷

The district court found numerous instances of county unresponsiveness to the needs of the minority community. Examples included:

allowing some blacks to be educated in largely segregated and clearly inferior schools, failing to hire more than a token number of blacks for county jobs, and paying those blacks hired lower salaries than their white counterparts; forcing black residents to take legal action to protect their rights to integrated schools and grand juries and to register and vote without interference; and participating . . . and contributing public funds to the operation of a private school established to circumvent the requirements of integration.⁵⁸

Burke County has been ordered to establish a single-member district election system.⁵⁹

College Park, Georgia—Annexation, Redistricting

In 1977 College Park attempted to annex 32 areas adjacent to the city and to redistrict its 6-member council. The Attorney General objected to these changes under section 5 of the Voting Rights Act,⁶⁰ finding that the black proportion of the city would have been reduced from 43 to 30 percent and concentrated into one council district.⁶¹ Under the proposed redistricting plan, Ward 2 would have had a 77 percent black population.⁶² Additionally, the total population of the proposed council districts would vary as much as 16 percent.⁶³ In terms of opportunities for black representation, the Attorney General concluded that "the annexations significantly dilute the city's black population and that College Park's electoral system does not minimize the dilutive effect of these annexations."⁶⁴ The Attorney General also objected to the city's proposed redistricting plan, since there was not sufficient evidence to show "that the redistricting will not have the effect of abridging the right to vote on account of race or color."⁶⁵

⁴⁷ John Martin Interview.

⁴⁸ *Ibid.*; E.J. Wilson Interview.

⁴⁹ U.S., Department of Treasury, Office of Revenue Sharing, Johnson County, Ga., No. 111083083-002, filed Oct. 31, 1979.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*; subsequent to these findings, the county initiated an affirmative action program with the goal of hiring 11 blacks by 1985. *Ibid.*

⁵⁴ John Martin Interview.

⁵⁵ Plaintiffs' Proposed Findings of Fact and Conclusions of Law, Lodge v. Buxton, No. 176-55 (S.D. Ga., Oct. 26, 1978), at 2, 3, *aff'd*, 639 F.2d 1376 (5th Cir. 1981).

⁵⁶ *Id.*

⁵⁷ Lodge v. Buxton, 639 F.2d 1376 (5th Cir. 1981).

⁵⁸ *Id.* at 1376-77.

⁵⁹ *Id.* at 1380-81.

⁶⁰ Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to George H. Glaze, city attorney, College Park, Miss., Dec. 9, 1977 (hereafter cited as College Park Objection Letter).

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.* In *City of Richmond v. U.S.*, the Supreme Court of the United States held that an "annexation reducing the relative political strength of the minority race in the enlarged city as compared with what it was before the annexation is not a statutory violation [of section 5] as long as the post-annexation electoral system fairly recognizes the minority's political potential." 422 U.S. 358, 378 (1975).

⁶⁵ College Park Objection Letter.

Louisiana

Ouachita Parish, Louisiana—Boundary Change

In 1977 the Ouachita Parish School District proposed that the residents of Monroe no longer be permitted to vote in elections for the parish (county) school board. Prior to this, residents of the city could vote for both the parish and city school boards. The Attorney General objected to this change under section 5 of the Voting Rights Act.⁶⁶ Under this proposed change, the Attorney General found, the black proportion of the electorate in the Ouachita Parish School District not only would have declined from 28 to 17 percent, but also the only black serving on the parish school board would have been removed.⁶⁷

The Attorney General also determined that “the residents of the city of Monroe have a substantial interest in the parish school system that would justify their being permitted to vote in the parish school elections.”⁶⁸ Over 3,000 students residing in the city attend these schools, many of the facilities of the parish school system are located in Monroe, and residents of the city of Monroe pay taxes to support the parish school system.⁶⁹ Given these facts, the Attorney General concluded that there was not sufficient evidence to show that the proposed boundary change “does not have the purpose and will not have the effect of discriminating on the basis of race or color.”⁷⁰

East Baton Rouge Parish, Louisiana—Multimember Election Districts

In 1971 the East Baton Rouge Parish School Board established a multimember election system in which 12 school board members were elected from 3 wards.⁷¹ Under this system and a prior multimember election system, no black had ever been elected to the school board in the 31 percent black parish (county).⁷²

⁶⁶ Drew S. Days III, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Kenneth C. DeJean, assistant attorney general, State of Louisiana, Mar. 7, 1977.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ “3 Blacks May Be Elected Under Compromise Plan,” *Baton Rouge* (La.) *State-Times*, May 28, 1980, p. 1-A.

⁷² *Ibid.*

⁷³ *Moch v. East Baton Rouge Parish School Board*, No. 74-280 (M.D. La., Oct. 10, 1974); *U.S. v. East Baton Rouge Parish School Board*, No. 76-252 (M.D. La., Aug. 17, 1976).

⁷⁴ *Moch v. East Baton Rouge Parish School Board*, 548 F.2d 594 (5th Cir., 1977); *United States v. East Baton Rouge Parish School Board*, 594 F.2d 56 (5th Cir., 1979).

In 1974 three black plaintiffs filed suit against the East Baton Rouge Parish School Board under the 14th and 15th amendments, and in 1976 the Department of Justice filed suit against the board under the 14th and 15th amendments, and section 2 of the Voting Rights Act. Both suits alleged that the multimember election system unconstitutionally diluted the black vote.⁷³ Each suit was dismissed by the district court, but the United States Court of Appeals for the Fifth Circuit revived the cases, sending them back to the district court for further proceedings.⁷⁴

A consent decree was issued on June 6, 1980, establishing a single-member election system.⁷⁵ In September and November 1980, the first school board elections using single-member districts were held. In the three predominantly black districts, black school board members were elected. Press Robinson, who had run unsuccessfully for the board in both 1972 and 1976 under the old multimember election system, was one of the successful black candidates.⁷⁶

Mississippi

Port Gibson, Mississippi—At-Large Elections

Port Gibson is governed by a mayor and a six-member council. Members of the city council are elected at large with staggered terms. Additionally, the city employs majority vote and anti-single-shot rules.⁷⁷ No black has ever served in elective office in the 63 percent black city.⁷⁸ During the period 1970 to 1976, black candidates ran for positions on both the city council and the office of mayor. All lost.⁷⁹ It is impossible to calculate precisely the degree of

⁷⁵ *U.S. v. East Baton Rouge Parish School Board*, No. 76-252 (M.D. La., Aug. 17, 1976); *Moch v. East Baton Rouge Parish School Board*, No. 74-280 (M.D. La., Oct. 10, 1974) (consent decree entered on June 6, 1980).

⁷⁶ Sonny Albarado, “Black School Boardmen May Be Crucial Swing Vote,” *Baton Rouge* (La.) *Advocate*, Sept. 15, 1980, p. 12-A.

⁷⁷ Carole Brezeale, city clerk, Port Gibson, Miss., telephone interview, May 15, 1981 (hereafter cited as Brezeale Interview).

⁷⁸ Evan Doss, Claiborne County tax assessor, and Rev. Eddie Walls, president, Port Gibson NAACP, interview in Port Gibson, Miss., Dec. 2, 1980 (hereafter cited as Doss and Walls Interview); given that the median age of the black population is lower than that of whites, a black majority of 65 percent is generally considered necessary for there to be an equal number of blacks and whites of voting age.

⁷⁹ *Ibid.* James Miller, former candidate for mayor, interview in Port Gibson, Miss., Dec. 2, 1980 (hereafter cited as Miller Interview).

racial bloc voting that occurs, since all residents of the city vote at the same location,⁸⁰ but virtually all respondents stressed that considerable racial bloc voting occurs in Port Gibson.⁸¹ For example, Evan Doss, Claiborne County tax assessor, stated that when blacks run for office in Port Gibson, "There is only one issue—that's race."⁸²

The lack of opportunities for black candidates to be elected in Port Gibson has dampened the desire of local blacks to run for office. No black has run for office in Port Gibson since 1976.⁸³ In fact, the 1980 elections in Port Gibson were uncontested.⁸⁴ A former candidate for city council said, "Blacks won't run because they have no chance,"⁸⁵ while an unsuccessful black candidate for mayor concluded, "You just can't win."⁸⁶

The election system and voting rules in Port Gibson are widely viewed in the black community as crucial mechanisms in limiting black access to city government. According to one respondent, blacks could only overcome the barriers presented by the election system and voting rules with a greatly increased proportion of the population.⁸⁷ Under the present system, he stressed, there would never be black representation in government.⁸⁸

Jackson, Mississippi—At-Large Elections

In Jackson, despite a 47 percent black population, no black has ever been elected to the city's 3-member commission.⁸⁹ Each commissioner is elected at large with majority vote and anti-single-shot requirements.⁹⁰ Although black candidates have run for the commission, all have been defeated.⁹¹ Attempts of black candidates to secure votes from the white majority have consistently failed. For example, in the 1973 municipal election, winning white candidates carried every one of the predominantly white precincts in Jackson.⁹² In 1977 the defeat of a

⁸⁰ The city of Port Gibson does not tabulate votes on the basis of precincts or boxes that are located in particular portions of the city. Rather, all residents vote in the same location and vote in particular boxes according to the first letter of their last name.

⁸¹ Doss and Walls Interview; Miller Interview.

⁸² Doss and Walls Interview.

⁸³ *Ibid.*

⁸⁴ Carole Brezeale, city clerk, Port Gibson, Miss., Evelyn Segrest, former city clerk, Port Gibson, Miss., and Catherine Cade, former city clerk, Port Gibson, Miss., interview in Port Gibson, Miss., Dec. 5, 1980 (hereafter cited Brezeale et al. Interview).

⁸⁵ Doss and Walls Interview.

⁸⁶ Miller Interview.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Kirksey v. City of Jackson*, 461 F. Supp. 1282, 1286 (S.D. Miss. 1978).

⁹⁰ *Id.* at 1286-88.

⁹¹ *Id.* at 1286-90.

referendum to change the at-large election system to one with more opportunities for black candidates again reflected strong racial bloc voting. Seventy-two percent of all white voters supported the retention of the at-large system while 98 percent of all black voters were opposed.⁹³ This strong white opposition to black candidates and to change in the Jackson election system has been a contributing factor, according to one respondent, to "the prevailing opinion in the black community. . . that it [political participation] doesn't matter."⁹⁴

In March 1977 black plaintiffs sued the city of Jackson, alleging that "at-large voting for members of the Jackson City Council unconstitutionally and unlawfully dilutes, minimizes and cancels out black voting strength" in violation of the 13th, 14th, and 15th amendments, and section 2 of the Voting Rights Act.⁹⁵ The district court ruled against the plaintiffs in 1978,⁹⁶ but the U.S. Court of Appeals for the Fifth Circuit remanded the case to the district court to be considered in light of a recent Supreme Court decision.⁹⁷ In January 1981 the district court again ruled against the plaintiffs, who have subsequently appealed the decision.⁹⁸

Greenwood, Mississippi—At-Large Elections

Greenwood also is governed by a three-member commission.⁹⁹ The city also uses majority vote and anti-single-shot rules.¹⁰⁰ Although Greenwood has a majority black population, no black has ever served as commissioner during the history of commission government in the city. Black candidates have run for office in Greenwood, but racial bloc voting has severely limited their opportunities for election.¹⁰¹ All black candidates for elected office in Greenwood have been eliminated either in the party

⁹² *Id.* at 1290.

⁹³ Plaintiffs' Proposed Findings of Fact and Conclusions of Law at 12, *Kirksey v. City of Jackson*, No. J77-0075(N) (S.D. Miss., Aug. 28, 1978) (hereafter cited as Plaintiffs' Proposed Findings).

⁹⁴ Henry Kirksey, Mississippi State senator, interview in Jackson, Miss., Dec. 3, 1980 (hereafter cited as Kirksey Interview).

⁹⁵ Plaintiffs' Proposed Findings at 1.

⁹⁶ *Kirksey v. City of Jackson*, 461 F. Supp. 1282, (S.D. Miss. 1978).

⁹⁷ 625 F.2d 21 (5th Cir. 1980).

⁹⁸ *Kirksey v. City of Jackson*, 506 F. Supp. 491 (S.D. Miss. 1981); Frank Parker, director, Voting Rights Project, Lawyers' Committee for Civil Rights Under Law, and Barbara Phillips, attorney, Lawyers' Committee, interview in Washington, D.C., May 20, 1981 (hereafter cited as Parker and Phillips Interview).

⁹⁹ *Jordan v. City of Greenwood*, No. GC-77-52-K-P, at 4 (N.D. Miss., filed May 6, 1977).

¹⁰⁰ *Id.* at 4-5.

¹⁰¹ *Id.* at 4.

primaries or defeated as independents in the general election.¹⁰²

Blacks have sued the city under the 13th, 14th, and 15th amendments, and section 2 of the Voting Rights Act, alleging that the election system and voting rules result in the election of a city commission that is "unresponsive to the particular needs and interests of the black community."¹⁰³ For example, black membership on appointed city boards has been limited. In the 52 percent black town, as of October 1980, there were 7 boards or commissions with no black members and 7 with only 1 black member.¹⁰⁴ According to the plaintiffs, a seven-member city council elected from single-member districts would resolve many of these problems. The case has been tried, but no decision has been rendered.¹⁰⁵

Warren County, Mississippi—Redistricting

In Warren County the 1971 county elections were held under a redistricting plan objected to by the Attorney General under section 5 of the Voting Rights Act.¹⁰⁶ After the 1975 county elections were stayed by the district court pending development of a nondiscriminatory plan by the county, the all-white board of supervisors in the 37 percent black county filed suit in the District Court for the District of Columbia seeking approval under the Voting Rights Act of its proposed redistricting plan.¹⁰⁷

The 1929 redistricting plan, the last plan effective prior to the Voting Rights Act, contained three districts within the near majority black city of Vicksburg and two in rural Warren County, but the new redistricting plan proposed to eliminate the Vicksburg districts and in each new district combine portions of the city with rural areas.¹⁰⁸ One area in the city with a high concentration of blacks would be divided among three districts.¹⁰⁹ The proposed

plan also contained districts that were neither compact nor contiguous. Finally, the redistricting plan contained no district with more than a 61 percent black population.¹¹⁰ A 65 percent black population is generally considered the minimum necessary to give blacks an opportunity to be elected to office.¹¹¹

The U.S. District Court for the District of Columbia denied preclearance of the proposed redistricting plan for Warren County. The court stated that the county had "failed to demonstrate that the proposed plan would not lead to a retrogression in the position of racial minorities. . ." and that the county had "offered no valid nonracial justification for the district lines within the city of Vicksburg which result in irregular shaped districts, fragment the black community and cause a diminution of black voting strength."¹¹²

Subsequent to this decision, the all-white county board of supervisors refused to conduct elections under the 1929 redistricting plan.¹¹³ However, in September 1979 the district court put into effect an interim, court-ordered, county redistricting plan and set elections for November 27, 1979.¹¹⁴ The interim plan included districts that were 67 percent and 65 percent black.¹¹⁵ The first black county supervisor in this century was elected in Warren County in that election.¹¹⁶

North Carolina

Wilson, North Carolina—At-Large Elections

In 1953, under a single-member district election system, G.K. Butterfield, Sr., became the first black in this century elected to the Wilson City Council.¹¹⁷ Mr. Butterfield served two terms and was defeated in his bid for a third term in 1957 after a single-

¹⁰² *Id.* at 5.

¹⁰³ *Id.* at 4-5; Willie Perkins, attorney for plaintiffs, telephone interview, June 18, 1981; Democratic Municipal Executive Committee, "Votes Cast in Primary Election held in the City of Greenwood, Leflore County, Mississippi on the 11th day of May, 1965"; Election Commissioners, the City of Greenwood, "Votes Cast in the city of Greenwood, General Election held in the City of Greenwood, LeFlore County, Mississippi on Tuesday, June 3, 1969"; Election Commissioners, the city of Greenwood, "Votes Cast in the General Election held in the city of Greenwood, LeFlore County, Mississippi, on the 5th day of June, 1973"; City of Greenwood, "1st Democratic Primary, May 12, 1981."

¹⁰⁴ *Id.* at 5-6.

¹⁰⁵ Final Pretrial Order, *Jordon v. City of Greenwood*, Oct. 27, 1980.

¹⁰⁶ Perkins Interview. For the response of the city of Greenwood to these statements, see appendix G of this report.

¹⁰⁷ Lawyers' Committee for Civil Rights Under Law, Mississippi Office, "Mississippi Office: 1978 Report—1979 Litigation Program, 1978 Docket, and 1978 Scorecard," p. 2.

¹⁰⁸ *Donnell v. United States No. 78-0392 (D.D.C. July 31, 1979), aff'd*, 100 S. Ct. 1000 (Feb. 19, 1980).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Donnell v. United States No. 78-0392 (D.D.C. July 31, 1979), aff'd*, 100 S. Ct. 1000 (Feb. 19, 1980); Under section 5 of the Voting Rights Act, objections to redistricting or reapportionment plans that have a discriminatory effect are based on the standards established in *Beer v. U.S.*, 435 U.S. 130 (1976). The Department of Justice can conclude that a redistricting plan has a discriminatory effect when it would lead to a "retrogression in the position of racial minorities with respect to their effective exercise of electoral franchise." (*Ibid.* at 141.) Of course, the Department can also conclude that district lines were drawn with a discriminatory purpose if evidence leads to that conclusion.

¹¹⁴ *Stokes v. Warren County Election Commission*, No. J79-0425(c)(S.D., Miss., Aug. 30, 1979).

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Joint Center for Political Studies, *National Roster of Black Elected Officials*, vol. 10 (1981), p. 159.

member district election system was replaced with an at-large election system.¹¹⁸ From 1957 to 1975, there was no black representation on the Wilson City Council, despite the fact that approximately one-third of the city's residents were black.¹¹⁹

A.P. Coleman, Wilson's only minority council member, was first elected as part of a slate sponsored by a predominantly white group of 60 Wilson business, professional, and civic leaders.¹²⁰ In the 1975 election, the "Wilson Forward" slate elected all four of its candidates.¹²¹ With the financial and organizational support of "Wilson Forward," Mr. Coleman ran well in both black and white precincts, finishing fourth in the field of 25 candidates and third on the "Wilson Forward" slate.¹²² Two other black candidates who ran without "Wilson Forward" backing trailed far behind, although one of the other black candidates outpolled Mr. Coleman in three of the four majority black precincts.¹²³

In 1977 Mr. Coleman did not seek reelection, but another black candidate, G.K. Butterfield, Jr., did seek election. Although Mr. Butterfield ran first in all four black precincts and collected more votes in each of these precincts than Mr. Coleman had in 1975, he lost, because in the six predominantly white precincts, he ran last.¹²⁴

In 1979 Mr. Coleman was one of six candidates running for six council seats.¹²⁵ In an uncontested election with low turnout, he finished first.¹²⁶ Although the top vote getters in 1975 and 1977 had been made mayor pro tem, Mr. Coleman was not.¹²⁷ According to Mr. Coleman, he "was completely taken by surprise" and "felt race was a factor in the change."¹²⁸

The ability of blacks to be elected under the present election system in Wilson is, therefore, dependent upon both white votes and organizational resources. Without this support, the opportunities are few. The perception remains in the Wilson black

community that the at-large system was established to remove blacks from office and is retained to deny blacks their full political participation.¹²⁹ As one respondent stated, "Every time blacks advance, the city tries to stop it."¹³⁰ Despite requests by the black community that a mixed election system be established to ensure greater black participation, there is little support for such a change on the city council.¹³¹ It appears that in the near future the situation will continue by which many blacks in Wilson perceive the city council as closed to their participation. One individual stressed that he did not feel that he has a vote on city council.¹³²

Halifax County, North Carolina—At-Large Elections

Halifax County is governed by six county commissioners who serve staggered terms and are elected with majority vote and residency requirements.¹³³ Halifax County also elects a sheriff, registrar of deeds, and clerk of the court.¹³⁴ Despite a 47 percent black population, no black has been elected to any at-large or countywide position.¹³⁵

The 1980 defeat of George T. Young, Sr., for the District 4 seat on the Halifax County Commission reflects the effect of the local electoral system and voting rules on black candidates. Although Mr. Young was required to reside in District 4 to run for the seat, all voters in the county could vote for him in the election. What this means for black candidates from predominantly black and rural districts of Halifax County is that they cannot gain election to the county commission without votes from predominantly white Roanoke Rapids.¹³⁶ For example, while candidate Young defeated his white opponent in District 4 (the district he was to represent) by 852 to

¹¹⁸ George Butterfield, Jr., Rev. Talmadge Watkins, president, Wilson NAACP, J.E. Williams, Milton Fitch, Sr., and Milton Fitch, Jr., interview in Wilson, N.C., Oct. 22, 1980 (hereafter cited as Butterfield et al. Interview).

¹¹⁹ Ibid.

¹²⁰ Ibid.; A.P. Coleman, councilmember, Wilson, N.C., interview in Wilson, Jan. 26, 1981 (hereafter cited as Coleman Interview).

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.; Supervisor of Elections, Wilson County, N.C., "Official Results, City Council Election, Nov. 4, 1975."

¹²⁴ Supervisor of Elections, Wilson County, N.C. "Official Results, City Council Election, Nov. 4, 1975."

¹²⁵ Butterfield et al. Interview; Coleman Interview; Supervisor of Elections, Wilson County, N. C., "Official Results, City Council Elections, 1975," and "Official Results, City Council Election, Nov. 8, 1977."

¹²⁶ Butterfield et al. Interview; Coleman Interview.

¹²⁷ Supervisor of Elections, Wilson County, N.C. "Official Results, City Council Election, Nov. 6, 1979."

¹²⁸ Butterfield et al. Interview; Coleman Interview.

¹²⁹ Coleman Interview.

¹³⁰ Butterfield et al. Interview.

¹³¹ Ibid.

¹³² Ibid.

¹³³ Ibid.; For the response of the city of Wilson to these statements, see appendix G of this report.

¹³⁴ George Young, former candidate for Halifax County Commission, interview in Enfield Township, N.C., Jan. 27, 1980 (hereafter cited as Young Interview); Horace Johnson, Jr., former candidate for Halifax County Commission, telephone interview, Jan. 5, 1981 (hereafter cited as Johnson Interview).

¹³⁵ Young Interview.

¹³⁶ Ibid.

713 votes, he lost predominantly white precincts in Roanoke Rapids by more than 1,000 votes.¹³⁷ As a result, Mr. Young lost the countywide election by 436 votes.¹³⁸ Under the county election system and voting rules, Mr. Young was declared the loser, since he needed to gain more votes countywide than his opponent for the District 4 seat.

Both Mr. Young and the only other black candidate for Halifax County Commission in the last decade, Horace Johnson, Sr., stressed that district elections are the only way to make the county government responsive to the needs of the black community.¹³⁹ As Mr. Johnson described it, at-large voting perpetuates a system in which "blacks don't get benefits from their taxes."¹⁴⁰

South Carolina

Georgetown County, South Carolina---At-Large Elections

In 1966 Georgetown County established an at-large election system for electing five members to its governing body. Since that time, the 45 percent black county has also employed numbered post and majority vote rules.¹⁴¹ Under this election system, two blacks served on the county council during the period 1966 to 1978. Both were appointed first by the council to vacant seats and subsequently never faced serious opposition in any election.¹⁴² However, no black has ever secured a position on the council by first being elected to a contested seat.¹⁴³

The 1978 campaigns of Hugh Walker and Herbert Knox for the Georgetown County Council reflect the difficulties the present election system poses for minority candidates. Mr. Walker faced 1 opponent in his bid for seat 3 and lost by 228 votes in the primary.¹⁴⁴ Mr. Walker received 83 percent of the vote in predominantly black precincts, while his white opponent received 82 percent of the vote in

predominantly white precincts.¹⁴⁵ Mr. Knox finished first among four candidates in his bid for seat 4, but did not receive a majority of votes cast.¹⁴⁶ In the subsequent runoff, he lost by more than 500 votes, with most of the support for the 2 white candidates who had been eliminated in the primary going to his white opponent.¹⁴⁷ In the runoff, Mr. Knox polled 94 percent of the vote in predominantly black precincts, while his white opponent polled 94 percent of the vote in predominantly white precincts.¹⁴⁸

As of 1980, blacks could not be elected to the Georgetown County Council without first having been appointed by the white members of the council. Very high degrees of racial bloc voting in elections where there are black challengers limit significantly the opportunities of these candidates. As one former black candidate put it, "There is a deeply entrenched machinery in the county. The problem is finding a viable alternative to this machinery."¹⁴⁹

Currently, black plaintiffs are suing the county under the 14th and 15th amendments and section 2 of the Voting Rights Act.¹⁵⁰ They allege that the present election system and voting rules operate "impermissibly to dilute the voting power of the County's black electors. . . . Black voters as a class are deprived of the opportunity meaningfully to participate in the political processes and to elect legislators of their choice."¹⁵¹

Florence County, South Carolina---At-Large Elections

In 1971 Florence County School District No. 1 established the procedure of electing nine school board members at large.¹⁵² The new system also employed numbered post and majority vote rules.¹⁵³ Black candidates ran for seats on the school board in 1971, 1973, 1976, and 1977, but only the two

¹³⁷ In 1980 Roanoke Rapids was 88.4 percent white. U.S., Department of Commerce, Bureau of the Census, *Census of Population and Housing: 1980*, PHC80-V-35, table 2, p. 28.

¹³⁸ Young Interview; Supervisor of Elections, Halifax County, "Abstract of Votes Cast at a Primary Election for County Officers, on Tuesday, May 6, 1980."

¹³⁹ *Ibid.*

¹⁴⁰ Young Interview; Johnson Interview.

¹⁴¹ Johnson Interview.

¹⁴² Brief for Plaintiffs at 2, *People United for Progress v. Georgetown County Council No. 78-1539* (D. S.C., filed Feb. 7, 1980) (hereafter cited as Plaintiffs' Brief); Supplementary Memorandum for Plaintiffs, at 1-2, *People United for Progress v. Georgetown County Council* (hereafter cited as Supplementary Memorandum for Plaintiffs).

¹⁴³ Plaintiffs' Brief at 2; Morris Johnson, member, People United for Progress; Herman Green, candidate for Georgetown County School Board; and Cornelius Young, member, People United for Progress,

interview in Georgetown, S.C., Nov. 6, 1980 (hereafter cited as Johnson et al. Interview).

¹⁴⁴ Plaintiffs' Brief at 2; Johnson et al. Interview.

¹⁴⁵ "Georgetown County Local Races," *Georgetown* (S.C.) *Times*, June 15, 1978, p. 14.

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.*

¹⁴⁸ "Georgetown County Runoff Voting," *Georgetown* (S.C.) *Times*, June 29, 1978, p. 15.

¹⁴⁹ *Ibid.*

¹⁵⁰ Johnson et al. Interview.

¹⁵¹ Plaintiffs' Brief at 8.

¹⁵² *Id.* at 13-14, citing *White v. Regester*, 412 U.S. 755, 766 (1973).

¹⁵³ Mordecai Johnson, city councilmember, Florence, S.C., and Frank Gilbert, interview in Florence, S.C., Nov. 5, 1980 (hereafter cited as Johnson and Gilbert Interview).

candidates who had been appointed first to vacancies on the board were elected.¹⁵⁴ Each of these candidates ran unopposed.¹⁵⁵ All other black candidates were defeated.¹⁵⁶

In virtually all of these elections, a high level of racial bloc voting in the 37 percent black county has prevented black candidates from being elected in the present election system.¹⁵⁷ For example, in 1977 a black candidate, Freddie Jolley, led all other candidates in the primary for seat no. 1.¹⁵⁸ Since Mr. Jolley did not receive a majority of the votes cast, a runoff was necessary.¹⁵⁹ In the runoff, the number of white voters in many precincts almost tripled, producing the largest turnout since the school board had been elected countywide. Mr. Jolley gained only 500 additional votes in the runoff, but his white opponent gained an additional 3,500.¹⁶⁰ Candidate Jolly lost by over 2,500 votes.¹⁶¹

This system has two apparent effects on the black community. First, the black community has limited control over which blacks are elected to the board. According to respondents, when blacks have suggested blacks for vacancies on the board, the suggestions have been ignored.¹⁶² As one respondent summed up, "Blacks are not represented by blacks of their choice."¹⁶³ Second, grassroots political participation is ultimately dampened. One individual described it as a situation in which "blacks get conditioned under these electoral rules to losing."¹⁶⁴

In June 1978, black plaintiffs sued the school district under the 1st, 13th, 14th, and 15th amendments, and section 2 of the Voting Rights Act.¹⁶⁵ The plaintiffs alleged that "the adoption and continued use of the at-large, numbered seat and majority run-off system was and is for the purpose and effect of diluting the voting strength of black residents of Florence. . . ."¹⁶⁶ The case was dismissed after the school board agreed to abolish the numbered post and majority vote rules. In the May 5, 1981, school

board elections, the first held under the new voting rules (plurality vote and no numbered posts), one black candidate was elected.¹⁶⁷

South Dakota

Tripp and Fall River Counties, South Dakota—Organization of Government, Redistricting

Under South Dakota law, both Shannon and Todd Counties are unorganized counties attached for governmental purposes to neighboring Fall River and Tripp Counties, respectively. Before 1975, the residents of predominantly Indian Shannon and Todd Counties were not permitted to vote in the elections of predominantly white Fall River and Tripp Counties, which provide them with governmental services.¹⁶⁸

In *Little Thunder v. State of South Dakota*,¹⁶⁹ plaintiffs, who were residents of these unorganized counties,¹⁷⁰ alleged that South Dakota law prevented them from voting for county officials in violation of the 14th amendment to the U.S. Constitution. Under South Dakota law, unorganized counties such as Shannon and Todd are attached to organized counties for "administration of governmental and fiscal affairs, including all State, county, judicial, taxation, election, recording, canvassing and foreclosure purposes. . . ."¹⁷¹ County officials who administer these local government functions for the unorganized counties are elected by voters of the organized counties. Residents of the unorganized counties were not allowed to vote for the county officials of the organized county to which they are attached.

The district court dismissed the plaintiffs' complaint.¹⁷² On appeal, the U.S. Court of Appeals for the Eight Circuit reversed the district court's decision and remanded the case to the district court for granting of appropriate equitable relief.¹⁷³ The court of appeals found that the South Dakota law denied

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*

¹⁶⁰ Florence County Election Commission, "Tabulation of Returns, Special Election for School District No. 1, Florence County, South Carolina, held May 3, 1977" (hereafter cited as Florence County Tabulation of Returns, May 3, 1977).

¹⁶¹ *Ibid.*

¹⁶² Florence County Election Commission, "Tabulation of Returns, Special Election for School District No. 1, Florence County, South Carolina, held May 17, 1977" (hereafter cited as Florence County Tabulation of Returns, May 17, 1977).

¹⁶³ Florence County Tabulation of Returns, May 17, 1977.

¹⁶⁴ Johnson and Gilbert Interview.

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*; statement by Frank Gilbert.

¹⁶⁷ Complaint at 1, Freddie Jolley v. School District No. 1 of Florence County, No. 78-880 (D.S.C., filed June 2, 1978).

¹⁶⁸ *Id.* at 2.

¹⁶⁹ John Gaines, attorney for plaintiffs, telephone interview, May 18, 1981.

¹⁷⁰ Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Mark Meierhenry, attorney general, State of South Dakota, Oct. 22, 1979 (hereafter cited as Meierhenry Objection Letter).

¹⁷¹ *Little Thunder v. State of South Dakota*, 518 F.2d (8th Cir. 1975).

¹⁷² Todd, Washabaugh, and Shannon Counties were the only unorganized counties in the State.

¹⁷³ S.D. Codified Laws Ann. §7-17-1 (1967).

¹⁷⁴ *Little Thunder v. State of South Dakota*, 518 F.2d 1253, 1254 (8th Cir. 1975).

the residents of the unorganized counties equal protection under the law. The court of appeals stated that the residents of the unorganized counties had a "substantial interest in the choice of county elected officials since those officials govern their affairs."¹⁷⁴ The court further stated that "such unequal application of fundamental rights we find repugnant to the basic concept of representative government."¹⁷⁵ As a result of this court decision, residents of the predominantly Indian counties of Shannon and Todd can now vote for county government officials in Fall River and Tripp Counties.

Subsequent to the 1975 *Little Thunder* decision, the Tripp County commissioners devised an election system which allowed residents of Todd County to vote for all three Tripp County commissioners, but allowed the residents of Tripp County to vote only for the one commissioner running from their district.¹⁷⁶ After the 1976 elections, however, the Tripp County Commissioners sued the State of South Dakota, alleging that the attachment of the counties was illegal since the residents of the two counties had not approved the change.¹⁷⁷ They also alleged that the election system allowing residents of Todd County to vote for all three commissioners and the residents of Tripp County only to vote for one commissioner was unconstitutional.¹⁷⁸ The South Dakota Supreme Court upheld the attachment but also held that the present election system was unconstitutional.¹⁷⁹ The court barred the successful candidate for commissioner in the 1976 election from taking office until the counties were reapportioned.¹⁸⁰

Based upon this decision, the Tripp County Board of Commissioners adopted a new redistricting plan to be used for the 1978 elections.¹⁸¹ Upon submission of the new plan under section 5 of the Voting Rights Act, the Attorney General determined that because the apportionment plan was based on voter registration instead of population statistics, there was "a

total deviation in population distribution of approximately 65 percent" among the three proposed districts.¹⁸² The Attorney General further noted that "the one district which is predominantly Indian in population. . . is substantially underrepresented whereas the two predominantly white districts are both significantly overrepresented. . . ."¹⁸³ As a result, the Attorney General objected to the plan, since Tripp County had not met the burden of proof "that the plan under submission does not have the purpose or effect of abridging the right to vote on account of race."¹⁸⁴

The Attorney General later declined to reconsider the objection.¹⁸⁵ After the Department of Justice filed suit, alleging that the county was planning to hold its November 1978 elections in districts pursuant to the redistricting plan that had not been precleared, the county signed a consent decree that allowed the 1978 elections to proceed.¹⁸⁶ The decree, however, barred the results in the commissioners' races from being certified unless either the Attorney General or the U.S. District Court for the District of Columbia found the proposed districts not to be discriminatory in purpose or effect.¹⁸⁷ As of May 1981, the results of the 1978 commissioners' race have not yet been certified. No commissioners have been elected since 1974 and despite the *Little Thunder* decision, the current commissioners were elected solely by the voters of Tripp County.¹⁸⁸

In *Little Thunder*, the U.S. Court of Appeals for the Eighth Circuit held that residents of predominantly Indian Shannon County had a "sufficient interest in the elections of Fall River county officials to be entitled to the right to vote for those officials."¹⁸⁹ Full participation for the predominantly Indian residents of Shannon County in Fall River county government, however, has not been realized. In 1976, Frank Rapp, an Indian and resident of Shannon County, attempted to run for county commissioner of Fall River County.¹⁹⁰ His nominating petition was rejected by the county on the

¹⁷⁴ *Id.* at 1256.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 1258.

¹⁷⁷ *County of Tripp v. State of South Dakota*, 264 N.W. 213, 219 (Sup. Ct. S.D. 1978).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 219.

¹⁸¹ *Id.* at 221.

¹⁸² Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Tom Tobin, State attorney's office, State of South Dakota, Oct. 26, 1978.

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*

¹⁸⁶ Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, reconsideration letter to Tom Tobin, State attorney's office, State of South Dakota, Nov. 9, 1978.

¹⁸⁷ *United States v. Tripp County*, No. 78-3045 (D. S.D. No. 1, 1978).

¹⁸⁸ *Id.*

¹⁸⁹ Mark Posner, attorney, Voting Section, Civil Rights Division, U.S. Department of Justice, telephone interview, May 14, 1981; two of the current commissioners were elected in 1974 by the voters of Tripp County. The third commissioner was not elected but appointed by the other two.

¹⁹⁰ *United States v. State of South Dakota*, 636 F.2d 241, 244 (8th Cir. 1980). fn

Id. at 242.

grounds that only residents of Fall River County could run for county commissioner.¹⁹¹ The Attorney General filed a complaint against the State of South Dakota, alleging that this prohibition violated the 1st, 14th, and 15th amendments, and section 2 of the Voting Rights Act.¹⁹² The district court dismissed the complaint, but on appeal, the U.S. Court of Appeals for the Eighth Circuit reversed the decision and remanded the case to the district court for granting of appropriate relief.¹⁹³ The court held that the "candidacy restriction. . .clearly burdens the right to vote in that it restricts the field of candidates and this limits the voters' freedom of choice."¹⁹⁴ The court further stated that this "right to vote is severely circumscribed by their inability to vote for candidates who live in the same county as they do. . . .The ultimate effect of the candidacy restriction would be the denial of representation to an identifiable class of voters with a common interest."¹⁹⁵

The political status of residents of Shannon and Todd Counties in neighboring Fall River and Tripp Counties has been further complicated by the passage of South Dakota House Bill 1197, which severs Tripp County from Todd County and Fall River County from Shannon County. The act establishes the two predominantly Indian political units as organized counties.¹⁹⁶ The Attorney General objected to this proposed change, however, finding that "the preponderance of evidence suggests that one of the reasons for the passage of House Bill 1197 is to nullify the effects" of *Little Thunder*.¹⁹⁷ According to the Attorney General, the lack of sufficient revenues in the newly organized counties and the required contracting out of services by the newly organized Shannon and Todd Counties to Fall River and Tripp Counties would return them "to a position of dependence" upon the predominantly white counties "while being without electoral par-

ticipation of [these] counties with respect to . . .the . . .permanent county governing bodies."¹⁹⁸ The State of South Dakota is currently seeking a declaratory judgment in the U.S. District Court for the District of Columbia that the proposed law is neither discriminatory in purpose or effect.¹⁹⁹

Texas

Jim Wells County, Texas—Redistricting

Jim Wells County has a 67 percent Mexican American population, but has only one Mexican American commissioner on a four-person county commission. In 1978 the county submitted a 1975 redistricting plan to the Department of Justice for preclearance.²⁰⁰ The Department objected to the plan.²⁰¹

In 1974 the county also had redistricted.²⁰² The plan developed at that time included 2 of 4 commissioner precincts with a Mexican American population of 65 percent or more and a third precinct with a Mexican American population of more than 60 percent. The 1975 plan submitted to the Department of Justice had, however, only 1 precinct with a more than 65 percent Mexican American population and 1 with a more than 60 percent Mexican American population.²⁰³

The objection letter also noted that the 1975 plan had a greater population deviation among districts than the 1974 plan (40.0 percent and 28.4 percent, respectively) and that the existence of racial bloc voting in the county made it unlikely that a Mexican American would be elected from a majority Anglo district.²⁰⁴

On February 1, 1980, the Department of Justice objected to another redistricting plan submitted by Jim Wells County.²⁰⁵ In this objection, the Department noted that the southern portion of Alice (a town in the county) was divided among all four

against the county alleging that the county had not precleared its redistricting plan. See *Arriola v. Harville*, No. 78-87 (S.D. Tex., Oct. 9, 1979). The county submitted the redistricting plan on Jan. 18, 1977. Delays in issuing the objection were due to the failure of the jurisdiction to respond to Department of Justice requests for additional information. Elda Gordon, equal opportunity specialist, U.S. Department of Justice, telephone interview, Mar. 17, 1981.

²⁰¹ Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Romeo Flores, county attorney, Jim Wells County, July, 3, 1978.

²⁰² *Ibid.*

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*

²⁰⁵ Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to T.L. Harville, county judge, Jim Wells County, Feb. 1, 1980.

¹⁹¹ *Id.*

¹⁹² *Id.* at 242.

¹⁹³ *Id.* at 245.

¹⁹⁴ *Id.* at 244.

¹⁹⁵ *Id.* at 244.

¹⁹⁶ Meierhenry Objection Letter.

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*

¹⁹⁹ *State of South Dakota v. U.S.* (D.D.C., filed Aug. 6, 1980). For additional information on the voting problems of Native Americans in South Dakota, see also South Dakota Advisory Committee to the U.S. Commission on Civil Rights, *Native American Participation in South Dakota's Political System* (1981).

²⁰⁰ This first redistricting plan for Jim Wells County was not submitted until 1976 when the Mexican American Legal Defense and Education Fund informed the U.S. Department of Justice that the county had redistricted without preclearance. MALDEF subsequently prevailed in a lawsuit

commissioners' precincts. That section of the county is also heavily Mexican American. The Department of Justice again stated that Mexican Americans would not likely win an election in predominantly Anglo precincts, given the existence of racial bloc voting in the county. The Department of Justice further stated that the one precinct in which Mexican Americans had a realistic chance of electing a Mexican American to office was of least importance "in view of the paucity of road mileage and budget funds allocated to it."²⁰⁶ Finally, it noted the lack of minority participation in developing the redistricting plan.²⁰⁷

On August 12, 1980, the Department of Justice again objected to another redistricting plan submitted by Jim Wells County.²⁰⁸ The county's new plan still divided the minority concentration in the southern portion of Alice into all four commissioner precincts. The Department noted that other plans were available that would not divide the concentration of minorities in Alice.²⁰⁹ It further stated, "The adoption of a plan that would maintain Mexican American voting strength at a minimum level, where alternative options would provide a fairer chance for minority representation, is relevant to the question of an impermissible racial purpose in its adoption."²¹⁰ Finally, the Department repeated that there was no significant participation by the minority community in the adoption of the redistricting plan.²¹¹

Crockett County, Texas—Redistricting

In May 1974 a Mexican American candidate, Jesus Castro, won the Democratic nomination for county commissioners' court in Precinct 4 in Crockett County. Although Precinct 4 had long had a majority Mexican American population, Mr. Castro became the first Mexican American ever to receive the Democratic nomination for county commissioners' court in the 45 percent Mexican American county.²¹²

In Crockett County a Democratic nomination is tantamount to being elected.²¹³ Before Mr. Castro could be elected in the November general election, however, the commissioners' court reapportioned the precincts, concentrating Mexican Americans in Precinct 4, to ensure that he would be the only Mexican American elected.²¹⁴ Under the redistricting, Precinct 4 would now have an 84 percent Mexican American population.²¹⁵ The result was a smaller proportion of Mexican American voters in other precincts in which there had also recently been Mexican American challenges to incumbent Anglo commissioners. In fact, in Precinct 1, which lost a significant number of Mexican Americans under the new redistricting, a Mexican American candidate had previously come within 60 votes of defeating the Anglo incumbent.²¹⁶ The new redistricting plan had been introduced by the incumbent Anglo commissioner of Precinct 1.²¹⁷

Without submitting the new districts for preclearance by the Department of Justice under section 5 of the Voting Rights Act, the county held the November 1974 elections. After the Attorney General objected to the plan,²¹⁸ the county nevertheless proceeded with the May 1976 Democratic primary and the June 1976 runoff.²¹⁹

After the 1976 primary, Mexican American plaintiffs sued the county, attempting to prevent the 1976 general election or any subsequent elections from taking place in the districts to which the Department of Justice had objected. A final order by the Federal court in September 1977 required that commissioners' court Precincts 1 and 3 be returned to their pre-1974 boundaries and that a special election employing the pre-1974 boundaries in those districts be held on December 10, 1977.²²⁰ Subsequent charges of irregularities in the December 10 election and the January 1978 runoff revealed such a widespread pattern of election law violations that a State district court invalidated this election and ordered a new election for August 1978.²²¹ In this new election,

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ James P. Turner, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to T.L. Harville, county judge, Jim Wells County, Aug. 12, 1980.

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Texas Advisory Committee to the U.S. Commission on Civil Rights, *Report on the Participation of Mexican Americans, Blacks and Females in the Political Institutions and Processes in Texas, 1968-1978*, prepared by Charles Cotrell (1980), p. 225 (hereafter cited as *Report on Participation*).

²¹³ Ibid., p. 222.

²¹⁴ Ibid., pp. 225-26.

²¹⁵ Ibid., p. 226.

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Lucius D. Burton, attorney-at-law, Odessa, Tex., July 7, 1976.

²¹⁹ *Report on Participation*, pp. 227-28.

²²⁰ Ibid., pp. 227-29.

²²¹ Ibid., pp. 230-32. These irregularities included the color coding of ballots so that the votes of Mexican Americans could be identified and later removed from the absentee ballot boxes.

Sostenes DeHoyos defeated the incumbent Anglo who authored the redistricting plan and became the first Mexican American elected to the position of county commissioner in Precinct 1.²²²

Houston, Texas—Annexation, Redistricting

In 1977 Houston annexed 37 square miles of predominantly white suburban areas, adding almost 140,000 new residents, almost all Anglo. As a result of the annexations, the black population in the enlarged city was reduced from 26.0 to 24.8 percent, and the Mexican American population was reduced from 14.0 to 13.5 percent.²²³ When the city attempted to preclear these annexations under section 5 of the Voting Rights Act, the Attorney General objected.²²⁴ The Attorney General stressed that the decrease in the minority population would make it even more difficult than had formerly been the case for minority residents to elect minority candidates under the present at-large system that also included residency districts and numbered posts.²²⁵ At that time, there was one minority member on the eight-member city council. According to the Attorney General, "Although approximately two of every eight residents of the City of Houston are black, and approximately one of every eight residents is a Mexican American, only one black, and no Mexican American, has ever served on the eight member City Council under the present electoral system."²²⁶

The city was granted approval by the Department of Justice to hold a referendum on August 11, 1979, on expanding the city council from 8 to 14 members. In the proposed election system, nine council members would be elected from single-member districts and five would be elected at large. Although blacks and Mexican Americans opposed the plan for a larger council, the referendum passed.²²⁷ The subsequent drawing of the new district boundaries was cleared by the Attorney General, and three new minority council members were elected on November 6, 1979. As a result there are now four minorities

on the Houston City Council.²²⁸ On September 21, 1979, the Attorney General withdrew his objection to Houston's proposed annexations.²²⁹

Virginia

Hopewell, Virginia—At-Large Elections

Hopewell currently has a seven-member council whose members are elected at large and serve staggered terms.²³⁰ No black has ever served on the Hopewell City Council. In fact, only 1 black has ever run for the council in the 20 percent black city. Although Rev. Curtis Harris has run for the city council 6 times over a 16-year period, none of his candidacies has been successful.²³¹

In 1964, 1966, 1968, 1970, 1978, and 1980, the Reverend Mr. Harris was a candidate for city council.²³² In each election, he could not gain enough white support to be elected.²³³ For example, in both 1978 and 1980, Mr. Harris polled more total votes in the two precincts with significant black populations than any other candidate on the ballot.²³⁴ However, in predominantly white precincts in both of these elections, he ran last or next to last.²³⁵

Without white support and, in particular, without support from Precinct No. 4, minority candidates cannot be elected to the Hopewell City Council.²³⁶ Currently, six of the seven members of the council reside in Precinct 4.²³⁷ Under this election system, blacks have been reluctant to run, and Mr. Harris has been the only exception.²³⁸

After considerable efforts by the Hopewell Action Council, the Virginia Southern Christian Leadership Conference, and the Virginia American Civil Liberties Union, the city council voted on January 13, 1981, to put the current at-large election system to a citywide referendum to determine if the voters prefer single-member districts.²³⁹ The referendum

Virginia Southern Christian Leadership Conference, and Elizabeth Jackson, president, Hopewell Action Council, interview in Hopewell, Va., Jan. 12, 1981 (hereafter cited as Harris and Jackson Interview).

²³¹ Ibid.

²³² Ibid.

²³³ Ibid.

²³⁴ City of Hopewell: "City Council Election, May 2, 1978 Election Results"; and "May 6, 1980 City Council Election."

²³⁵ Ibid.

²³⁶ Harris and Jackson Interview.

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Ibid.

²²² Ibid., p. 232.

²²³ Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Robert M. Collie, Jr., city attorney, Houston, June 11, 1979.

²²⁴ Ibid.

²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ U.S., Commission on Civil Rights, *The State of Civil Rights: 1979* (1980), p. 33.

²²⁸ Ibid.

²²⁹ Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, letter withdrawing objection to Robert M. Collie, Jr., city attorney, Houston, Sept. 21, 1979.

²³⁰ "City and County At-Large Elections," p. 2; Curtis Harris, president,

will be held as part of the general election on November 3, 1981.²⁴⁰

State and Federal Elections Systems and Voting Rules

South Carolina

State Senate—Multimember Districts

The South Carolina Senate elects its 46 members in 13 multimember districts and 3 single-member districts. The senate also uses numbered post and majority vote rules.²⁴¹ No black has served in the South Carolina Senate in this century.²⁴² The South Carolina House elects its 124 members in single-member districts only, using a majority vote rule.²⁴³ Of the 124 members of the house, there were 14 black members in 1980.²⁴⁴

Although black representation in the South Carolina Legislature has increased in the last decade, the election systems and voting rules used in both chambers of the legislature limit the opportunities for black representation. In the senate, majority white, multimember districts composed of several counties in which candidates must run for a particular seat have made black representation impossible.²⁴⁵ For example, in 1980 William Saunders, a Charleston radio station owner, was considered a strong contender to be the first black since 1895 to be elected to the senate.²⁴⁶ However, he was defeated in his bid for the vacant seat no. 1 in senate District 16, which is composed of Georgetown and Charleston Counties. In traditionally Democratic Georgetown County, which is 45 percent black, Mr. Saunders received 58 percent of the vote, polling 98 percent of the vote in predominantly black precincts.²⁴⁷ In more populous Charleston County, which is 34 percent black, his support fell to 43 percent of the total vote.²⁴⁸ Given the present

boundaries of this multimember district, blacks cannot be elected. Senate seat no. 1 in District 16 is now occupied for the first time by a Republican.²⁴⁹

In March 1980 black plaintiffs sued the State of South Carolina under the 1st, 13th, 14th, and 15th amendments, and section 2 of the Voting Rights Act. The plaintiffs alleged that "the present method of electing the senate of South Carolina, including the use of large majority-white multimember districts, numbered seats and the majority runoff requirement has the effect and is for the purpose of diluting the relative strength of the class of black voters in South Carolina. . . ."²⁵⁰ The case was dismissed by the district court and, according to one of the attorneys for the plaintiffs, the suit is not being pursued due to lack of financial resources necessary to support such an effort.²⁵¹

State House—Redistricting

The South Carolina House has single-member districts, but black opportunities for election to that body continue to be limited to those few districts whose boundaries include majority black voting populations. High levels of racial bloc voting in conjunction with the majority runoff rule severely limit black opportunities for election in virtually all other single-member districts. For example, in house District No. 61, which includes portions of Florence, Dillon, and Marion Counties, Frank Gilbert, a black candidate, led four white candidates in the August 23, 1977, Democratic primary. He polled 1,141 votes or 46 percent of the votes cast.²⁵² Mr. Gilbert's total was almost double that of his nearest challenger.²⁵³ He had not received a majority of the votes, however, and was forced into a runoff, which he lost to his white opponent.²⁵⁴

In house District No. 107, which includes a portion of Georgetown County, Morris Johnson, a black candidate, won the Democratic nomination

²⁴⁰ Curtis Harris, president, Virginia Southern Christian Leadership Conference, telephone interview, June 18, 1981. For the response of the city of Hopewell to these statements, see appendix G of this report.

²⁴¹ *Registration and Election Laws of South Carolina*, §2-1-60 (1980), §7-17-600 (1980).

²⁴² Johnson and Gilbert Interview.

²⁴³ *Registration and Election Laws of South Carolina*, §2-1-10 (1980), §7-17-600 (1980).

²⁴⁴ Joint Center for Political Studies, *The National Roster of Black Elected Officials*, vol. 10 (1981), p. 235.

²⁴⁵ Johnson and Gilbert Interview.

²⁴⁶ "A Black Man Runs for the S.C. State Senate," *Focus*, 1980, no. 8, p. 7.

²⁴⁷ Dillard Field, "Margin Elects Cantrell; GOP Captures 2 seats," *Georgetown (S.C.) Times*, Nov. 6, 1980, p. 2.

²⁴⁸ *Ibid.*

²⁴⁹ *Ibid.*

²⁵⁰ Complaint at 6, *Simkins v. Gressette*, No. 80-0500-8 (D.S.C., filed Mar. 14, 1980).

²⁵¹ Mordecai Johnson, former city council member, Florence, S.C., and attorney for plaintiffs, telephone interview, May 20, 1981. The Department of Justice also filed a lawsuit against the State of South Carolina, alleging that the 3 single and 13 multimember districts and the use of numbered posts and majority runoff requirements diluted minority voting strength, in violation of section 2 of the Voting Rights Act and the 15th amendment. (*U.S. v. State of South Carolina*, No. 80-730-8 (D.S.C. filed Apr. 18, 1980)). The complaint was later withdrawn in light of the Bolden decision, which makes intent to discriminate difficult to prove; Paul Hancock, Assistant for Litigation, U.S. Department of Justice, Civil Rights Division, Voting Section, interview in Washington, D.C., May 27, 1981.

²⁵² Johnson and Gilbert Interview; statement by Frank Gilbert.

²⁵³ *Ibid.*

²⁵⁴ *Ibid.*

for the seat vacated by the death of the incumbent. In the February 15, 1977, Democratic runoff, Mr. Johnson defeated his white opponent by 2,193 votes to 2,061.²⁵⁵ However, in the April 5, 1977, final election, Mr. Johnson failed to attract any additional white support, which was needed to ensure his election over his Republican opponent. In 4 predominantly white precincts, he polled 25 votes in the February runoff compared to 502 votes for his Democratic opponent.²⁵⁶ In the final election Mr. Johnson could increase his support in these precincts to only 48 votes, while his Republican opponent polled 802 votes.²⁵⁷ Mr. Johnson lost the election by over 700 votes.²⁵⁸ In that election Georgetown County elected its first Republican to the statehouse in this century.²⁵⁹

Virginia

State House—Multimember Districts

The Virginia House of Delegates elects its 100 members from 20 single-member districts, 28 multimember districts, and 4 floterial districts.²⁶⁰ (Floterial districts are single-member districts whose boundaries encompass other districts. Electors in these districts, therefore, vote for candidates who will represent the floterial district, as well as for those who will represent the other districts.) Of the 100 members in the house of delegates, 4 are black.²⁶¹ This level of black representation is related in part to the fact that only one district in the entire house of delegates has a potential black voting-age majority.²⁶² Although blacks constitute 19 percent of the State population, and are concentrated in the southern and southeastern portions of the State, the drawing of legislative boundaries and the extensive use of multimember districts has limited black opportunities for elected office.²⁶³

Currently, all four blacks in the Virginia House of Delegates are elected from multimember districts. In

²⁵⁵ Claire Connors, "Johnson Wins Primary Runoff," *Georgetown* (S.C.) *Times*, Feb. 17, 1977, p. 1.

²⁵⁶ Claire Connors, "Young Wins Vacant Seat in House," *Georgetown* (S.C.) *Times*, Apr. 17, 1977, p. 1; Board of Canvassers for the County of Georgetown, "The Whole Number of Votes Cast for District 107 House of Representatives."

²⁵⁷ *Ibid.*

²⁵⁸ *Ibid.*

²⁵⁹ *Ibid.*

²⁶⁰ Code of Virginia, Title 24.1, §12.1 (1980); Chan Kendrick, director, Virginia American Civil Liberties Union, and Judy Goldberg, staff attorney, Virginia American Civil Liberties Union, interview in Richmond, Va., Jan. 13, 1980 (hereafter cited as Kendrick and Goldberg Interview).

²⁶¹ Joint Center for Political Studies, *The National Roster of Black Elected Officials*, vol. 10 (1981), p. 262.

²⁶² Flora Crater, Elizabeth Vantrease, and Meg Williams, *The Almanac of*

these particular districts, candidates must run districtwide for three to seven seats in the house of delegates. Since none of these districts has a black majority, there is a tenuous electoral base for black candidates.²⁶⁴ As a result of the refusal of many whites to support black candidates, only single-shot voting in the black community has in some instances assured black representation. In 1979, of the four black delegates elected, three ran far behind white delegates elected in the same multimember districts. In Newport News, Delegate Robert C. Scott ran at least 2,500 votes behind the successful white candidates.²⁶⁵ In Richmond, Delegates Benjamin Lambert and James Christian, Jr., ran at least 3,000 votes behind the successful white candidates.²⁶⁶ In fact, Mr. Christian avoided defeat by only 442 votes.²⁶⁷ Only the late William F. Robinson, former delegate from Norfolk, avoided this situation in the last house of delegates election.²⁶⁸ According to Norfolk community leader Evelyn Butts, however, Mr. Robinson finished first in the seven-member Norfolk district because a certain number of blacks voted for him only.²⁶⁹ In past elections, Mr. Robinson had finished seventh in the seven-member district despite the fact he had been endorsed by the local Democratic party.²⁷⁰ Efforts were made in 1979 to avoid this through single-shot voting.²⁷¹

The problem for black candidates in multimember legislative districts in Virginia is that they must gain white support or organize extensive single-shot voting campaigns in the black community. Even when blacks are part of a slate, securing white support is problematic. For example, Delegates Lambert and Christian ran in the Richmond multimember district in 1979 as part of a Democratic slate. Although this gained them some white support, it also gave the whites on the slate more black support.²⁷² According to a study by Michael Brown of the Virginia State Conference of Branches,

Virginia Politics (Falls Church, Va.: The Woman Activist Fund, 1981) (hereafter cited as *The Almanac*).

²⁶³ Kendrick and Goldberg Interview.

²⁶⁴ Michael Brown, coordinator, field branch activities, Virginia NAACP, interview in Richmond, Va., Jan. 13, 1980 (hereafter cited as Brown Interview).

²⁶⁵ *The Almanac*, p. 16.

²⁶⁶ *Ibid.*, p. 48.

²⁶⁷ *Ibid.*

²⁶⁸ *Ibid.*, p. 34.

²⁶⁹ Evelyn Butts, cochair, Concerned Citizens for Political Education, interview in Norfolk, Va., Jan 15, 1981.

²⁷⁰ *Ibid.*

²⁷¹ *Ibid.*

²⁷² Michael Brown, "An Analysis of the 1979 Richmond House of Delegates' Race" (unpublished paper, 1980), p. 8.

NAACP, one out of two black voters supported white candidates, but only one of three white voters supported a black candidate in the 1979 house of delegates race in Richmond.²⁷³

Mississippi

State Senate and House—Redistricting (Multimember Districts)

The Mississippi Senate and House currently elect all 174 members from single-member districts.²⁷⁴ In the 1979 elections, the first to be held with single-member districts only, two blacks were elected to the senate and 15 to the house.²⁷⁵ Prior to this election, the extensive use of multimember districts limited to 4 the number of blacks in the Mississippi legislature,²⁷⁶ although blacks then constituted 38 percent of the State's residents.

The current apportionment plan is the culmination of 14 years of litigation in which blacks attempted to achieve fair representation in the Mississippi legislature. In 1965 black plaintiffs filed suit against the State of Mississippi alleging that the existing legislative apportionment did not comply with the one-person, one-vote principle, in violation of the equal protection clause of the 14th amendment.²⁷⁷ The district court found for the plaintiffs and ordered the Mississippi legislature to reapportion on the basis of one person, one vote.²⁷⁸

Subsequent to the 1966 court decision, two plans developed by the State and one developed by the U.S. District Court for the Southern District of Mississippi were held unconstitutional due to malapportionment.²⁷⁹ In addition, the Department of Justice objected to two plans developed by the legislature, one in 1975 and one in 1978.²⁸⁰ The latter plan objected to by the Department of Justice was subsequently determined not to be discriminatory in purpose or effect by the U.S. District Court for the District of Columbia and is the one currently in effect.²⁸¹

²⁷³ Ibid.

²⁷⁴ Miss. Code Ann. §§5-1-1, 5-1-3 (1972) (1980 Cum. Supp).

²⁷⁵ Joint Center for Political Studies, *The National Roster of Black Elected Officials*, vol. 10 (1980).

²⁷⁶ Ibid., vol. 8 (1978).

²⁷⁷ *Conner v. Johnson*, 256 F. Supp 962 (S.D. Miss. 1966).

²⁷⁸ *Id.*

²⁷⁹ See *Connor v. Johnson*, 265 F. Supp 492 (S.D. Miss. 1967) and *Connor v. Johnson*, 330 F. Supp 506 (S.D. Miss 1971), supplemented in 330 F. Supp. 521 (S.D. Miss. 1971).

²⁸⁰ See *State of Mississippi v. U.S.*, No. 78-1425 (D.D.C. June 1, 1979) at 2 and 7, *aff'd* 444 U.S. 1050 (1980).

²⁸¹ *Id.*

²⁸² One plan was a single-member district plan that was held unconstitutional on malapportionment grounds. *Connor v. Finch*, 431 U.S. 407 (1977).

There was strong opposition by black residents of the State to the prior plans because they maintained the multimember district election system.²⁸² These districts diluted black voting strength, since many of them were created by combining majority black counties with majority white counties, with the majority white counties having the larger population.²⁸³

In 1978 the Mississippi legislature adopted a plan that required members of the legislature to be elected from single-member districts. That plan, which is the current one, has resulted in increased representation by blacks in the Mississippi legislature, from 4 in 1978 to 17 in 1979.²⁸⁴

Congress—Redistricting

Under the 1962 drawing of congressional district lines by the Mississippi Legislature, the Second and Third Congressional Districts encompassed Mississippi's delta region and contained 24 of the State's 29 majority black counties.²⁸⁵ The Second Congressional District was 59 percent black and the Third was 46 percent black.²⁸⁶

In 1966 the Mississippi Legislature redistricted, drawing congressional district boundaries horizontally across the State. As a result, the Mississippi delta region, which is predominantly black, was divided among four of the State's five congressional districts.²⁸⁷ The 1972 congressional redistricting plan made only minor changes in the 1966 plans.²⁸⁸

The 1972 plan, which is currently in effect, contains no congressional district that is more than 46 percent black.²⁸⁹ A high degree of racial bloc voting and a majority vote rule employed in party primaries, combined with these congressional district boundaries, make it virtually impossible for black congressional candidates to be elected in Mississippi.²⁹⁰

Recent elections in the Fourth Congressional District, which is 43 percent black, reflect the limited opportunities for black candidates. In 1980 a

²⁸³ Parker and Phillips Interview.

²⁸⁴ Joint Center for Political Studies, *The National Roster of Black Elected Officials*, vols. 8 and 10 (1978 and 1980).

²⁸⁵ Washington Research Project, *The Shameful Blight: The Survival of Racial Discrimination in Voting in the South* (Washington, D.C.: 1972), p. 96 (hereafter cited as *Shameful Blight*).

²⁸⁶ U.S., Department of Commerce, Bureau of the Census, *Congressional District Data Bank* (1963), p. 254.

²⁸⁷ *Shameful Blight*, p. 97.

²⁸⁸ Ibid., p. 98.

²⁸⁹ Congressional Quarterly, *Congressional Districts in the 1970's* (Washington, D.C.: Congressional Quarterly, 1974), pp. 108-09.

²⁹⁰ Kirksey Interview.

black candidate, Henry Kirksey, declared for Congress in the Fourth Congressional District. In the June 3 Democratic primary, he outpolled all other candidates, but did not receive a majority of the votes cast.²⁹¹ In the subsequent runoff, Mr. Kirksey could not gain enough additional support, especially among white voters, to win the nomination. In the runoff his total vote increased by 9,000, but that of his white opponent increased by over 18,000. He lost by almost 6,000 votes.²⁹²

In the November 4 final election, another black candidate, Leslie McLemore, ran as an independent for the same congressional seat. Although Mr. McLemore finished second, he, too, was unable to secure significant white support. For example, in Jackson's predominantly white northeast and south sections, candidates Kirksey and McLemore failed to win any of the 39 precincts.²⁹³ In fact, in only 5 of the predominantly white precincts did their vote amount to more than 15 percent of the total votes cast in any of the 3 elections in which they were candidates.²⁹⁴

Candidacy

Not only do particular election systems and voting rules and certain methods of drawing boundary lines reduce the opportunities for minority representation, but minority candidates also may confront a variety of other problems that have a similar effect. In some instances, potential minority candidates may never run. In others, minority candidates may face obstacles that contribute to their defeat. Factors that may affect minority candidates in this way include harassment and intimidation of minority candidates or voters and limited access to both white and black voters.

Harassment and Intimidation

In many areas, strong disapproval both of minorities running for office and of members of the minority community supporting these candidates

continues. Although the Voting Rights Act prohibits officials and private citizens from interfering with the right of minorities to vote,²⁹⁵ minority candidates and minority voters still are harassed and intimidated in numerous ways that adversely affect their right to vote.

Harassment or intimidation of minority candidates can begin even prior to a declaration of candidacy. For example, in Johnson County, Georgia, Robert Folsom, a black resident of the county who had been participating in efforts to improve the economic and political status of blacks in the county, had been seriously considering running for sheriff. He had broached the topic both with black friends and white coworkers.²⁹⁶ On April 19, 1980, shots were fired into Mr. Folsom's house, wounding his daughter.²⁹⁷ Mr. Folsom chose not to run for sheriff.²⁹⁸ The incident has had other effects on Robert Folsom. Subsequent to the shooting, he quit his job as a police officer. According to Mr. Folsom, any law enforcement officer must confront racism, but he "cannot be objective now."²⁹⁹ Folsom stated that "now my daughter is walking around with [shotgun] pellets in her head."³⁰⁰ Two whites were arrested and charged with the shooting.³⁰¹

After declaring their candidacy, minority candidates continue to be the targets of white disapproval. In Roanoke Rapids, North Carolina, city council candidate Granville Carter stated that he received threatening telephone calls and numerous expressions of disapproval of his campaign. Mr. Carter said that he was told by whites, "You're not supposed to be in politics." Moreover, blacks informed him that his campaign would negatively affect black people in Roanoke Rapids.³⁰² Mr. Carter believes that white employers had put pressure on black employees to give him that message.³⁰³

In Jackson, Mississippi, congressional candidate Leslie McLemore stated that he eventually decided to travel accompanied by campaign aides, one who was armed, after receiving threatening telephone

²⁹¹ Rhodes Cook, "Black State Senator Leads Field For Rep. Hinson's Seat But Faces June 24 Runoff," Congressional Quarterly *Weekly Report*, June 7, 1980, p. 1556.

²⁹² "Mississippi 4th Runoff Results," Congressional Quarterly *Weekly Report*, June 28, 1980, p. 1802.

²⁹³ Kirksey Interview.

²⁹⁴ *Ibid.*

²⁹⁵ 42 U.S.C. §1971(b) (1976).

²⁹⁶ Robert R. Folsom, community activist, interview in Wrightsville, Ga., Nov. 18, 1980 (hereafter cited as Folsom Interview).

²⁹⁷ *Ibid.*

²⁹⁸ *Ibid.*

²⁹⁹ *Ibid.*

³⁰⁰ *Ibid.*

³⁰¹ In the Superior Court of Johnson County, Ga., Danny Hugh Foskey and Hershel D. Hall were charged with the offense of aggravated assault against Constance Folsom, Bobby Folsom, Carolyn Lucinda Folsom, and Christine Folsom. Special Presentment, Superior Court, Johnson County, Ga., Apr. 19, 1980. According to the assistant district attorney for Johnson County, William McBroom, the trial of the two alleged assailants had been scheduled for June 22, 1981, but due to a change in the attorneys for the plaintiffs, it was postponed. On June 25, 1981, motions from the plaintiffs' new attorneys were heard.

³⁰² Granville Carter, candidate for city council, Roanoke Rapids, North Carolina, interview in Roanoke Rapids, N.C., Jan. 28, 1981 (hereafter cited as Carter Interview).

³⁰³ *Ibid.*

calls that warned of dire consequences “if you don’t get out of the race.”³⁰⁴ During the campaign, persons working for Mr. McLemore stated that both a McLemore campaign office and a booth were marked with Ku Klux Klan advertisements.³⁰⁵

In South Carolina, on October 31, 1980, a cross was burned on the lawn of James W. Fennell, a candidate for South Carolina House District No. 120, which includes Hampton and Colleton Counties.³⁰⁶ According to Mr. Fennell, the cross burning was one of numerous incidents of intimidation and fraud that led to his defeat.³⁰⁷ Although the South Carolina Board of State Canvassers refused to overturn the election, it did find “that there were gross improprieties and irregularities in the conduct of this election in both counties.”³⁰⁸

Minorities may also be subject to strong disapproval if they support minority candidates. As a result, they may be convinced that support for minority candidates could have disastrous consequences. In Plaquemines Parish, Louisiana, the Parish Administration Advisory Council, chaired by the chairman of the Plaquemines Parish Commission, Chalin Perez, sent a letter to parish employees endorsing white school board candidates only. Black community activists in the parish argued that this letter intimidated many of the parish’s black employees,³⁰⁹ and as a result, many did not support black school board candidates in 1980.³¹⁰ None of the black school board candidates won, although one ran from a predominantly black district.³¹¹ Additionally, according to the campaign manager of one unsuccessful black candidate, blacks in the parish “still vote for white candidates out of fear.”³¹²

In Dillon County, South Carolina, some blacks also have been afraid to vote for black candidates. According to a black candidate, word spreads in the community that influential whites “will know” for whom blacks voted.³¹³

³⁰⁴ Leslie McLemore, professor and chairman of the Department of Political Science, Jackson State University, and candidate for Congress, interview in Jackson, Miss., Dec. 5, 1980 (hereafter cited as McLemore Interview).

³⁰⁵ Ally Mack, professor of political science, Jackson State University, interview in Jackson, Miss., Dec. 2, 1980.

³⁰⁶ James W. Fennell, candidate for South Carolina House District 120, telephone interview, Mar. 19, 1981 (hereafter cited as Fennell Interview); Paul Lieberman and Chester Goolrick, “South Carolina Blacks Still Lack Political Clout Despite Majorities,” *Atlanta Constitution*, Jan. 23, 1981, p. 4-A.

³⁰⁷ Fennell Interview.

³⁰⁸ State of South Carolina, Board of State Canvassers, Order in Re: Protest of James W. Fennell, Nov. 4, 1980, General Election for State House of Representatives, District 120, Dec. 1, 1980.

³⁰⁹ Earlie Mae St. Ann, candidate for Plaquemines Parish School Board, interview in Port Sulpher, La., Dec. 11, 1980 (hereafter cited as St. Ann

Interview); Rhonda Encalade, poll watcher for Frederick Encalade, candidate for Plaquemines Parish School Board, telephone interview, Dec. 11, 1980 (hereafter cited as Encalade Interview).

Minorities who support minority candidates who are running as independents may also be the target of white hostility. When these candidacies challenge both the racial and party status quo, considerable pressure is exerted upon black voters not to support these candidates. According to Herman Green, who ran as an independent candidate for the Georgetown County (S.C.) School Board in November 1980, many individuals were reluctant to be associated with an independent campaign in the staunchly Democratic county. Mr. Green stated that “many potential backers are reluctant to contribute or support independents since they have to do business here.”³¹⁴ In general, he stressed, “There is widespread fear among black voters that the power structure would find out if they supported black independents.”³¹⁵ Many black voters told Mr. Green that “he should have played ball with them [the Democrats].”³¹⁶

Access to Voters

Since minority candidates often cannot win without at least some white support, the opportunity to campaign freely in the white community is crucial. Minority candidates often find this impossible, however, and most rely solely upon minority votes and resources. For example, George Young, candidate for the Halifax County (N.C.) Board of Commissioners, was unable to recruit white campaign workers and was reluctant to send black workers into many precincts in predominantly white Roanoke Rapids.³¹⁷ According to Mr. Young, “The attitude and reception makes it uncomfortable.”³¹⁸ Mr. Young won many of the rural areas of the county, which are predominantly black, but he fell far enough behind his opponent in these Roanoke Rapids precincts to lose the countywide election.³¹⁹ Mr. Young also stressed that even many of his white friends were reluctant to support him openly: “Most

Interview); Rhonda Encalade, poll watcher for Frederick Encalade, candidate for Plaquemines Parish School Board, telephone interview, Dec. 11, 1980 (hereafter cited as Encalade Interview).

³¹⁰ Ibid.

³¹¹ Ibid.

³¹² Peggy Rayes, campaign manager for Earlie Mae St. Ann, interview in Port Sulpher, La., Dec. 11, 1980 (hereafter cited as Rayes Interview).

³¹³ Johnson and Gilbert Interview; statement by Frank Gilbert.

³¹⁴ Johnson et al. Interview; statement by Herman Green.

³¹⁵ Ibid.

³¹⁶ Ibid.

³¹⁷ George Young, Sr., candidate for Halifax County Commission, interview in Enfield Township, N.C., Jan. 27, 1981 (hereafter cited as Young Interview).

³¹⁸ Ibid.

³¹⁹ Supervisor of Elections, Halifax County, “Abstract of Votes Cast at a Primary Election for County Officers, on Tuesday, May 6, 1980.”

of my white friends said they can't blow their cover in actively supporting me."³²⁰

In Port Gibson, Mississippi, unsuccessful mayoral candidate James Miller campaigned only in the town's black community. According to Mr. Miller, "It's suicidal, a fruitless effort" to get exposure in the white community.³²¹

In Jackson, Mississippi, congressional candidate Leslie McLemore stated that he was not invited to as many business and civic groups as were his white opponents.³²² According to Mr. McLemore, he was excluded both as a black and as an independent candidate.³²³

In many jurisdictions, minority candidates also have difficulty gaining access to political organizations or groups that endorse and financially support candidates. In effect, this also denies black candidates the opportunity to campaign for white votes. For example, in Aransas County, Texas, a Mexican American candidate filed for the office of justice of the peace for Precinct No. 1 in the May 1978 Democratic primary.³²⁴ Before the primary took place, the Anglo incumbent who was seeking reelection died. The only remaining living candidate on the ballot was the Mexican American.³²⁵ The contest, however, was not over.³²⁶ Subsequently, political advertisements appeared in local newspapers informing voters that they could still vote for the former justice of the peace "even though he is now deceased."³²⁷ Voters also were informed that if the deceased "receives a majority of the votes cast, the Aransas County Democratic Committee will convene and select a nominee whose name will be certified to be placed on the General Election Ballot for November."³²⁸ The Mexican American candidate lost the election and, under article 8.22 of the Texas Election Code, the Aransas County Demo-

cratic Committee appointed a candidate to serve as the party's nominee for the general election.³²⁹ Rather than selecting the Mexican American candidate, the party selected an Anglo who had not been on the primary ballot.

In Plaquemines Parish, Louisiana, blacks have only recently begun improving their economic and political status.³³⁰ Local respondents stated that many blacks for years were afraid to register, to vote, or to campaign for other changes to improve the quality of their lives; but that is beginning to change.³³¹ For example, after several years of appeal to the parish commission, the residents of Ironton, an all-black town in the parish, finally got running water in the city in December 1980.³³² Previously, water had to be collected by individuals and stored in cisterns. Additionally, the creation of the present single-member districts for electing members to the school board only occurred after black plaintiffs sued the parish when it was discovered that the parish had not precleared under section 5 of the Voting Rights Act any previous changes in its election system.³³³ In the May 1980 elections, the first since the court decision requiring the parish to return to single-member districts, black candidates ran for five of the nine seats on the parish school board.³³⁴ This was the first time in the history of the parish that blacks had run for that body.³³⁵ According to three respondents, the Plaquemines Parish Administration Advisory Council, an all-white body of elected officials and other prominent citizens that endorses candidates, did not support any of the black school board candidates.³³⁶ The advisory council sent letters to all parish employees, urging a vote for

³²⁰ Young Interview.

³²¹ Miller Interview.

³²² McLemore Interview.

³²³ Ibid.

³²⁴ Joaquin G. Avila, associate counsel, Mexican American Legal Defense and Educational Fund, letter to Gerald Jones, Chief, Voting Section, Civil Rights Division, U.S. Department of Justice, Apr. 28, 1978.

³²⁵ Ibid.

³²⁶ According to Texas law, "If a candidate in the first primary dies after the deadline for filing, his name shall be printed on the first primary ballot and the votes cast for him. If such a deceased candidate receives a majority of the votes, the proper executive committee shall choose a nominee and certify such name to the proper office. . . ."Tex. Elec. Code, Art. 8.22 (Vernon Supp. 1980).

³²⁷ *Rockport (Tex.) Pilot*, Apr. 27, 1978, p. 11.

³²⁸ Ibid.

³²⁹ Jose Garza, staff attorney, Mexican American Legal Defense and

Educational Fund, telephone interview, May 1, 1981. For the response of the Aransas County Democratic Executive Committee to these statements, see appendix G.

³³⁰ Wendell Rawls, Jr., "Sons of Perez, Delta's Patriarch, Grapple for Power," *New York Times*, Feb. 25, 1980, p. A14; Ron Pursell, managing attorney, Community Development Unit, New Orleans Legal Assistance Corporation, and Ron Chisom, paralegal, Community Development Unit, New Orleans Legal Assistance Corporation, interview in New Orleans, La., Dec. 10, 1980.

³³¹ St. Ann Interview; Encalade Interview; Merlis Broussard, former plaintiff against Plaquemines Parish, La; interview in Ironton, La., Dec. 8, 1980 (hereafter cited as Broussard Interview).

³³² Ibid.

³³³ *Broussard v. Perez*, 416 F. Supp. 584 (1976).

³³⁴ St. Ann Interview; Encalade Interview; Broussard Interview.

³³⁵ Rayes Interview.

³³⁶ St. Ann Interview; Encalade Interview; Rayes Interview.

“all of the candidates supported by your Parish Administration.”³³⁷ None of the black candidates won.³³⁸

Black candidates also have confronted problems in gaining access to black voters. Unless black candidates can adequately monitor the process of voting and of counting the votes, they may be unable to mobilize their black support and to make black votes count. For example, in November 1980, blacks alleged that many white election workers throughout Mississippi’s Fourth Congressional District prevented voters from using marked sample ballots in voting areas.³³⁹ These ballots were provided by candidates. Neither Mississippi law nor general instructions distributed to election workers by the Hinds County Election Commission prohibit the use of these types of sample ballots.³⁴⁰ According to Leslie McLemore, a candidate for Congress in that election, it was clear that many of these election workers were “trying to negate the effectiveness of the McLemore campaign as much as possible. Poor people and black people rely upon sample ballots more than anyone else.”³⁴¹ Where the McLemore campaign had trained personnel or attorneys available, this prohibition was not enforced.³⁴² In St. Landry Parish, Louisiana, a white member of the parish school board controlled the election machinery to such a degree that he was able to organize a complex vote-buying scheme involving election workers.³⁴³ As a result of the ensuing vote buying, two black candidates lost their bid for the school board.³⁴⁴ Subsequently, the election was overturned, and Gilbert Austin, one of the black candidates, gained a seat on the board in a court-ordered special election in April 1980.³⁴⁵

Conclusion

This chapter has discussed both problems encountered by minority candidates which reduce their opportunities for election and also election systems

and voting rules which dilute the vote of the minority population.

The Commission found that in jurisdictions subject to preclearance minority candidates experienced obstacles which severely limited their opportunities for election. In Johnson County, Georgia; Jackson, Mississippi; and Hampton County, South Carolina, minority candidates were harassed and intimidated while they campaigned. In Plaquemines Parish, Louisiana, and Dillon and Georgetown Counties, South Carolina, black voters have been fearful of supporting black candidates. In addition, minority candidates often must rely solely upon minority votes and resources to win election. In Roanoke Rapids, North Carolina, and Port Gibson and Jackson, Mississippi, minority candidates found it difficult to campaign in white neighborhoods and had limited access to political organizations or groups that endorse or financially support candidates.

Since 1975 particular election systems and boundary changes also have continued to limit the opportunities for minorities to be elected to office. As the preceding pages have documented, election systems, voting rules, and boundary changes in Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, South Dakota, Texas, and Virginia frequently have reduced the minority population or diluted minority voting strength in specific districts to the point where minority candidates cannot win. In these situations, the minority community sometimes is faced with an unresponsive elected government that ignores their interests in public services, education, and employment.

Discriminatory boundary changes will be of special concern in the period 1980–82. After the 1980 census population figures are released, States, counties, and municipalities again will be determining whether district lines will have to be redrawn. Of primary importance to minorities will be whether redistricting plans lessen minority voting strength

³³⁷ Chalin O. Perez, chairman, Plaquemines Parish Administration Advisory Council, letter on Plaquemines Parish Administration Advisory Council stationery, Sept. 10, 1980.

³³⁸ St. Ann Interview; Encalade Interview.

³³⁹ McLemore Interview; Mack Interview; Kirksey Interview. The Hinds County, Miss., Election Commission, in instructions to election workers for the November 1980 election, stated that the bailiff “should ensure that no candidate or person representing a candidate distributes any campaign literature within 30 ft. of the building. . . . This means any sample BALLOT with candidate’s advertisement.” State of Mississippi, County of Hinds, “General Election Instructions,” Nov. 4, 1980, p. 2. The instructions, however, did not prohibit voters from carrying these ballots into the voting area for their own personal use.

³⁴⁰ According to Mississippi election laws, voters are not prohibited from using marked sample ballots at election sites. *See*, Miss. Code Ann. §23-7-11; 23-7-311 (Supp. 1980). These sections of the code discuss the use of sample ballots provided by the State, but do not specify that marked sample ballots are prohibited.

³⁴¹ McLemore Interview.

³⁴² Kirksey Interview.

³⁴³ Gilbert Austin, Jr., member, St. Landry Parish School Board, interview in Opelousas, La., Jan. 30, 1981.

³⁴⁴ *Ibid.*; United States v. Saint Landry Parish School Board, 601 F.2d 859 (1979).

³⁴⁵ United States v. Saint Landry Parish School Board, 601 F.2d 859 (1979).

and whether they discriminate against minorities in purpose or effect.

Many of these election systems, voting rules, and boundary changes that have a discriminatory purpose or effect are subject to preclearance under section 5, since they were established subsequent to the effective date the jurisdictions were covered under the Voting Rights Act. In numerous other situations, however, they were established prior to the effective date of coverage under the act. For example, the at-large election systems in Opelika, Alabama; Port Gibson, Mississippi; Georgetown County, South Carolina; Halifax County, North Carolina; and Hopewell, Virginia, were in existence prior to the effective date these jurisdictions were covered under the Voting Rights Act. In many instances, minorities have either lacked the expertise or resources to challenge these election systems or voting rules. In some instances, minorities have sought to prove through the courts that jurisdictions have diluted their voting strength, in violation of the 14th or 15th amendments or section 2 of the Voting Rights Act. Lawsuits alleging unconstitutional vote dilution, however, have been made more difficult due to a recent Supreme Court decision, *City of Mobile v. Bolden*.³⁴⁶

In *City of Mobile v. Bolden*, black plaintiffs alleged that the at-large method of electing Mobile, Alabama's, three-person city commission, which had been used since 1911, diluted black voting strength. They alleged unconstitutional vote dilution under the 14th and 15th amendments and under section 2 of the Voting Rights Act of 1965. The plaintiffs prevailed at the district court and appellate court levels.³⁴⁷ Both lower courts relied on *White v. Regester*³⁴⁸ and *Zimmer v. McKeithen*³⁴⁹ in holding for the plaintiffs. In *White v. Regester* the Supreme Court of the United States held unconstitutional the use of multimember district election systems in Dallas and Bexar Counties, Texas. The Court discussed the burden of proof required to prove unconstitutional vote dilution:

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.³⁵⁰

In *Zimmer v. McKeithen* the Court of Appeals for the Fifth Circuit held unconstitutional the use of an at-large election system in East Carroll Parish, Louisiana. In that case, the fifth circuit further developed the standards established in *White* for proving a vote dilution case. It listed several factors that could sustain a finding of unconstitutional vote dilution if an aggregate of them could be shown to exist:

Where a minority can demonstrate a lack of access to the process of slating candidates, the unresponsiveness of legislators to their particularized interests, a tenuous state policy underlying the preference for multi-member or at-large districting, or that the existence of past discrimination in general precludes the effective participation in the election system, a strong case is made.³⁵¹

In *City of Mobile v. Bolden*, the city appealed the fifth circuit's decision to the Supreme Court of the United States. A divided Court reversed the fifth circuit³⁵² and issued six opinions.³⁵³ Four justices, the plurality opinion, asserted that intent must be shown under the 14th amendment if an at-large election system is to be found unconstitutional. To prove intent, a "plaintiff must prove that the disputed plan was "conceived and operated as [a] purposeful device to further racial discrimination'. . . ."³⁵⁴

The plurality rejected the *Zimmer* standard for proving intent, stating that it was "most assuredly insufficient to prove an unconstitutionally discriminatory purpose. . . ."³⁵⁵ It distinguished the holding in *White* by arguing that the invidious law in *White* (i.e., use of multimember districts) was traced to a racially discriminatory purpose.

The plurality further asserted that a dilution action cannot be brought under the 15th amendment, only under the 14th amendment. It further asserted that discriminatory purpose also must be shown in suits filed under the 15th amendment. It stated that this amendment "prohibits only purposefully discriminatory denial or abridgment by government of the freedom to vote. . . ."³⁵⁶ and to register. A majority of the Court, however, believed that

³⁴⁶ 446 U.S. 55 (1980).

³⁴⁷ 423 F. Supp. 384 (S.D. Alabama 1976), *aff'd* 571 F.2d 238 (5th Cir. 1978).

³⁴⁸ 412 U.S. 755 (1973).

³⁴⁹ 485 F.2d 1297 (5th Cir. 1973) (en banc), *aff'd per curiam* on other grounds *sub. nom* East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976).

³⁵⁰ 412 U.S. at 766.

³⁵¹ 485 F.2d at 1305.

³⁵² 446 U.S. 55 (1980).

³⁵³ *Id.* Justice Stewart wrote the plurality opinion and was joined by Chief Justice Burger and Justices Powell and Rehnquist. Justice Stevens concurred in the judgment and Justice Blackmun concurred in the result. Justices Brennan, Marshall, and White filed dissenting opinions.

³⁵⁴ *Id.* at 66, *citing* Whitcomb v. Chavis, 403 U.S. 124, 149 (1971).

³⁵⁵ *Id.* at 73.

³⁵⁶ *Id.* at 65.

a dilution action based on discriminatory intent still can be brought under the 15th amendment.³⁵⁷ Finally, the plurality opinion said that section 2 of the Voting Rights Act has an “effect no different from that of the 15th amendment,”³⁵⁸ thereby stating that discriminatory intent must be shown in lawsuits filed under this section.

Although the *Bolden* decision has made proving unlawful vote dilution more difficult, the negative effects of many election systems, voting rules, and boundary changes are very real. As the preceding case studies have documented, minorities through-

³⁵⁷ *Id.* Justices Stevens, Blackmun, White, Marshall, and Brennan formed the majority on this issue. For a discussion of their opinions see *Lodge v. Buxton*, 639 F. 2d 1358, 1372 (5th Cir. 1981).

³⁵⁸ *Id.* at 61.

out the areas covered by the act are excluded from the political process and are convinced that their current election systems make responsive government impossible. In many areas, numerous unsuccessful efforts to elect minorities to office or to change the particular election system have produced widespread disillusionment and apathy. As one black leader from a near majority black town, which has not elected a black to municipal office in this century, put it, “Blacks have lost hope for representation. Apathy has set in. The feeling of hopelessness is well ingrained.”³⁵⁹

³⁵⁹ Ronald Jackson, state representative, District 38, interview in Birmingham, Ala., Jan. 29, 1981. Mr. Jackson was referring to the city of Phenix City, Ala., which elects its city commission under an at-large election.

Preclearance and Noncompliance

This chapter discusses the kinds of election changes to which the Department of Justice has objected under section 5 of the Voting Rights Act and the degree of local compliance with that section of the act. Section 5 requires jurisdictions subject to preclearance either to submit for preclearance any proposed change in voting practices or procedures to the Attorney General or to obtain a declaratory judgment in the U.S. District Court for the District of Columbia that the proposed change is not discriminatory in purpose or effect.¹

Section 5 was designed to provide a speedy mechanism for the review of voting changes that could potentially undercut full minority participation in the political process. Given the efforts of jurisdictions to circumvent court decisions that abolished discriminatory voting practices, section 5 provided an ongoing review of all changes in voting practices or procedures. Howard Glickstein, then director of the Center for Civil Rights at the University of Notre Dame, testified at the 1975 hearings on the extension of the Voting Rights Act regarding the effectiveness of section 5:

Section 5 has had a far-reaching impact in preventing both blatantly and subtly discriminatory changes. As the suspension of literacy tests and devices and the Federal examiner provisions of the act have helped to raze many of the barriers to black registration and voting in the covered States, whites have resorted to changing the governmental structures to assure that black political power will be kept to a minimum. Gerrymandering

district lines to avoid black majorities, switching to at-large elections or multimember districts to prevent localized black majorities from electing any representatives at all, and annexing predominantly white suburban areas to majority black cities to avoid black control are some examples of the types of changes section 5 has been used to invalidate.²

Department of Justice Submissions and Objections

Between 1975 and 1980, 30,322 proposed changes in voting practices and procedures were submitted to the Department of Justice under section 5 of the Voting Rights Act (see table 6.1). Over one-half of these changes, about 16,208 or 53.5 percent, were submitted by Texas. The next largest number, over 2,200 (7.5 percent) of proposed changes, was submitted by Georgia. Three States (Connecticut, New Hampshire, and Wyoming) submitted no proposed changes at all, and 6 States submitted fewer than 10 each (Hawaii, 9; Idaho, 1; Maine, 3; Michigan, 3; Oklahoma, 1; and South Dakota, 6). All of the Southern States subject to preclearance under the act (the 40 counties in North Carolina, Alabama, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia) except for the covered counties in Florida submitted over 700 proposed changes each.

These proposed changes resulted in a total of 236 objection letters from the Department of Justice.³ The largest number of objection letters, 85 (36.0

¹ 42 U.S.C. §1973c (1970).

² U.S., Congress, Senate, Subcommittee on Constitutional Rights of the Committee on the Judiciary, *Extension of the Voting Rights Act of 1965*;

Hearings on S. 407, S. 903, S. 1297, S. 1409, and S. 1443, 94th Cong., 1st sess., 1975, p. 216.

³ This report covers only changes that have occurred since the Voting

percent), was sent to Texas. Georgia received 41 objection letters, 17.4 percent of the total. These two States accounted for over one-half of the objection letters. Ten States that submitted proposed changes to the Department of Justice received no objection letters (Alaska, Colorado, Florida, Hawaii, Idaho, Maine, Massachusetts, Michigan, New Mexico, and Oklahoma; see table 6.2).

The number of objections, however, is larger than the number of objection letters, since many of these letters contain objections to more than one type of proposed change. For example, one objection letter may contain objections to an at-large election system and to an annexation.

According to figures supplied by the Department of Justice, the 236 objection letters issued included a total of 538 objections. The largest number of objections was to proposed changes submitted by Georgia, 152 objections, or 28.3 percent of the total. This was followed by 128 objections to proposed changes submitted by Texas, 23.8 percent of the total. These were the only States that received more than 100 objections. The next largest number of objections was to proposed changes in Louisiana, with 69 (12.8 percent) (see table 6.3).

In addition, Commission staff analyzed the Department of Justice objection letters to determine which changes most frequently caused objections. To reflect more accurately the total number of objections, the Commission's analysis counts each element of an objection separately. For example, if the Department of Justice had objected to a proposed change involving six polling places, the Commission counted this as six objections whereas the Department of Justice had counted it as one objection. The resulting total number of objections counted by the Commission is, therefore, larger than the total number of objections originally indicated in Department of Justice data reported in table 6.3.

Rights Act was extended in 1975. Data from the Department of Justice indicate, however, that the number of objection letters has risen sharply since the extension of the Voting Rights Act, from 148 between 1970 and 1974, to 236 between 1975 and 1980. U.S., Department of Justice, Civil Rights Division, Voting Section, "Number of Section 5 Submissions Which Have Been Objected to by State and Year from 1965 to February 28, 1981."

⁴ "Dilution" occurs as a result of implementation of voting laws, practices, or procedures that decrease minority voting strength and, thereby, decrease the likelihood of electing minority candidates to political office. Mechanisms related to dilution include annexations, at-large election systems, staggered terms, and numbered place systems.

⁵ See David H. Hunter, *Federal Review of Voting Changes* (Washington, D.C.: Joint Center for Political Studies, 1975). Under an at-large election system, representatives of city or county governing bodies are elected by the entire political subdivision rather than from districts within it. When the minority population is smaller than the white population and when racial

Commission analysis of Department of Justice objections shows that there were a total of 770 specific proposed changes to which objections had been interposed (see table 6.4).

The majority of changes that were the subject of objections related to the dilution of minority voting strength.⁴ The changes that resulted in the largest number of objections were annexations. These were the subject of 235 objections, or 30.5 percent of the total. The Department of Justice most often objected to the annexations of predominantly white residential areas or to undeveloped areas zoned for middle-income housing. Many objection letters stated that these annexations would have had the effect of decreasing minority voting strength in the annexing jurisdiction, thereby decreasing the possibility that minorities would be able to elect candidates of their choice.

Five other types of proposed changes were objected to more than 50 times each. The Department of Justice objected 80 times (10.4 percent of the total) to proposed changes to at-large election systems.⁵ It objected 66 times (8.6 percent) to proposals to institute majority vote requirements⁶ and 60 times (7.8 percent) to election changes that included numbered posts.⁷ Finally, it objected 56 times (7.3 percent of all objections) to proposed changes involving redistricting of boundary lines that adversely affected minorities and 55 times to changes that involved polling locations.

With the exception of the changes to polling place locations, all of the most frequently proposed changes were ones that could have resulted in the dilution of minority voting strength. These proposed changes accounted for 64.5 percent of all objections interposed by the Department of Justice, or nearly two-thirds of the total.

Several other types of changes that were objected to less frequently also involved dilution of minority

bloc voting exists within the political subdivision, a minority candidate could have very little chance of being elected.

⁶ *Ibid.*, p. 39. A jurisdiction with a majority vote requirement requires candidates to receive a majority of the votes to win an election. If no candidate receives a majority, there is a runoff election between the two candidates who received the highest number of votes. If one of the candidates is a minority person and voting is along racial lines, the likelihood of winning in a head-to-head contest with the white candidate is minimal.

⁷ *Ibid.*, pp. 39-40. Under a numbered post requirement, candidates seeking the same political office are elected by the entire electorate of the jurisdiction but still have to run for a designated post (e.g., A, B, C). For example, if a minority and a white candidate run for post A and voting is along racial lines, the chances for a minority candidate to win in a majority white jurisdiction are minimal.

TABLE 6.1 Changes Submitted Under Section 5 and Reviewed by Department of Justice, by State and Year, 1975-80

State	1975	1976	1977	1978	1979	1980	Total	
							Number	Percent
Alabama	299	349	153	146	142	295	1,384	4.6%
Alaska	0	3	0	25	1	8	37	0.1
Arizona	52	228	180	311	163	655	1,589	5.2
California*	0	382	99	105	8	89	683	2.3
Colorado*	0	12	4	34	147	36	233	0.8
Connecticut**	0	0	0	0	0	0	0	0.0
Florida*	1	57	8	46	28	28	168	0.6
Georgia	284	252	242	444	371	689	2,282	7.5
Hawaii*	0	6	0	0	0	3	9	0.0
Idaho*	0	0	0	0	0	1	1	0.0
Louisiana	255	303	460	254	336	356	1,964	6.5
Maine**	0	3	—	—	—	—	3	0.0
Massachusetts**	0	11	0	6	0	0	17	0.0
Michigan**	0	3	0	0	0	0	3	0.0
Mississippi	107	152	114	123	112	153	761	2.5
New Hampshire**	0	0	0	0	0	0	0	0.0
New Mexico*	0	65	—	—	—	—	65	0.2
New York*	78	106	96	72	27	25	404	1.3
Oklahoma*	0	1	0	0	—	—	1	0.0
North Carolina*	293	125	183	156	89	158	1,004	3.3
South Carolina	201	419	299	212	138	192	1,461	4.8
South Dakota*	0	0	0	2	4	0	6	0.0
Texas	249	4,694	1,735	2,425	2,917	4,188	16,208	53.5
Virginia	259	301	434	314	267	464	2,039	6.7
Wyoming*	0	0	0	0	0	0	0	0.0
Total	2,078	7,472	4,007	4,675	4,750	7,340	30,322	99.9

* Selected county (counties) subject to preclearance rather than entire State.

** Selected town (towns) subject to preclearance rather than entire State.

— Not covered.

Note: Column does not total 100 percent due to rounding.

Source: U.S., Department of Justice, Civil Rights Division, Voting Section, Dec. 31, 1980.

TABLE 6.2 Objection Letters From the Department of Justice, by State and Year, 1975-80

State	1975	1976	1977	1978	1979	1980	Total	
							Number	Percent
Alabama	5	10	1	2	1	3	22	9.3%
Alaska							0	0.0
Arizona	2	1				1	4	1.7
California*		1	1				2	0.8
Colorado*							0	0.0
Connecticut**							0	0.0
Florida*							0	0.0
Georgia	13	7	8	5	3	5	41	17.4
Hawaii*							0	0.0
Idaho*							0	0.0
Louisiana	3	2	1	3		2	11	4.7
Maine**							0	0.0
Massachusetts**							0	0.0
Michigan**							0	0.0
Mississippi	9	5	6	2	3	3	28	11.9
New Hampshire**							0	0.0
New Mexico*							0	0.0
New York*	1						1	0.4
Oklahoma*							0	0.0
North Carolina*	3		2	2	1	2	10	4.2
South Carolina	2	8	6	7	4		27	11.4
South Dakota*				1	1		2	0.8
Texas	1	29	12	18	12	13	85	36.0
Virginia	1				1	1	3	1.3
Wyoming*							0	0.0
Total	40	63	37	40	26	30	236	99.9%

* Selected county (counties) covered rather than entire State.

** Selected town (towns) covered rather than entire State.

Note: The above figures do not include objections subsequently withdrawn. Column does not total 100 percent due to rounding.

Source: U.S., Department of Justice, Civil Rights Division, Voting Section, Feb. 28, 1981.

TABLE 6.3 Objections Interposed by the Department of Justice, by State, 1975-80

State	Objections 1975-80	
	Number	Percent
Alabama	42	7.8
Alaska	0	0.0
Arizona	7	1.3
California*	5	0.9
Colorado*	0	0.0
Connecticut**	0	0.0
Florida*	0	0.0
Georgia	152	28.3
Hawaii*	0	0.0
Idaho*	0	0.0
Louisiana	69	12.8
Maine**	0	0.0
Massachusetts**	0	0.0
Michigan**	0	0.0
Mississippi	40	7.4
New Hampshire**	0	0.0
New Mexico*	0	0.0
New York	1	0.2
Oklahoma*	0	0.0
North Carolina*	52	9.7
South Carolina	37	6.9
South Dakota*	2	0.4
Texas	128	23.8
Virginia	3	0.6
Wyoming*	0	0.0
Total	538	100.1

* Selected county (counties) subject to preclearance rather than entire State.

** Selected town (towns) subject to preclearance rather than entire State.

Note: The above figures do not include objections subsequently withdrawn.
Column does not total 100 percent due to rounding.

Source: U.S. Department of Justice, Civil Rights Division. Voting Section, Feb. 28, 1981.

TABLE 6.4 Changes Submitted Under Section 5 to Which Objections by Department of Justice were Interposed, by Type of Change, 1975-80

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	7.1
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	100.1

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: Commission analysis of Department of Justice objection letters.

voting strength. These included residency requirements,⁸ 42 objections (5.5 percent of the total); staggered terms,⁹ 36 (4.7 percent); creation of new single-member districts, including newly reapportioned districts or changes in district lines, 26 (3.4 percent); multimember districts,¹⁰ 13 (1.7 percent); and consolidation or incorporation, 6 (0.8 percent). Together, all the objections to proposed changes that could have diluted minority voting strength constituted 80.5 percent of objections issued by the Department of Justice.

The 770 objections or 236 objection letters issued by the Department of Justice to proposed election changes indicate that voting problems continue to exist in various forms in many covered jurisdictions. The discriminatory purposes or effects of these practices and procedures objected to by the Department of Justice continue to impede full minority political participation.

Noncompliance

Department of Justice data presented in the preceding pages reveal the extent and kinds of proposed changes that have been objected to by the Department of Justice through section 5 preclearance. Not all election changes that have a discriminatory effect on minority voters are submitted to the Department of Justice for preclearance. Under the Voting Rights Act, whenever a covered State or political subdivision "shall enact or seek to administer any voting qualifications or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect" on the date used to determine coverage (that is, November 1, 1964, for jurisdictions covered in 1965; November 1, 1968, for those covered in 1970; and November 1, 1972, for jurisdictions covered in 1975), it must preclear the change with the Attorney General or obtain a declaratory judgment from the U.S. District Court for the District of Columbia.¹¹

⁸ *Ibid.*, p. 40. Under a system with residency requirements, each representative must live in a separate district, but voting may be at large. As a result, a minority candidate may run against a white candidate from a predominantly minority district, but may not win in the general election.

⁹ *Ibid.* Staggered term elections require candidates to run for the same position at different time intervals. As a result, candidates for a number of otherwise identical positions are separated into individual races, and a minority candidate has to run in a head-to-head contest with a white candidate. In an at-large election system where voting is along racial lines, the minority candidate has only a minimal chance of winning.

¹⁰ *Ibid.*, p. 36. Under a multimember district election system, more than one representative is elected from a single district. If the minority population is smaller than the white population in the district and if racial bloc voting exists, a minority person will have very little chance of being elected to office.

Information obtained from civil rights organizations revealed that jurisdictions do not always comply with the requirements of section 5. They either fail to submit election law changes for section 5 review or they implement changes despite Department of Justice objections. As a result of these practices, those individuals whom the Voting Rights Act is designed to protect are not receiving the protections which Congress intended them to have. The American Civil Liberties Union's (ACLU) southern office has sued several counties in Georgia that failed to preclear changes from single-member election districts to at-large election systems. They have also challenged the enforceability of other types of election law changes made by Georgia counties, but not precleared under section 5. For example, in *McKenzie v. Giles*, the ACLU challenged the at-large election systems for both the Dooly County Board of Commissioners and the Board of Education on grounds that the at-large systems had not been precleared under section 5.¹² In fact, Dooly County's method of electing county commissioners on an at-large basis was enacted in 1967.¹³ After the ACLU filed suit against Dooly County alleging noncompliance with the Voting Rights Act, the county submitted its at-large election system to the Department of Justice, some 13 years after the election system was enacted. On July 31, 1980, the Department of Justice objected to the change in method of election.¹⁴ In a consent decree of July 1980, the court in the *McKenzie* case directed that the board of commissioners be elected from three single-member districts.¹⁵ With regard to the at-large election system for the board of education, the court provided for the election of board members from five single-member districts.¹⁶ In March 1981 the Georgia General Assembly enacted legislation providing for single-member district elections for the Dooly County Board of Education.¹⁷ A county

¹¹ 42 U.S.C. [1973c (1976)].

¹² *McKenzie v. Giles*, No. 79-43-Amer. (M.D. Ga. July 5, 1980) (consent decree), Plaintiff's First Amended Complaint at 6.

¹³ 1967 Ga. Laws. 2586.

¹⁴ Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to John C. Pridgen, Vienna, Ga., July 31, 1980.

¹⁵ *McKenzie v. Giles*, No. 79-43-Amer. (M.D. Ga. July 5, 1980) (consent decree).

¹⁶ *Id.*

¹⁷ John Pridgen, county attorney, Dooly County, Ga., telephone interview, July 20, 1981.

referendum on the single-member district election system was held in May 1981 and passed.¹⁸ An election for the five school board posts was held July 14, 1981, and resulted in the election of the first black to the Dooly County Board of Education.¹⁹

Other Georgia ACLU cases that involved a failure to preclear election changes include *Davenport v. Isler*²⁰ and *Jones v. Cowart*.²¹ These challenges to at-large elections in Clay and Calhoun Counties, respectively, were on grounds that the at-large election systems used in electing county commissioners had not been precleared under section 5. As a result of the suit in Clay County, the three-judge Federal district court ordered, in June 1980, that the county's at-large election system for board of commissioners was "not legally enforceable until such time as administrative or judicial preclearance is obtained therefore pursuant to [1973c]."²² In Calhoun County a June 1980 consent decree provides for the election of county commissioners from five single-member districts.²³ According to the consent decree, five of the seats on the seven-member board of education will also be from these five voting districts, with two members to be elected at-large.²⁴

Another ACLU case, *Berry v. Doles*, was brought principally on grounds that Peach County, Georgia's, at-large voting system unconstitutionally diluted minority voting strength.²⁵ A second cause of action in that suit, however, was that Peach County failed to submit a voting rule implementing staggered terms of office.²⁶ On February 28, 1977, a three-judge Federal court enjoined enforcement of the rule providing for staggered terms of office until section 5 compliance was met, but denied plaintiffs retroactive relief.²⁷ In June 1978 the Supreme Court of the United States entered a *per curiam* order directing that Peach County be given 30 days within which to seek preclearance, and if preclearance were denied, plaintiffs were to be allowed to reapply for retroactive relief (e.g., special elections, to

remedy the section 5 violation).²⁸ *Berry v. Doles* was settled in November 1979 when the district court entered a consent decree providing for the election of four county commissioners from single-member districts and one county commissioner to be elected at large.²⁹

The ACLU also learned that the city of Dawson, Georgia, was using a numbered post system in city council elections that had not been submitted for section 5 review. The ACLU filed a complaint seeking to enjoin the use of numbered posts, and on November 29, 1977, the district court found for the plaintiffs and barred the use of numbered posts until the city complied with the Voting Rights Act.³⁰

The Mexican American Legal Defense and Educational Fund (MALDEF) has also learned of instances in which local jurisdictions failed to seek preclearance of election changes. In conducting discovery for a challenge to the at-large election system in Lockhart, Texas, MALDEF found that a 1973 city charter had not been submitted for section 5 review.³¹ The city charter included provisions for a numbered post system and an increase in the size of the city council. MALDEF filed suit to enjoin future elections until the city charter had been precleared.³² On March 2, 1979, the district court issued a temporary restraining order enjoining the election process until the city of Lockhart submitted the city charter for preclearance.³³ On September 14, 1979, the Department of Justice objected "to the Home Rule Charter insofar as it incorporates an at-large method of election, with numbered posts and staggered terms."³⁴ After receiving the Department of Justice's objection to its election method, the city of Lockhart filed a declaratory judgment action in the U.S. District Court for the District of Columbia seeking preclearance of the election change.³⁵ On

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Davenport v. Isler*, No. 80-42-COL (M.D. Ga., June 23, 1980).

²¹ *Jones v. Cowart*, No. 79-79-ALB (M.D. Ga., June 11, 1980) (consent decree).

²² *Davenport v. Isler*, No. 80-42-COL (M.D. Ga., June 23, 1980).

²³ *Jones v. Cowart*, No. 79-79-ALB (M.D. Ga., June 11, 1980) (consent decree) at 2.

²⁴ *Id.*, consent decree at 3.

²⁵ Christopher Coates, staff attorney, ACLU southern office, telephone interview, July 20, 1981.

²⁶ *Ibid.*

²⁷ *Berry v. Doles*, 438 U.S. 190, 191 (1978) (*per curiam*).

²⁸ *Id.*

²⁹ *Berry v. Doles*, No. 76-139-Mac. (M.D. Ga., Nov. 16, 1979) (consent decree) at 2.

³⁰ *Holloway v. Raines*, No. 77-27 Amer. (M.D. Ga., Nov. 29, 1977).

³¹ Jose Garza, staff attorney, MALDEF, San Antonio, Tex., telephone interview, July 17, 1981 (hereafter cited as Garza Interview).

³² *Cano v. Chesser*, No. A-79-CA-0032 (W.D. Tex., filed Feb. 7, 1979).

³³ *Cano v. Chesser*, No. A-79-CA-0032 (W.D. Tex., Mar. 2, 1979) (temp. restr. order).

³⁴ Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Walter H. Mizell, city attorney, Lockhart, Tex., Sept. 14, 1979.

³⁵ *City of Lockhart v. United States*, No. 80-0364 (D.D.C. July 30, 1981) (memorandum opinion).

July 30, 1981, the district court denied the city of Lockhart's request for a declaratory judgment.³⁶ In denying Lockhart's request, the district court stated:

The plaintiff has failed to demonstrate . . . that the "home rule" governance and election plan will not have a discriminatory effect on Mexican-American voters ability to elect candidates of their choice. Although the at-large system, by itself, does not deny Mexican-American voters the opportunity to elect candidates of their choice, the imposition of the numbered-post and staggered-term provisions has clearly had and will continue to have such an effect on Mexican-American voters.³⁷

In *Escamilla v. Stavely*, MALDEF represented the plaintiffs who brought suit to require Terrell County, Texas, to submit a 1973 redistricting plan to the Department of Justice that had not been precleared.³⁸ Despite a 1976 request by the Department of Justice that Terrell County submit the 1973 plan for preclearance,³⁹ the county did not do so until October 28, 1978.⁴⁰ On December 27, 1978, the Department of Justice issued an objection letter to the 1973 reapportionment of commissioner precincts in Terrell County.⁴¹ The Department of Justice found that the 1973 redistricting plan afforded Mexican American voters "less of an opportunity than other residents to participate in the political process and elect candidates of their choice" by concentrating the Mexican American community in one precinct and dispersing the rest of the Mexican Americans into other commissioner precincts.⁴² The result of this redistricting plan was that the overall effect of the Mexican American vote was minimized or diluted. The district court, in an order of March 18, 1980, ordered Terrell County to submit a new redistricting plan to the Department of Justice.⁴³ On April 28, 1980, the new redistricting plan was precleared by the Department of Justice.⁴⁴

Other MALDEF cases include *Arriola v. Harville*, a challenge to the implementation of a 1975 redistricting plan for the county commission in Jim Wells County, Texas, that the U.S. district court found was not in compliance with section 5 preclearance requirements⁴⁵ and *Silva v. Fitch*, an action to

prevent implementation of a 1973 Frio County, Texas, reapportionment plan that the county was implementing despite a Department of Justice objection.⁴⁶

Department of Justice figures also indicate that many jurisdictions continue to fail to preclear proposed election changes. For example, in 1980 a total of 124 letters of request for submissions were sent to covered jurisdictions where it was believed that changes had been made without preclearance.⁴⁷ Of these, 79 jurisdictions responded with 78 changes that had taken place without preclearance.⁴⁸ As of January 27, 1981, the Department of Justice had received no response from 45 jurisdictions that may have made election law changes, but did not submit them for preclearance.⁴⁹

Preliminary data collected by the Southern Regional Council in Atlanta, Georgia, on nonsubmissions by covered jurisdictions in South Carolina, Georgia, Alabama, and Louisiana further suggest the extent of noncompliance with section 5 preclearance procedures despite the fact that the Voting Rights Act has been in existence for 16 years. The Southern Regional Council reviewed State session laws enacted since the Voting Rights Act was passed and compared these laws to the Department of Justice's records of submissions. Preliminary estimates of nonsubmissions discovered in this manner indicate that South Carolina had 120 nonsubmissions; Georgia, 330; Alabama, 65; and Louisiana, 37.⁵⁰

Janice Glover, project director of the Fair and Open Government Project of the Southern Regional Council, stated that these are "estimates of the number of nonsubmissions"; nonetheless, they are indicative of the extent of noncompliance.⁵¹ In fact, Ms. Glover said, the figures for South Carolina and Louisiana are "probably low because they are home

³⁶ *Id.* at 12.

³⁷ *Id.*

³⁸ Garza Interview.

³⁹ J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, letter to Jack Hayre, Terrell County attorney, Sanderson, Tex., Dec. 8, 1976.

⁴⁰ Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Lucius D. Bunton, Odessa, Tex., Dec. 27, 1978.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Escamilla v. Stavely*, No. DR-78-CA-23 (W.D. Tex., Mar. 18, 1980).

⁴⁴ Drew S. Days III, Assistant Attorney General, Civil Rights Division,

U.S. Department of Justice, letter to James A. Moseley, Odessa, Tex., Apr. 28, 1980.

⁴⁵ *Arriola v. Harville*, No. C-78-87 (S.D. Tex., Oct. 9, 1979).

⁴⁶ *Silva v. Fitch*, No. SA-76-CA-126 (W.D. Tex., Oct. 5, 1975), *aff'd sub nom. Fitch v. Silva*, 429 U.S. 1081 (1977).

⁴⁷ Margay Williams, Associate Director of Section 5 Unit, U.S. Department of Justice, telephone interview, Feb. 9, 1981.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ David Bell, program officer, Southern Regional Council, telephone interview, July 20, 1981.

⁵¹ Janice Glover, project director, Southern Regional Council, telephone interview, Mar. 13, 1981.

rule States and do not have to go through the State legislature to change local laws.”⁵²

In some instances jurisdictions have attempted to implement changes despite the fact that the Department of Justice has objected to the change. For example, in July 1979, the Department of Justice filed a civil suit to prevent county officials in Pike County, Alabama, from ignoring a section 5 objection.⁵³ The county, in 1974, submitted a proposal to change from a single-member district election system for county commissioners to an at-large election system with a residency requirement. Under the new election system, commissioners were required to reside in the district they represented, but each would be elected on a countywide basis. The Department of Justice objected to the change because it was unable to conclude that the at-large system would not have a discriminatory effect.⁵⁴

Despite the objection, Pike County proceeded with elections for commissioners under the at-large system in 1976 and 1978.⁵⁵ In addition, Pike County instituted another change, which required candidates to indicate the specific position they sought (i.e., numbered post). This change had never been submitted to the Department of Justice for approval.⁵⁶ The U.S. District Court for the Middle District of Alabama held that Pike County’s at-large election system and numbered post requirement were unconstitutional.⁵⁷ The court declared that the individuals on the Pike County Commission were holding their positions illegally. The court ordered new elections under the old single-member district system unless the Department of Justice interposed no objection to another type of election system that the county might wish to enact.⁵⁸

Another example of a jurisdiction implementing a law despite having received a Department of Justice objection is Hale County, Alabama. The Department of Justice objected on April 23, 1976, to Hale County’s change in the method of electing county commissioners from districts to an at-large election system.⁵⁹ In May 1976 Hale County held a primary election on an at-large basis to elect candidates to run for county commissioner, places 2 and 3, despite the Department of Justice’s objection.⁶⁰

In *United States v. County Commission, Hale County, Alabama*, the Attorney General brought suit alleging that Hale County had changed its election system for county commissioners in violation of the preclearance requirements of the Voting Rights Act.⁶¹ The district court held that Hale County’s change from district elections to at-large elections was of “no force and effect and any elections conducted pursuant to those enactments were unlawful.”⁶² The court also held that the county would be required to “[elect] county commissioners by district. . . unless and until such time as the Attorney General or the District Court of the District of Columbia determines otherwise.”⁶³

The Department of Justice continues to be involved in litigation against jurisdictions that implemented changes over its objection. Information provided by the Department indicates that as of December 1980 it has been involved in 48 cases since 1975 involving noncompliance with an objection interposed by the Attorney General under section 5.⁶⁴ The Department of Justice was the plaintiff in 29 of these cases⁶⁵ (see table 6.5).

Conclusion

Jurisdictions subject to preclearance have submitted over 30,000 changes in voting practices or procedures between 1975 and 1980 for Federal preclearance under section 5 of the Voting Rights Act. Although most changes are innocuous, the Department of Justice’s review of proposed voting changes regularly uncovers proposed voting practices or procedures that would be discriminatory in purpose or effect. Between 1975 and 1980, the Department of Justice issued 236 objection letters to proposed changes, an average of 39 objections per year.

Although 236 objection letters may appear insignificant compared to the total number of submissions made in the same time period, the potential effect on minority political participation of each proposed change to which the Department of Justice has objected is significant. For example, as was dis-

⁵² *Ibid.*

⁵³ *United States v. Pike County Commission*, No. 79-245-N (M.D. Ala. Oct. 12, 1979).

⁵⁴ *Id.*, slip op. at 2.

⁵⁵ *Id.*, Brief for Plaintiff at 5.

⁵⁶ *Id.*, slip op. at 3.

⁵⁷ *Id.* (declaratory judgment) (Oct. 12, 1979).

⁵⁸ *Id.*

⁵⁹ *United States v. County Commission, Hale County, Ala.*, 425 F. Supp. 433 (S.D. Ala. 1976) (three-judge court), *aff’d*, 430 U.S. 924 (1977).

⁶⁰ 425 F. Supp. 435-436.

⁶¹ *Id.* at 433.

⁶² *Id.* at 436.

⁶³ *Id.*

⁶⁴ U.S. Department of Justice, Litigation Unit, Table of Cases (1980).

⁶⁵ *Ibid.*

TABLE 6.5 Cases Involving Noncompliance with an Objection by the Attorney General in Which the Department of Justice was the Plaintiff, Defendant, or Amicus, 1975–80

State of jurisdiction involved	1975	1976	1977	1978	1979	1980
Alabama		3		1	1	2
Alaska						
Arizona						
California						
Colorado						
Connecticut						
Florida						
Georgia		2				2
Hawaii						
Idaho						
Louisiana		2				
Maine						
Massachusetts						
Michigan						
Mississippi	5		1			
New Hampshire						
New Mexico						
New York						
Oklahoma						
North Carolina						
South Carolina		1	1	4	1	
South Dakota				1	1	
Texas		3	7	5	1	4
Virginia						
Wyoming						
Total	5	11	9	11	4	8

Source: U.S., Department of Justice, Civil Rights Division, Voting Section, December 1980.

cussed in chapter 5, the Department of Justice's objection letter⁶⁶ to proposed annexations in Houston, Texas, prevented the dilution of the city's minority population which would have made it even more difficult for minorities to elect candidates of their choice under the city's at-large election system. As a result of the objection letter, Houston redrew its districts to provide for the election of nine council members from single-member districts and five on an at-large basis.⁶⁷ Previously, only one black and no Mexican American had ever been elected to the Houston City Council.⁶⁸ The first election after redistricting saw three new minorities elected (two blacks and one Mexican American), increasing the number of minorities on the city council to four.⁶⁹ The effect of this one objection letter, then, was surely significant to the minority population in Houston.

Similarly, South Dakota has only received two Department of Justice objection letters, but each of these has had an important effect on the American Indian population in Shannon and Todd Counties. In its 1979 letter, the Department objected to a South Dakota law that would have nullified the effect of a court of appeals decision giving the residents of the unorganized counties of Shannon and Todd (whose

populations are predominantly Indian) the right to vote for county officials in the organized counties to which they are attached.⁷⁰ In that decision, the court of appeals found that residents of Shannon and Todd Counties were denied equal protection of the laws in not being able to vote for county officials because they had a "substantial interest in the choice of county elected officials since those officials govern their affairs."⁷¹ Although the population affected by this objection letter is only slightly more than 5,000, the objection had the ultimate effect of helping ensure the right of American Indians to vote for officials who govern their lives.

The Department of Justice's section 5 review, then, is a vital mechanism for uncovering proposed changes in voting practices or procedures that could be discriminatory in purpose or effect. A relatively few objections have the potential for significant impact because of the effect one objection can have on the voting rights of a large segment of the minority population in a given jurisdiction. Also, the failure of jurisdictions to comply with section 5 preclearance procedures has a significant effect on the voting rights of racial and language minorities if the examples of known unsubmitted changes are indicative of general failure to preclear.

⁶⁶ Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Robert M. Collie, Jr., city attorney, city of Houston, June 11, 1979.

⁶⁷ U.S., Commission on Civil Rights, *The State of Civil Rights: 1979* (1980), p. 33.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Mark Meierhenry, attorney general, State of South Dakota, Oct. 22, 1979.

⁷¹ *Little Thunder v. State of South Dakota*, 518 F.2d 1253, 1256 (8th Cir. 1975).

The Minority Language Provisions of the Voting Rights Act

Practices having the effect of inhibiting the full political participation of language minorities still occur at the local level, as previous chapters have shown. Chapter 4, particularly, documents the continued use of practices which limit their right to vote. The location of polling places in predominantly white communities or white establishments where language minorities feel unwelcome was found to discourage them from voting. Challenging language minority citizens' eligibility to vote without explaining what they can do to vote creates unnecessary frustration and disillusionment with the electoral process for them. The lack of bilingual election officials and trained bilingual workers to assist language minority voters at the polls was also discussed in chapter 4 as limiting their participation.

This chapter will more closely study the problems language minorities have in achieving full political participation. Specifically, it examines whether the minority language provisions added by Congress in 1975 to the Voting Rights Act have resulted in increased access to the political process by language minority groups. The chapter also discusses those practices that continue to exclude language minorities from the electoral process. Federal enforcement of the minority language provisions is also reviewed.

The Minority Language Provisions

Language minority citizens, including those who were born in the United States and those whose families have resided here for generations, have encountered numerous barriers to achieving full political participation. Such barriers have resulted in low registration and voting by language minority citizens. In Texas, for example, a U.S. district court in 1972 stated:

There can be no doubt that lack of political participation by Texas Chicanos is affected by a cultural incompatibility which has been fostered by a deficient educational system. . . . This cultural and language impediment, conjoined with the poll tax and the most restrictive voter registration procedures in the Nation have operated to effectively deny Mexican Americans access to the political processes in Texas even longer than the blacks were formally denied access by the white primary.¹

Testimony presented during the 1975 hearings on extension of the Voting Rights Act documented the lack of access of language minority citizens to the political process. Numerous witnesses testified concerning the roles culture, socioeconomic conditions, unequal educational opportunities, and a language other than English have in preventing language minorities from fully participating in the political process.² One witness, Howard A. Glickstein, then director of the Center for Civil Rights at the University of Notre Dame, testified:

of Leonel Castillo, city comptroller, city of Houston, Texas, pp. 738-56; testimony and prepared statement of Vilma S. Martinez, president and general counsel, Mexican American Legal Defense and Educational Fund, pp. 756-89; testimony and prepared statement of Howard A. Glickstein, director, Center for Civil Rights, University of Notre Dame, pp. 214-29.

¹ *Graves v. Barnes*, 343 F. Supp. 704, 731 (W.D. Tex., 1972).

² U.S., Congress, Senate, Subcommittee on Constitutional Rights of the Committee on the Judiciary, *Extension of the Voting Rights Act of 1965: Hearings on S. 407, S. 903, S. 1297, S. 1409, and S. 1443*, 94th Cong., 1st sess., 1975, see e.g., testimony and prepared statement of Edward R. Roybal, U.S. Representative, pp. 255-68; testimony and prepared statement

Overt discrimination is not the only factor which limits the political participation of Spanish-speaking Americans. Since most registration and election materials are printed in English, the language barrier often has prevented Spanish-speaking citizens from registering or, once registered, from voting effectively. This barrier is as significant an impairment of the right to vote as any literacy test that was used to deny the franchise to blacks.³

In testimony based on its 1975 report, the U.S. Commission on Civil Rights noted that English-only registration and voting "does impede the political participation of voters whose usual language is not English."⁴ The Commission further noted:

The failure of the States to provide adequate bilingual assistance through bilingual registration and election officials, bilingual registration forms, ballots, printed election materials, and publicity undermines the voting rights of non-English-speaking citizens and effectively excludes some otherwise qualified voters from participating in elections.⁵

Based upon information presented during the 1975 hearings, the minority language provisions were added to the Voting Rights Act upon determination by the Congress that "voting discrimination against citizens of language minorities is pervasive and national in scope."⁶ Congress found that because of the denial of equal educational opportunities by State and local governments, language minorities experienced severe disabilities and illiteracy in the English language that, together with English-only elections, excluded them from participation in the electoral process.⁷ Congress, therefore, determined that to enforce the 14th and 15th amendments to the U.S. Constitution, it was "necessary to eliminate such discrimination by prohibiting English-only elections and by prescribing other remedial devices."⁸

The minority language provisions apply in those jurisdictions that meet either of the following two criteria:

(1) The jurisdiction provided English-only registration and election materials on November 1, 1972 (that is, maintained a test or device,⁹ under the 1975 amendments), and less than 50 percent of its citizens of voting age were registered on November 1, 1972,

or voted in the Presidential election of 1972,¹⁰ and more than 5 percent of the citizens of voting age in the jurisdiction were members of a single language minority group.¹¹

(2) More than 5 percent of the citizens of voting age in the jurisdiction are members of a single language minority, and, the illiteracy rate of such persons as a group is higher than the national illiteracy rate.¹²

Those jurisdictions falling under the first set of criteria are commonly referred to as "4(f)(4) jurisdictions" because they must meet the requirements of section 4(f)(4) of the act. Jurisdictions covered by the second set of criteria are commonly called "203(c) jurisdictions" because they must comply with the provisions of section 203(c).¹³

Jurisdictions covered under either of the two sets of criteria must comply with the special provisions of the Voting Rights Act requiring assistance to language minority citizens.¹⁴ Specifically, these jurisdictions must provide:

...any 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 minority group as well as in the English language.¹⁵

The provisions further state that where the language of the applicable minority group is oral or unwritten or, in the case of Alaskan Natives, if the predominant language is historically unwritten, the jurisdiction is "only required to furnish oral instructions, assistance, or other information relating to registration and voting."¹⁶

Jurisdictions covered under the first set of criteria described above, also are subject to the special provisions of section 5, requiring preclearance with the Attorney General of changes in voting practices or procedures and may be assigned Federal voting examiners and observers.¹⁷ Jurisdictions covered under the second set of criteria described above, are subject only to the minority language provisions. Political subdivisions in States covered under sec-

³ *Id.*, at 228.

⁴ *Id.*, at 98.

⁵ *Id.*

⁶ 42 U.S.C. 1973b(f)(1) (1976).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* §1973b(f)(3). This section was added by the 1975 amendments to the act and states that the term "test or device" shall also mean "any practice or requirement by which [a jurisdiction] provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including, ballots, only in the English language." *Id.*

¹⁰ *Id.* §1973b(b).

¹¹ *Id.* §1973b(f).

¹² *Id.* §1973aa-1a(b). For purposes of this subsection, illiteracy means the failure to complete the fifth primary grade.

¹³ The actual minority language "trigger" provisions are §§4(f)(3) and 203(b), respectively, but nonetheless reference is usually made to §§4(f)(4) and 203(c) as if those were the sections defining coverage under the act.

¹⁴ The language minorities covered under the act are American Indians, Asian Americans, Alaskan Natives, and persons of Spanish heritage. 28 C.F.R. §55.1(c) (1980).

¹⁵ 42 U.S.C. §1973b(f)(4), 1973aa-1a(c) (1976).

¹⁶ *Id.*

¹⁷ *Id.* §1973c-1973f.

tion 203 are exempt from the minority language requirements if less than 5 percent of the citizens of voting age are members of a single language minority group.¹⁸

Interim guidelines for implementing the minority language provisions of the Voting Rights Act were issued by the Department of Justice on October 3, 1975.¹⁹ Subsequently, proposed interpretive guidelines were published for comment, and the final guidelines were issued.²⁰ These interpretive guidelines establish the framework by which the Attorney General seeks compliance with the major objective of the minority language provisions, “to enable members of applicable language minority groups to participate effectively in the electoral process.”²¹

The guidelines provide two basic standards by which the Attorney General measures compliance with the requirements of the minority language provisions. These are:

(1) That materials and assistance should be provided in a way designed to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities; and

(2) That an affected jurisdiction should take all reasonable steps to achieve that goal.²²

The guidelines stress the responsibility of covered jurisdictions for all implementation decisions. Specifically, they state that compliance with the minority language provisions is the responsibility “of the affected jurisdiction” and the “guidelines should not be used as a substitute for analysis and decision by the affected jurisdiction.”²³

Minority Language Assistance from the Perspective of Minority Language Groups

This section examines practices and procedures that exclude language minorities from effective participation in the electoral process from the perspective of minority language citizens. Interviews were held in five States with individuals and representatives of eight minority group organizations to determine the types of minority language

assistance most needed, factors explaining why these needs were not being met, and the steps they considered necessary to aid language minorities to participate more effectively in the electoral process.

Minority group representatives were in agreement that the minority language provisions of the Voting Rights Act have had only minimal results in their areas. For example, Rolando Rios of the Southwest Voter Registration Education Project stated that the language provisions “must have helped, but the impact has only been minimal compared to what would have been if the law was enforced.”²⁴ Representatives of the American G.I. Forum of the United States in Denver, Colorado, thought the minority language provisions have the potential of increasing the political participation of Mexican Americans in Denver, but local “efforts are not sufficient to have any impact.”²⁵ American Indian representatives in Tahlequah, Oklahoma, said the language provisions have had no effect in Cherokee County.²⁶

The reasons why most representatives of minority language groups believe the language provisions have had limited effect are revealed in their discussions of the unmet needs in their communities—bilingual registration services and oral bilingual assistance at the polls. Minority group representatives were unanimous in their opinion that these were the most important services a jurisdiction could offer to enable language minorities to participate more effectively in the electoral process. Publicity about the availability of bilingual services was also considered important. Some of the interviewees thought written minority language assistance was needed, to a lesser extent.

Bilingual Registration Services

In the view of the community-based organizations, bilingual registration services must include more than printed bilingual registration forms. Voter outreach services and voter education programs for the minority language community, they say, are the first and most important steps in getting minority language citizens registered and involved in the

¹⁸ *Id.* §1973aa-1a(b).

¹⁹ 40 Fed. Reg. 46080 (Oct. 3, 1975).

²⁰ 28 C.F.R. Part 55 (1980).

²¹ *Id.* §55.2(b).

²² *Id.*

²³ *Id.* §55.2(c).

²⁴ Rolando Rios, director of litigation, Southwest Voter Registration Education Project, interview in San Antonio, Tex., Dec. 16, 1980 (hereafter cited as Rios Interview).

²⁵ Roderick Delgado, president, Denver American G.I. Forum of the United States; Manuel Gonzalez, Remigio Pete Reyes, Tony Arguello, Denver residents; State Representatives Laura De Herrera and Richard Castro, interview in Denver, Nov. 20, 1980 (hereafter cited as Delgado et al. Interview).

²⁶ Waythene Young, North American Indian Women's Association, interview in Tahlequah, Okla., Dec. 3, 1980 (hereafter cited as Young Interview), and Agnes Cowan, Cherokee Bilingual Center, interview in Tahlequah, Okla. (hereafter cited as Cowan Interview).

political process. For example, John Navarrette, president of the Mexican American Political Association (MAPA) in Fresno County, California, stated that bilingual oral assistance on a one-to-one basis at registration was the most important need of the language minority community in Fresno.²⁷ Mr. Navarrette based his comments on his experience with voter registration drives conducted by his organization in cooperation with the county's Hispanic elected officials and with the Southwest Voter Registration Education Project. During these registration drives, his organization found that members of the language minority community had many questions about an apparently simple registration form despite the fact it was in Spanish.²⁸ Mr. Navarrette stated that "registration cards can be written in Spanish, but assistance has to go beyond that."²⁹

In Tahlequah, Oklahoma, Waythene Young, president of the North American Indian Women's Association, expressed similar needs regarding oral assistance at registration for American Indians in Cherokee County. When her organization registered voters in Cherokee County, Ms. Young learned that registration procedures and registration forms needed to be explained.³⁰ Her organization found that English-speaking students at the Job Corps center also did not understand some of the questions on the registration form.³¹ She remarked that "Cherokee County is very bilingual and people speak English, but don't understand it as well as Cherokee and are more comfortable in Cherokee."³²

Roderick Delgado of the American G.I. Forum of the United States in Denver, Colorado, said that voter registration in Denver is a major need of the Mexican American community that has been overlooked by local election officials.³³ He stated that registration in the minority community is largely the result of efforts by a bipartisan coalition supported by funds from the Southwest Voter Registration Education Project.³⁴

The effect of inadequate provision by jurisdictions for the registration needs of minority language citizens is that they are virtually excluded from

participation in the electoral process. Unless a community-based organization or a nonpartisan voter registration effort assumes the responsibility of registering language minorities, potential language minority voters remain alienated from the political system and fearful or intimidated by procedures they do not fully comprehend.

The comments made by the representatives of community-based organizations and individuals in Commission interviews concerning the unmet registration needs of language minorities correspond to findings by an extensive Federal Election Commission (FEC) survey. In its 1979 report on bilingual election services, the FEC found that there were fewer bilingual registration services than bilingual voting services.³⁵ The FEC determined that this inequity was related to the attitude of election officials that "registration is something that people must do for themselves, to demonstrate their commitment to political participation, and that only after being registered do they really merit aid and attention."³⁶ The FEC concluded that:

...many election administrators either do not want, or feel that they are unable, to deal directly with the large and growing mass of unregistered but eligible voters. Since language minority citizens are disproportionately found in this...mass, the inescapable conclusion is that the goals of the bilingual provisions...cannot be met until this inattention to the unregistered is remedied.³⁷

Oral Bilingual Assistance at the Polls

In addition to registration services, the interviewed individuals and representatives of community-based organizations argued that oral bilingual assistance at the polls is a crucial need of language minorities. Some of the respondents noted that the provision of oral assistance at the polls appears to be left to the chance that a bilingual person will be appointed to work at a polling site in an area where language assistance is needed. For example, State Representative Laura De Herrera of Denver, Colorado, said that bilingual oral assistance at the polls in Denver is dependent upon political party committee people.³⁸ She commented that party committees

²⁷ John Navarrette, president, Fresno County Mexican American Political Association, interview in Fresno, Calif., on Dec. 9, 1980 (hereafter cited as Navarrette Interview).

²⁸ Ibid.

²⁹ Ibid.

³⁰ Young Interview.

³¹ Ibid.

³² Ibid.

³³ Delgado et al. Interview.

³⁴ Ibid.

³⁵ Federal Election Commission, "Bilingual Election Services, Volume III: A State of the Art Report," August 1979, p. 66 (hereafter cited as "Bilingual Election Services Report").

³⁶ Ibid.

³⁷ Ibid.

³⁸ Laura De Herrera, State representative, interview in Denver, Colo., Nov. 20, 1980.

recommend names to the county clerk, who selects the poll workers.³⁹ Similarly, in Texas the appointment of bilingual poll workers in areas where they are needed is left to the chance that election judges, who are appointed by county commissioners, are bilingual or will select bilingual clerks to serve during the election.⁴⁰

Respondents in Fresno found the lack of bilingual precinct workers so acute that they complained to local election officials.⁴¹ Fresno city council member Lionel Alvarado stated that election officials need to "reach out and get Hispanics to work the polls at election time."⁴² He said oral assistance at polls in Fresno was needed because "Hispanics are intimidated just by the experience of going into the booth and using computerized cards."⁴³ He also said that poll workers should reflect the community.⁴⁴ Cruz Bustamante also commented on the need for oral assistance at the polls in Fresno, noting that a large number of language minorities in Fresno could not read well and often depended on their children to translate for them.⁴⁵ He stated that bilingual poll workers were needed because polls are often in Anglo homes or churches and that language minority voters feel unwelcome there, especially when they are not helped in their language.⁴⁶

Respondents in Cherokee County, Oklahoma, also considered oral assistance at the polls to be an important need that is not being adequately met in Cherokee County. Agnes Cowan of the Cherokee Bilingual Center in Tahlequah expressed the view that the one bilingual interpreter the county election board makes available during elections is not enough.⁴⁷ She stated that the county election board at one time provided seven interpreters, but it decided that they were not adequately utilized and discontinued their use. Ms. Cowan remarked that the interpreters were not used because the American Indians did not know they were available.⁴⁸ Oral bilingual assistance, in her view, is necessary. Although Cherokees in the community, especially older persons, can understand and speak English,

they have trouble comprehending documents. She stated, "Speaking English is one thing, but comprehension is what's important."⁴⁹

Carolyn Swimmer and Gloria Sly, employees of the Cherokee Education Center in Tahlequah, commented that American Indian voters definitely need to have the State questions on the ballot explained, because there are a number of Cherokees who can speak both English and Cherokee but cannot read either language.⁵⁰ They also mentioned that oral interpreters are provided in Cherokee tribal elections.⁵¹

The representative of the League of United Latin American Citizens (LULAC) in Albuquerque, New Mexico, said that oral bilingual assistance was important and "undoubtedly has helped," because the bilingual people in his area are "not that fluent in reading material so oral assistance is of more benefit to them."⁵² Mr. Mares also said that people were more comfortable voting when someone was there to assist them.⁵³

The most significant effect of inadequate oral bilingual assistance at the polls is that it discourages future interest in voting. If a minority language voter goes to the poll and finds that such help is unavailable or is inadequate, then the voter may be discouraged from attempting to vote again. As several respondents noted, minority language voters can be easily intimidated by the entire voting process. According to representatives of community-based organizations, the best way to make voting a positive experience for language minorities is to have helpful, trained, oral bilingual assistants available at the polls. The failure of local jurisdictions to provide this help is a major factor in discouraging language minority citizens from effectively participating in the political process.

Publicity About Bilingual Services

A majority of the respondents remarked that when bilingual services are provided, their availability should be publicized. If the language minority

³⁹ Ibid.

⁴⁰ Tex. Elec. Code Ann. art. 3.01 (Vernon Supp. 1980).

⁴¹ Navarrette Interview.

⁴² Lionel Alvarado, city council member, interview in Fresno, Calif., Dec. 9, 1980 (hereafter cited as Alvarado Interview).

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Cruz Bustamante, MAPA member, interview in Fresno, Calif., Dec. 9, 1980 (hereafter cited as Bustamante Interview).

⁴⁶ Ibid. For the response of Fresno County to these statements, see appendix G of this report.

⁴⁷ Cowan Interview.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Carolyn Swimmer, resource teacher, and Gloria Sly, community coordinator, Cherokee Education Center, interview in Tahlequah, Okla., Dec. 3, 1980 (hereafter cited as Swimmer and Sly Interview).

⁵¹ Ibid. For the response of Cherokee County to these statements, see appendix G.

⁵² Sam Mares, northern district director, League of United Latin American Citizens (LULAC), interview in Albuquerque, N.Mex., Nov. 17, 1980 (hereafter cited as Mares Interview).

⁵³ Ibid.

community is unaware that bilingual election services are available, it is obvious that the services, no matter how elaborate, will tend not to be used. John Trasvina of San Francisco remarked that the situation was analogous to “someone not inviting people to a party and complaining that all the food is left because no one showed up.”⁵⁴

Interviewees noted that jurisdictions can publicize the availability of bilingual election services both efficiently and inexpensively by having printed announcements and bilingual material available in places frequented by the language minority community. Bilingual public service announcements, notices in minority newspapers and magazines, or bilingual advertisements in the community newspaper are other ways jurisdictions can effectively publicize bilingual election services. Other forums for publicity of services discussed include providing speakers for church groups, community organizations, and neighborhood meetings or social gatherings.⁵⁵

In general, most of the respondents, except those in San Francisco, remarked that there was little, if any, publicity about the availability of bilingual services. The LULAC representative in Albuquerque, New Mexico, said that “people don’t know the bilingual material is there. Most members of the minority community are not aware of the bilingual election services that are available.”⁵⁶

In Tahlequah, Oklahoma, Waythene Young, president of the North American Indian Women’s Association, said there was no publicity about the availability of bilingual election services, although “the county did advertise once” that people could call her organization about registration.⁵⁷ She said the county could better inform American Indians about bilingual election services by publicizing in the tribal newspaper and by asking to speak at community meetings.⁵⁸

Community representatives in Fresno and Denver remarked that publicity about bilingual election services or the election was only made available by candidates and community groups. In Fresno the Mexican American Political Association (MAPA) representative said, “Most of the radio and TV spots

were the result of community group effort.”⁵⁹ The county, stressed Mr. Navarrette, “only does what is minimally required by law.”⁶⁰ Remigio Pete Reyes of Denver stated that bilingual announcements on television and radio were done by candidates or the Southwest Voter Registration Education Project.⁶¹ He also mentioned that candidate debates were televised on the educational television channel in Spanish and “the same thing should be done on the regular TV stations.”⁶² State Representative Laura De Herrera argued that bilingual radio and television programs that provide information on the political process, candidates, and issues are needed so that language minorities can more effectively exercise their voting rights.⁶³ She also remarked that the availability of written bilingual material at the polls should be better publicized so that people know it is available.⁶⁴

The major effect of a jurisdiction’s failure to inform the minority language community about bilingual election services is that the people who need these services are not aware that they are available and, consequently, do not use them.

Bilingual Written Material

Community-based organizations in San Francisco expressed the need for better provision of bilingual written material. Representatives of MAPA and Chinese for Affirmative Action in San Francisco indicated that the English-only version of the State-provided ballot pamphlet had limited value to minority language citizens. This pamphlet is provided in Chinese or Spanish to those who requested translated material when they registered. Those unaware of its unavailability in translated versions may request one later by sending in a request card. The English version, which is available to all voters, has captions on the cover in Chinese and Spanish stating that if voters want the pamphlet in Chinese or Spanish, they must request one by sending in a request card. Henry Der, executive director of Chinese for Affirmative Action, said, “Why would someone who doesn’t read English even bother to flip through it,” referring to the fact that a non-English-speaking person might be overwhelmed by

⁵⁴ Angie Alarcon, president, San Francisco Mexican American Political Association (MAPA), and members Ena Aguirre and John Trasvina, interview in San Francisco, Dec. 11, 1980 (hereafter cited as Alarcon et al. Interview).

⁵⁵ Mares, Young, Delgado, and De Herrera Interviews.

⁵⁶ Mares Interview.

⁵⁷ Young Interview.

⁵⁸ Ibid.

⁵⁹ Navarrette Interview.

⁶⁰ Ibid.

⁶¹ Delgado et al. Interview.

⁶² Ibid.

⁶³ De Herrera Interview.

⁶⁴ Ibid. For the responses of the city and county of Denver Election Commission and the Colorado Secretary of State’s Licensing and Elections Division to these statements, see appendix G.

the amount of English material that must be gone through to find the card on which to request translated material.⁶⁵ John Trasvina of the San Francisco MAPA also expressed concern about the value of the State-provided pamphlet, saying that it was “rarely used and not useful for either English or non-English speakers” because it was written in “legalese.”⁶⁶ Discussing written material provided in San Francisco, Ena Aguirre of MAPA, an elementary school principal, remarked that “the grade level of the written material doesn’t reflect the population.”⁶⁷

The availability of bilingual electoral services was of utmost concern to the community-based organizations and individuals interviewed. Better bilingual assistance in registration and oral assistance at the polls were cited most frequently as the most important needs of the language minority community. The failure of jurisdictions to provide adequate bilingual services in these areas is seen by these community people as continuing to exclude minority language citizens from effective participation in the political process.

Cooperation of Local Election Officials

The community organizations and individuals expressed strong viewpoints as to why the needs of the language minority communities in their areas were not met. All but two interviewees placed principal responsibility for the unmet needs of the language minority community on local election officials. Only in San Francisco did representatives of minority organizations perceive that local election officials were trying to implement adequately the minority language provisions. (San Francisco has consented to a court decree to provide minority language assistance).⁶⁸

In Tahlequah, Oklahoma, Agnes Cowan, of the Cherokee Bilingual Center, called for the participation of American Indian community leaders in the development of a successful bilingual election program in Cherokee County.⁶⁹ She noted that “Cherokees don’t relate well to the county election board;

there’s a lot of fear and suspicion.”⁷⁰ She said that participation by Indian leaders would help to alleviate their distrust of non-Indians that had resulted from their having been previously misled and taken advantage of.⁷¹

The respondents in Denver, particularly those who had campaigned there, said that local officials were not responsive to minority candidates. They stated that community organizations, such as the Southwest Voter Registration Education Project, had done more to register and educate voters in the minority language community than had local election officials.⁷² The LULAC representative in Albuquerque said that local election officials should “contact local organizations. . . to maintain a continual dialogue and greater communication” about the needs of the language minority community.⁷³

The belief of respondents that the needs of minority language citizens are not being met because of noncooperation by local election officials finds support in the FEC’s survey of bilingual election services. This survey found that efforts to provide comprehensive bilingual voter services “have been extremely limited.”⁷⁴ FEC attributed these limited efforts to:

... a widespread misunderstanding on the part of local election administrators: firstly, that just formalistically making bilingual services available, without bringing them to the language minorities through the links of community organizations, will produce any great demand for them; and, secondly, that the point of the legislation is primarily to have bilingual forms available and that the appropriate measure of its success, therefore, is the number of bilingual forms used.⁷⁵

The individuals and community organizations interviewed also provided recommendations for making compliance with the minority language provisions an attainable goal. Rolando Rios, of the Southwest Voter Registration Education Project, stated that the minority language regulations had to be made more specific and enforced so that it is clear what “jurisdictions must have for effective bilingual assistance.”⁷⁶

In San Francisco Henry Der, executive director of Chinese for Affirmative Action, remarked that the minority language provisions of the Voting

⁶⁵ Henry Der, executive director, Chinese for Affirmative Action, interview in San Francisco, Dec. 11, 1980 (hereafter cited as Der Interview).

⁶⁶ Alarcon et al. Interview.

⁶⁷ Ibid. For the response of the California Secretary of State to these statements, see appendix G.

⁶⁸ United States v. City and County of San Francisco, No. C-78 2521 CFP (N.D. Cal., May 8, 1980) (consent decree) (hereafter cited as U.S. v. City and County of San Francisco).

⁶⁹ Cowan Interview.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Delgado et al. Interview.

⁷³ Mares Interview.

⁷⁴ “Bilingual Election Services Report,” p. 17.

⁷⁵ Ibid.

⁷⁶ Rios Interview.

Rights Act should be "amended to the degree that it specifies what constitutes effective participation by minority language voters."⁷⁷ He stated that the law should provide for more than the "technical system of providing [bilingual] materials and services."⁷⁸ He also thought it should provide for "increased participation in voter registration and voting."⁷⁹

In response to a question as to what State officials could do to improve access to the political process for language minorities, the respondents provided several recommendations. Representatives of the American G.I. Forum of the United States in Denver thought that State election officials should "encourage the use of bilingual ballots"⁸⁰ in Colorado communities. That organization also said that State election officials should "support legislation liberalizing voter registration" so that more language minorities could be reached.⁸¹ Rolando Rios of the Southwest Voter Registration Education Project argued that the State of Texas should establish "concrete regulations on how to enforce the State law" providing for bilingual election services.⁸² In California, the Chinese for Affirmative Action and MAPA representatives agreed that State officials could improve access to the political process for language minorities by implementing the Voting Rights Act and California law on voting assistance to language minorities. Specifically, they noted that California's law requiring registrars to develop voter outreach plans⁸³ could be implemented better. Henry Der of Chinese for Affirmative Action stressed that the secretary of State is failing to take the lead to see that the State law is enforced.⁸⁴ He reported that his organization had filed a complaint with the secretary of State to the effect that San Francisco was not abiding by the State law in that it did not provide registration outreach in underregistered areas.⁸⁵ Mr. Der said his complaint was based on his organization's study

showing that Chinatown's voter registration rate was one-half that of the majority community, but no action was ever taken on the complaint.⁸⁶

The MAPA representatives in San Francisco agreed that the State should take action to enforce its law providing for voter outreach in underregistered areas. They called for the secretary of State to "make sure that the voter outreach plan that is filed for San Francisco is implemented"⁸⁷ by establishing a program "to monitor the voter outreach program."⁸⁸

In conclusion, community-based organizations are concerned about practices that continue to impede the progress of language minorities in becoming informed and able to participate effectively in the electoral process. They believe these impediments can be removed by providing (1) bilingual services for registration and oral bilingual assistance at the polls, (2) improved publicity about the availability of bilingual services, and (3) better cooperation of local election officials.

Federal Enforcement of the Minority Language Provisions

Responsibility for enforcing compliance with the minority language provisions is delegated according to the coverage formula that applies to a jurisdiction. Jurisdictions covered under section 4(f)(4) are the responsibility of the Civil Rights Division of the Department of Justice. These jurisdictions are subject to both the minority language provisions and preclearance procedures. Responsibility for enforcement of the language provisions in jurisdictions covered under section 203 is delegated to U.S. attorneys whose regions include these jurisdictions.⁸⁹ Section 203 jurisdictions are subject only to

⁷⁷ Der Interview.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Delgado et al. Interview.

⁸¹ Ibid.

⁸² Rios Interview.

⁸³ "It is the intent of the Legislature that voter registration be maintained at the highest possible level. The Secretary of State shall adopt regulations requiring each county to design and implement programs intended to identify qualified electors who are not registered voters, and to register such persons to vote. The Secretary of State shall adopt regulations prescribing minimum requirements for such programs. If the Secretary of State finds that a county has not designed and implemented a program meeting such prescribed minimum requirements, the Secretary of State shall design a program for such county and report the violation to the Attorney General." Cal. Elec. Code §304 (West 1977).

⁸⁴ Der Interview.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Alarcon et al. Interview.

⁸⁸ Ibid. For the response of the California Secretary of State to these statements, see appendix G.

⁸⁹ Barry Weinberg, Deputy Chief, Voting Section, U.S. Department of Justice, telephone interview, Apr. 23, 1981. Mr. Weinberg stated that the decision to delegate responsibility for enforcement of the minority language provisions in section 203 jurisdictions to U.S. attorneys was made in November 1975. He was unaware of any correspondence or other written documentation occurring at that time. The first correspondence from the Department of Justice to the U.S. attorneys officially informing them of their section 203 enforcement responsibilities was in a memorandum of Oct. 22, 1976, from James P. Turner, Acting Assistant Attorney General, Civil Rights Division.

the requirements of the minority language provisions.⁹⁰

Because section 4(f)(4) jurisdictions must preclear all election law changes with the Department of Justice, bilingual plans and procedures describing how the jurisdiction will comply with the language provisions are also reviewed under this process. As in other submissions, the jurisdiction must demonstrate to the Attorney General or the U.S. District Court for the District of Columbia that its bilingual plans and procedures are discriminatory neither in purpose nor effect.⁹¹

The Department of Justice provided the Commission with a list of section 4(f)(4) jurisdictions that have submitted bilingual plans and procedures for review. It also included information on those jurisdictions that the Department of Justice has requested to submit bilingual plans and procedures for preclearance. A review of this list indicates that a majority of section 4(f)(4) jurisdictions have submitted bilingual plans and procedures either on a State, county, or subdivision basis. In reviewing compliance with the minority language provisions, the Department of Justice has issued five objection letters related to bilingual plans and procedures—to Yuba County, California, on May 26, 1976; Monterey County, California, on March 4, 1977; to Lamar Consolidated Independent School District, Fort Bend County, Texas, on October 3, 1977; and to Apache County High School District, Arizona, on October 4, 1976, and on March 20, 1980.⁹² The Department of Justice has withdrawn its objections except for that in Monterey County, California, and the one in the Apache County High School District issued on October 4, 1976.⁹³

The types of problems that arise with bilingual plans are illustrated in the Apache County case. The Apache County High School District brought suit for a declaratory judgment in the U.S. District Court for the District of Columbia to preclear the bilingual plan for the August 31, 1976, bond election objected to by the Department of Justice.⁹⁴ The district court denied the Apache County High School District's request. The court found that the school district had "deliberately failed to inform the Navajos" about the election and the issues involved

because it had not disseminated information in Navajo, had not sent information to Navajo chapter officials for distribution at meetings, and had not asked Navajo organizations about how to communicate adequately with the Navajo people.⁹⁵

The court also found that the school district did not adequately provide for bilingual Navajo poll workers and limited the number of polling places on the Navajo Reservation to the detriment of Navajo voters.⁹⁶ Further, the court stated that the "diminution of voting places was done with that intent, and had that effect [of abridging protected voting rights]."⁹⁷ The court further stated that "information regarding the existence of and pertaining to the subject matter of an election is surely information necessary to cast an effective vote."⁹⁸

The enforcement of the minority language provisions in jurisdictions subject only to the requirements of section 203 is not as easily determined as for section 4(f)(4) jurisdictions, which are subject to preclearance. Since responsibility for enforcement of compliance with the language provisions of section 203 is delegated to U.S. attorneys, no centralized enforcement mechanism is present. In fact, to gain information on the extent of Federal enforcement in section 203 jurisdictions, each U.S. attorney must be contacted individually.

To assess Federal compliance efforts in jurisdictions subject only to the minority language provisions, interviews were held with eight U.S. attorneys whose districts include section 203 jurisdictions. (See table 7.1.) They were also selected based on the applicable language minority groups in their districts. For example, the U.S. attorney districts for Colorado and New Mexico have the most section 203 jurisdictions covered for Spanish, the eastern district of Oklahoma has the most jurisdictions covered for American Indians, and the district of Hawaii has the most jurisdictions with an Asian American language (Japanese and Filipino). In addition, the jurisdictions in these U.S. attorney districts are covered solely by section 203.

Interviews with the eight U.S. attorneys revealed that none had any compliance procedures and only three had done any type of enforcement activity to help assure compliance with the minority language

⁹⁰ 28 C.F.R. §55.8(b) (1980).

⁹¹ *Id.* §55.22.

⁹² U.S., Department of Justice, Civil Rights Division, "Complete Listing of Objections Pursuant to Section 5 of the Voting Rights Act of 1965" (1980).

⁹³ *Ibid.*

⁹⁴ Apache County High School Dist. No. 90 v. United States, No. 77-1815 (D.D.C. June 12, 1980).

⁹⁵ *Id.*, slip op. at 4.

⁹⁶ *Id.*, at 5-6.

⁹⁷ *Id.*, at 14.

⁹⁸ *Id.*

TABLE 7.1 U.S. Attorneys Interviewed and Number of Jurisdictions Subject to Section 203 and Applicable Minority Language Group by U.S. Attorney District

U.S. attorney district	Total number of section 203 jurisdictions (counties) ¹ in U.S. attorney district	Applicable minority language groups		
		Spanish heritage	American Indian	Asian American
Colorado	33	33	1	
New Mexico	32	32	5	
E.D. California	17	16	1	
E.D. Oklahoma	14		14	
N.D. California	9	9		1
N.D. Oklahoma	7		7	
Nevada	4	3	2	
Hawaii	3			3
	<u>119</u>	<u>93</u>	<u>30</u>	<u>4</u>

¹ Jurisdictions may be covered for more than one applicable minority language group. For example, in Colorado, one jurisdiction (Montezuma County) is covered for both Spanish and an American Indian Language.

Source: 28 C.F.R. Part 55, appendix, July 1, 1979, and telephone interviews with secretaries in U.S. attorneys' offices to determine which covered counties were in the U.S. attorneys' districts.

provisions in their regions. In general, the U.S. attorneys considered that it was not their role to seek out problems, but to wait for the submission of specific complaints. U.S. Attorney R.E. Thompson of New Mexico stated, "Not much manpower will be expended by U.S. attorneys unless there is a problem."⁹⁹

B. Mahlon Brown, the U.S. attorney in Nevada, said, "I do not consider enforcement of section 203 of the Voting Rights Act to be a priority type of activity in this State."¹⁰⁰ He also stated, "I do not have formal procedures or a system for enforcing compliance with the minority language provisions. I will adhere to the law and apply it vigorously if a complaint is brought to my attention."¹⁰¹

In Hawaii, U.S. Attorney Walter Heen remarked that he was aware of the requirements of the minority language provisions, but he did not know whether his office was responsible for enforcing the provisions.¹⁰² According to Mr. Heen, his office had never received a complaint regarding voting rights violations and none of his office's resources was allocated to voting rights.¹⁰³

In response to a question regarding reasons why U.S. attorneys are not actively enforcing the language provisions, the assistant U.S. attorney for Colorado, Carole Dominguin, stated that U.S. attorneys do not have the resources to do compliance enforcement or investigations.¹⁰⁴ She also said that U.S. attorneys cannot monitor polls on election day because they would become witnesses and there would be problems in prosecuting later on.¹⁰⁵ Joe Dolan, the U.S. attorney for Colorado, stressed that another agency, such as the Community Relations Service of the Department of Justice, should evaluate compliance and do spot checking at the polls.¹⁰⁶ The U.S. attorney for the eastern district of Oklahoma, James Edmondson, stated that responsibility for enforcing compliance with the minority language provisions was "the major responsibility of the State election board" and "Federal resources should be maintained for prosecution."¹⁰⁷ Hubert ÁBryant, U.S. attorney for the northern district of Oklahoma, remarked that unless the Department of Justice "gives U.S. attorneys the manpower to do the job," responsibility for enforcing compliance with the

⁹⁹ R.E. Thompson, U.S. attorney, district of New Mexico, interview in Albuquerque, Nov. 17, 1980.

¹⁰⁰ B. Mahlon Brown, U.S. attorney, district of Nevada, interview in Las Vegas, Aug. 20, 1980.

¹⁰¹ Ibid.

¹⁰² Walter Heen, U.S. attorney, district of Hawaii, interview in Honolulu, Aug. 26, 1980.

¹⁰³ Ibid.

¹⁰⁴ Joe Dolan, U.S. attorney, district of Colorado, and Carole Dominguin, assistant U.S. attorney, interview in Denver, Nov. 20, 1980.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ James Edmondson, U.S. attorney, eastern district of Oklahoma, interview in Muskogee, Okla., Dec. 2, 1980.

minority language provisions should be given to the Department of Justice in Washington, D.C.¹⁰⁸ He stated that more support staff is needed if the U.S. attorney is supposed to seek out problems.¹⁰⁹

In Colorado and the eastern district of California, some enforcement activity was found. In Colorado, the U.S. attorney sent out questionnaires to county clerks and community organizations in all of the State's jurisdictions covered under the minority language provisions, requesting information on their bilingual services and problems in implementation with the language provisions.¹¹⁰ Toso Himel, assistant U.S. attorney in the eastern district of California, remarked that compliance enforcement in his office consisted of sending all covered jurisdictions letters prior to the last congressional election.¹¹¹ These letters were to remind the jurisdictions of their responsibilities under the act and to request samples of their bilingual materials.¹¹²

The U.S. attorney for the northern district of California, G. William Hunter, was asked what problems his office had in enforcing the minority language provisions. He responded that his enforcement efforts were like "firemen putting out fires."¹¹³ He complained that his staff resources were limited and that he did not have the manpower continually to monitor voting rights.¹¹⁴ Despite Mr. Hunter's problems with limited staff resources, he has managed successfully to enforce compliance with the minority language provisions in one of the largest covered jurisdictions in his district, San Francisco.

On May 19, 1980, a three-judge court in the U.S. District Court for the Northern District of California approved a consent decree in the case brought by the U.S. attorney, *United States v. City and County of San Francisco*.¹¹⁵ In general, the consent decree provided that San Francisco make available Chinese- and Spanish-language voting and registration materials and provide assistance so that Chinese- and Spanish-speaking citizens of San Francisco could be "effectively informed of and effectively participate in the voting process for all primary, special and general elections."¹¹⁶ The appointment

of Federal examiners was also required by the decree.¹¹⁷

Under the consent decree, a voter outreach plan must be developed by the registrar. The city is required, among other things, to distribute bilingual voting and registration materials for Chinese- and Spanish-speaking citizens, work with community groups in identifying locations to distribute voter registration forms, identify underregistered language minority precincts, develop bilingual public service announcements, and administer a street corner registration program in underregistered Chinese- and Spanish-speaking precincts.¹¹⁸

Moreover, the consent decree provides for an extensive program to recruit, hire, and train bilingual poll workers. As part of this program, the registrar must identify Chinese- and Spanish-speaking precincts that will require Chinese- and Spanish-language assistance at the polls and "establish procedures to insure that such assistance will be available when and where needed."¹¹⁹ Also required by the decree is the establishment of a citizens' task force to advise and assist the registrar and the implementation of an election hotline for voters to receive information in Chinese and Spanish on election day.¹²⁰

Finally, the consent decree, which is in effect until August 6, 1985, requires that San Francisco provide the court and the U.S. attorney with preelection and postelection reports.¹²¹ The preelection report is to include action taken in preparation for an election, a list of targeted precincts, bilingual poll workers assigned to those precincts, and samples of all election material prepared in English, Spanish, and Chinese. The postelection report is to indicate the manner in which the consent decree's provisions were complied with in the election.¹²²

The San Francisco registrar of voters has three staff members who work exclusively in the area of compliance with the minority language provisions,

¹⁰⁸ Hubert Bryant, U.S. attorney, northern district of Oklahoma, interview in Tulsa, Dec. 4, 1980.

¹⁰⁹ *Ibid.*

¹¹⁰ Dolan Interview.

¹¹¹ Toso Himel, assistant U.S. attorney, eastern district of California, interview in Sacramento, Aug. 19, 1980.

¹¹² *Ibid.*

¹¹³ G. William Hunter, U.S. attorney, northern district of California, and Amanda Metcalf, assistant U.S. attorney, interview in San Francisco, Aug. 26, 1980.

¹¹⁴ *Ibid.*

¹¹⁵ *U.S. v. City and County of San Francisco*.

¹¹⁶ *Id.*, consent decree at 3.

¹¹⁷ *Id.*

¹¹⁸ *Id.*, at 4-5.

¹¹⁹ *Id.*, at 6.

¹²⁰ *Id.*, at 7.

¹²¹ *Id.*, at 9.

¹²² *Id.*

planning compliance efforts, recruiting bilingual poll workers, and publicizing.¹²³ According to the registrar's assistant in charge of implementing the minority language provisions, a total of 4,598 minority language citizens (3,206 Chinese- and 1,392 Spanish-speaking persons) were on their list for written bilingual material as of October 27, 1980.¹²⁴

In its December 4, 1980, postelection report to the U.S. district court and U.S. attorney, the registrar of voters reported that whereas in 1978 the registrar had identified 55 precincts in need of bilingual poll workers, "2-1/2 years later, the number is up to 247."¹²⁵ The report also reveals that the registrar fully publicized San Francisco's bilingual election services and worked with community organizations such as Chinese for Affirmative Action.¹²⁶ The executive director of Chinese for Affirmative Action, Henry Der, in fact, helped the registrar set priorities for bilingual poll workers in Chinese precincts and provided assistance in recruiting bilingual poll workers.¹²⁷

Unlike other jurisdictions, San Francisco's implementation of the minority language provisions has been carried out under court supervision. Planning bilingual election services, working with community organizations, publicity, recruitment, hiring, and training bilingual poll workers as well as the creation of innovative programs such as street corner registration and election-day bilingual hotlines are activities that San Francisco has shown can be accomplished.

In another civil suit, the Department of Justice's Civil Rights Division worked with the U.S. attorney for the district of New Mexico in filing suit to enforce the minority language provisions in San Juan County, New Mexico, a section 203 jurisdiction.¹²⁸ The Attorney General, on behalf of the United States, alleged that San Juan County violated the voting rights of American Indians in San Juan County by failing to provide (1) "oral instructions, assistance, and other information relating to the registration and voting process in the Navajo language whenever such information was provided in

English";¹²⁹ (2) "adequate numbers of bilingual persons to serve as interpreters within each precinct in San Juan County serving Navajo voters in need of language assistance";¹³⁰ (3) adequate training for "bilingual interpreters in effective interpretation of all aspects of the ballot, including constitutional amendments, so that they may effectively render oral assistance to Navajo-speaking voters";¹³¹ (4) "sufficient information concerning the location of polling places in the Navajo language";¹³² and, (5) "sufficient oral instructions, assistance, and other information concerning all aspects of the voter registration process, absentee voting process, and voter purging process in the Navajo language."¹³³

In a stipulation of April 8, 1980, both parties in this action agreed to settle the case without a trial.¹³⁴ The United States District Court for the District of New Mexico issued an order on April 8, 1980, adopting the stipulation as the order of the court and dismissing the complaint with prejudice.¹³⁵ The district court, also, retained jurisdiction until December 31, 1984, "to review any questions concerning compliance with the provisions of the Order approving this Stipulation."¹³⁶

The stipulation of April 8, 1980, stated that San Juan County agreed to comply with the minority language provisions of the Voting Rights Act in preparing and conducting all elections within the county. Specifically, San Juan County agreed:

(1) To expand its "voter registration program to actively register Navajo voters."¹³⁷ This was to be done by establishing a voter registration office in Shiprock staffed by a deputy registration officer bilingual in Navajo and English during the 2 weeks preceding the registration deadline for countywide elections; appointing a minimum of 2 deputy registration officers who are bilingual in English and Navajo to each precinct in the county with a Navajo voting age population of 5 percent or more, as well as appointing at least 24 at-large deputy registration officers who are bilingual in English and Navajo; and announcing and publishing the establishment of the registration office, its

¹²³ Nancy Dillon, assistant to the San Francisco registrar of voters, interview in San Francisco, Dec. 10, 1980.

¹²⁴ *Ibid.*

¹²⁵ "Report of San Francisco Registrar of Voters to U.S. District Court, Northern District of California and U.S. Attorney," Dec. 4, 1980, p. 1.

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

¹²⁸ *United States v. County of San Juan*, New Mexico, No. 79-508 JB (D.N. Mex. Apr. 8, 1980).

¹²⁹ *Id.*, Plaintiff's Complaint at 4.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*, Stipulation at 2.

¹³⁵ *United States v. County of San Juan*, New Mexico, No. 79-508 JB (D.N. Mex. Apr. 1980) (order adopting stipulation as order of the court).

¹³⁶ *Id.*, Stipulation at 6.

¹³⁷ *Id.* at 2.

location, dates and hours of operation, the availability of bilingual assistance, and registration deadlines on two radio stations with Navajo-language programs and in English in two newspapers in the county 2 weeks before each election's registration deadline.¹³⁸

(2) To provide "more comprehensive recruitment and enlistment of bilingual poll officials and interpreters." This was to be done by enlisting a minimum of two bilingual interpreters and one alternate to serve at polling places in each precinct with a 5 percent or more Navajo voting-age population.¹³⁹

(3) To expand poll worker training. The program for poll officials and all county employees involved in the electoral process is to provide information on Federal bilingual voting requirements, the bilingual registration and voting procedures undertaken by the county to comply with the Voting Rights Act, and to provide instruction on methods of rendering effective assistance to Navajo-speaking voters.¹⁴⁰

(4) To provide each polling place in those precincts with a 5 percent or more Navajo voting-age population a list of all registered voters so as to allow bilingual interpreters to assist Navajo-speaking voters to locate their proper polling place.¹⁴¹

(5) To expand their program for adequate translation of all voting information for communication in Navajo. The county also agreed to continue to distribute voter information in Navajo through means designed to reach Navajo-speaking voters.¹⁴²

(6) To announce three times each week on two Navajo radio programs and to publish twice in two English language newspapers all information concerning offices and candidates on the ballot, constitutional amendments, referendum issues, other issues on the ballot, eligibility to vote in the

election, and all other voting information during the 2-week period preceding each election.¹⁴³

San Juan County, New Mexico, then, is another illustration of Federal enforcement of the minority language provisions in a section 203 jurisdiction. Effective enforcement of the minority language provisions in all section 203 jurisdictions, however, has not been consistent.

Conclusion

Compliance with the minority language provisions of the Voting Rights Act varies among covered jurisdictions. The effect of a jurisdiction's failure to comply with the language provisions or to make more than minimal effort to comply is that language minorities are excluded from full participation in the electoral process. The lack of bilingual voter education services, of bilingual oral assistance for registering and voting, and of publicity about the availability of bilingual election services was found to hamper severely the effectiveness of the minority language provisions and to limit the ability of language minorities to register and vote.

Achieving full compliance will require greater enforcement of the minority language provisions. Currently, enforcement of the provisions covering section 4(f)(4) jurisdictions (jurisdictions that must provide minority language assistance and preclear changes in election law) is the responsibility of the Civil Rights Division of the Department of Justice. Enforcement of the provisions in section 203 jurisdictions (jurisdictions that only have to provide minority language assistance) has been delegated to U.S. attorneys. Interviews with eight U.S. attorneys show that little is being done in their jurisdictions to enforce these provisions. None of the U.S. attorneys monitors elections or confers with community-based organizations to determine the needs of the language minority community and whether they are being met, although two had engaged in some type of compliance activity. Implementation of the minority language provisions has been inconsistent and uneven. It is evident that meaningful participation in the political process for language minorities is a promise yet to be fulfilled.

¹³⁸ *Id.* at 3.

¹³⁹ *Id.* at 4.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 5.

¹⁴² *Id.*

¹⁴³ *Id.*

Findings and Recommendations

Findings

Results of the Voting Rights Act

1. The number of minorities who have been elected to public office has increased since the Voting Rights Act was extended in 1975.

a. In 1974, 964 blacks held public office in the six States, plus North Carolina, that were subject to preclearance in 1965 and 1970. In July 1980, 2,042 blacks served as elected officials in these States.

b. In 1979-80, 1,138 Hispanics had been elected to public office in Arizona and Texas, the two States made subject to preclearance by the 1975 amendments to the Voting Rights Act.

Despite considerable progress, however, minorities continue to constitute a small percentage of elected officials in virtually all States covered under the preclearance provisions. Blacks constitute no more than 8 percent of all elected officials in Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia. Hispanics constitute 13 percent of all elected officials in Arizona and 6 percent in Texas. Most minority elected officials are in local positions, such as school board members. Few minorities have been elected to the U.S. Congress, to State senates, to county governing boards, or to law enforcement positions, such as sheriff or county judge.

2. The number of minorities who have registered since the initial passage of the Voting Rights Act has been substantial. For example, 7 percent of voting

age blacks in Mississippi were registered immediately prior to the passage of the act. Within 2 years, 60 percent of voting age blacks in Mississippi were registered. Registration rates for minorities continue to lag well behind the rates for whites, however. According to a 1976 Bureau of the Census survey of registration in jurisdictions covered by the preclearance provisions of the Voting Rights Act, between 63 and 78 percent of whites were registered in these jurisdictions, contrasted with between 48 and 67 percent of minorities. Only two States under statewide preclearance coverage (Louisiana and South Carolina) and North Carolina maintain registration data by race. In two of these States—Louisiana and North Carolina—black registration rates in 1980 continued to be substantially lower than white registration rates. In Louisiana, South Carolina, and North Carolina the white registration rates were 76 percent, 62 percent, and 72 percent; in contrast, the black registration rates were 61 percent, 56 percent, and 55 percent, respectively.

Continuing Problems in Registration

3. In the Commission's study of voting problems in 70 jurisdictions covered by the preclearance provisions, some minorities found registration officials discourteous or openly hostile and intimidating when they attempted to register. Requests for unnecessary personal information by officials also were found to intimidate minorities. Building on the blatant and pervasive discrimination against them in

the past, the present attitudes of registrars deter minorities from registering.

4. Registration in the jurisdictions studied often took place in locations (e.g., county courthouses) or at times that were particularly inconvenient for minorities, a disproportionate number of whom are poor and live in rural areas unserved by public transportation.

5. Alternative registration procedures, including the use of deputy registrars and satellite registration offices in minority communities, could result in substantial increases in minority registration. Minority organizations, however, have had a difficult time convincing registration officials of the need for such alternative procedures. Some have had to appeal to State legislators or to other officials or organizations to obtain more accessible registration.

6. In two instances the section 5 preclearance process prevented the implementation of purging and reregistration procedures that could have had a negative effect on the number of minorities who were registered to vote.

Continuing Problems in Voting

7. In several jurisdictions studied, all polling places were located in predominantly white communities or in buildings that housed all-white organizations or were in areas not served by public transportation. Such locations deter minorities from voting.

8. Two States, Louisiana and Mississippi, enacted legislation restricting assistance to illiterates. The Department of Justice objected to the legislation submitted by Mississippi, but not to that from Louisiana. Commission interviews in Louisiana indicated that some blacks in that State who needed assistance at the polls were unable to vote as a result of this legislation.

9. Minorities continued to be harassed or intimidated by election officials when they attempted to vote.

Continuing Problems in Fair Representation

10. In jurisdictions subject to preclearance that were included in the Commission study, minorities faced numerous barriers to electing the candidates of their choice. These barriers included the following:

a. Minorities have rarely been able to win elections in the large number of jurisdictions subject to preclearance that have at-large election systems and where racial bloc voting exists. The

use of at-large election systems severely limits the ability of minority communities to elect the candidates of their choice.

b. Numerous voting rules continue to limit the ability of minorities to be elected to public office. These rules, which dilute minority voting strength, include majority vote requirements, anti-single-shot voting rules, numbered posts, residency requirements, and staggered terms. These rules often are coupled with at-large election systems. The result is that minority voting strength is substantially weakened in jurisdictions where racial bloc voting continues to be the predominant political pattern, and minority candidates have little or no opportunity to win election.

c. Annexations and consolidations have had a negative effect on minority voting strength. Some jurisdictions have attempted to annex predominantly white areas or areas zoned for middle-income housing, thereby decreasing minority voting strength in the annexing jurisdiction. Other jurisdictions have refused to annex predominantly minority areas even though these areas have sought annexation.

d. Jurisdictions have drawn boundaries with the purpose or effect of diluting minority voting strength. They have split areas with a high concentration of minorities into several districts, so that minorities do not represent a substantial proportion of the population in any district. They also have created redistricting plans in which minority voting strength in the new districts is less than that in existing districts.

e. Some minorities who attempt to run for political office are intimidated, harassed, or threatened. Often they do not have the same access to all voters as do white candidates because predominantly white civic and partisan organizations do not support their candidacies.

Preclearance and Noncompliance

11. The Department of Justice issued objections to over 700 proposed changes submitted by jurisdictions subject to preclearance between 1975 and 1980. Most of these proposed changes involved election rules which, if they had been implemented, would have diluted minority voting strength. The largest number of proposed changes involved attempts to annex predominantly white areas or areas zoned for middle-income housing. Other changes to which the Department of Justice frequently objected included

changes to at-large election systems and to the use of the majority vote rule, which requires winning candidates to receive a majority of the votes cast rather than a plurality.

12. Although covered jurisdictions are required to preclear all proposed changes in election rules with the Department of Justice or the U.S. District Court for the District of Columbia, this requirement is sometimes violated. Moreover, some jurisdictions have implemented changes to which the Department of Justice has interposed objections without obtaining the required declaratory judgment of nondiscrimination from the U.S. District Court for the District of Columbia, in violation of section 5 of the Voting Rights Act.

Minority Language Provisions

13. Lack of bilingual voter education services, bilingual oral assistance for registering and voting, and the lack of publicity about the availability of bilingual election services severely hampers the effectiveness of the minority language provisions and limits the ability of language minorities to register and vote.

14. There has been minimal enforcement of the minority language provisions by most of the eight U.S. attorneys interviewed.

Recommendations

Extension of the Voting Rights Act

1. **Prior to August 6, 1982, Congress should extend for an additional 10 years the special provisions of the Voting Rights Act.**

Despite increased political participation by minorities in many jurisdictions covered by the special provisions of the Voting Rights Act, minorities continue to face a variety of problems which the act was designed to overcome. This report has documented white resistance and hostility by some State and local officials to increased minority participation in virtually every aspect of the electoral process. It also has documented the resistance of many local jurisdictions to following either the letter or spirit of the preclearance provisions of the Voting Rights Act.

Commission research found that minorities continue to be excluded from full participation in the political process in jurisdictions subject to preclear-

ance. For example, harassment and intimidation of minority voters and candidates persist, and registration still is inaccessible to minorities living in rural areas. In many jurisdictions subject to preclearance, the political position of minorities continues to be precarious. With the goal of providing long-term protections for minority participation in the political process, the Commission, therefore, recommends that the provisions of the Voting Rights Act being considered for extension in 1982 should be extended through 1992, an additional 10 years. It also recommends that those jurisdictions covered by the 1970 and 1975 amendments to the act be covered until 1992 as well.

Extension of the special provisions of the act would mean that the Department of Justice could send Federal examiners and observers to areas where complaints concerning the integrity of registration and election activities continue. It would also mean that covered jurisdictions would have to preclear their redistricting and reapportionment plans developed as a result of the 1980 and 1990 census. This report has shown that unfair redistricting is one of the major mechanisms preventing full minority participation in the political process.

2. **Prior to August 6, 1982, Congress should extend for an additional 7 years the minority language provisions of the Voting Rights Act.¹**

Minority language citizens, many of whom are from families that have lived in this Nation for generations, continue to face barriers in registering and in voting because of their difficulty with the English language. High illiteracy rates and the denial of equal educational opportunities have impeded the progress of language minorities in achieving full access to the political process.

Although bilingual oral assistance in registering and in voting was found by Commission research to be the most important type of bilingual election service needed, minority organizations felt that such assistance was frequently not adequate. The lack of bilingual voter education services and publicity concerning the availability of bilingual election services were other areas found to limit the political participation of language minority citizens.

Although these provisions are not due for consideration for extension until August 6, 1985, the Commission recommends that the minority language provisions of the Voting Rights Act be extended for

¹ See dissent of Commissioner Stephen Horn.

7 years. This extension would make uniform the expiration dates of all of the act's special provisions. It would also provide more time to jurisdictions that have not yet fully implemented the minority language provisions so that they can adequately plan and implement assistance to language minority citizens as intended by Congress.

3. Congress should amend section 2 of the Voting Rights Act to prohibit all States or political subdivisions from maintaining or establishing voting practices or procedures that have the "effect" of discriminating on the basis of race, color, or inclusion in a minority language group.

Section 2 of the Voting Rights Act² is a nationwide provision. Lawsuits filed under this section have involved challenges by minorities to alleged discriminatory voting practices or procedures in jurisdictions not covered by the special provisions of the Voting Rights Act. Lawsuits under this section have also involved challenges to alleged discriminatory practices or procedures in jurisdictions covered by the special provisions, but where the challenged practice or procedure was instituted prior to the effective date of coverage under the act.

Section 2 prohibits States or political subdivisions from using voting practices or procedures that "deny or abridge the right of any citizen. . . to vote on account of race or color"³ or inclusion in a minority language group.⁴ The Commission's recommendation would change this section to prohibit jurisdictions from maintaining or establishing voting practices or procedures that have the "effect" of "denying or abridging the right to vote on account of race or color" or inclusion in a minority language group.

Commission field research and objection letters issued by the Department of Justice have shown that efforts to establish voting practices or procedures having a discriminatory effect on minorities continue. For example, a jurisdiction's effort to annex a predominantly white residential area may have the effect of decreasing substantially the minority population in the annexing jurisdiction. This decrease could dilute the political strength of the minority community, resulting in the community's inability to elect candidates of its choice. Similarly, a requirement that illiterate persons can only receive voting assistance from election workers, instead of from persons of their choice, may discourage those

persons from voting if there are no minority election workers and they feel intimidated by white election workers.

The effects of certain practices and procedures can be the result of past and present intentional discrimination against minorities or the result of a jurisdiction's insensitivity to minority interests. Since some jurisdictions do not consider the effects of their voting practices and procedures on their minority populations, it is important that minorities themselves have some effective mechanism for seeking redress. The Commission's recommendation to amend section 2 would provide that mechanism.

4. Congress should hold hearings to determine whether a nationwide Federal election law that provides minimum standards for registering and voting in Federal elections should be implemented.

Commission research in jurisdictions subject to preclearance found that certain voting practices and procedures limited the ability of persons to exercise their right to vote effectively. Practices such as denying a person the right to take a self-marked sample ballot into the poll, not allowing an illiterate person to secure assistance in voting from an individual of his or her choice, and failing to make registration more accessible to rural, low-income persons may also be barriers to other voters regardless of where they live.

The Commission recommends that Congress hold hearings to determine if practices such as those found in covered jurisdictions are pervasive nationwide and whether a Federal election law setting certain minimum standards for registering and voting should be implemented. The Federal election law would identify those areas Congress finds to be so fundamental to the electoral process that should not be denied to any citizen.

Enforcement of the Voting Rights Act

5. Congress should amend the Voting Rights Act to provide for civil penalties or damages against State and local officials who fail to comply with the preclearance provisions of the Voting Rights Act.

This report has documented the continuing refusal by some jurisdictions covered by the Voting Rights Act to comply with the preclearance provisions of section 5. Either they fail to preclear their election law changes or they implement them despite the Department of Justice's objection. This continuing

² 42 U.S.C. §1973 (1976).

³ *Id.*

⁴ 42 U.S.C. §1973b(f)(2) (1976).

violation of the Voting Rights Act significantly diminishes the voting rights of minorities.

More effective enforcement is needed if minorities are to achieve full participation in the political process. One means of making it more effective is to provide for civil penalties or damages against State and local officials who violate the Voting Rights Act, with damages being awarded to the individual or organization seeking to enforce the act.⁵

6. Congress should amend the Voting Rights Act by adding a section which places an affirmative responsibility on the Attorney General to enforce more vigorously compliance with the preclearance provision of section 5.

Commission review of information received from civil rights organizations indicated that jurisdictions do not always comply with section 5 preclearance requirements. Some jurisdictions were even found to implement election changes despite having received an objection from the U.S. Department of Justice.

To ensure that jurisdictions required to submit election law changes do, in fact, submit them, the Commission recommends that the act be amended to place an affirmative responsibility on the Attorney General to enforce more vigorously compliance with section 5. This amendment to the act should require the Attorney General to devise forthwith systematic procedures for reviewing compliance with section 5. One of these procedures might include, for example, a requirement that all jurisdictions subject to section 5 submit a yearly report identifying their election law changes and whether or not they have been submitted.

7. The Department of Justice should amend its guidelines on implementation of the minority language provisions to include specific criteria for determining effective minority language assistance.⁶

⁵ This recommendation also was made in the Commission's 1975 study, U.S., Commission on Civil Rights, *The Voting Rights Act: Ten Years After*, p. 346.

Current Department of Justice guidelines provide only that "materials and assistance should be provided in a way designed to allow members of applicable language minority groups to be informed of and participate effectively in voting-connected activities."⁷ Lack of specific criteria has resulted in inadequate assistance to minority language voters. For example, Commission research indicates that oral assistance is a major need of the minority language community that is not being met. So that covered jurisdictions may provide minority language assistance more thoroughly and efficiently, criteria should be developed by the Department of Justice specifying what constitutes effective minority language assistance.

8. The Attorney General should provide for effective enforcement of the minority language provisions in jurisdictions subject to section 203 of the Voting Rights Act by requiring U.S. attorneys to monitor regularly compliance with the provisions in every section 203 jurisdiction in their districts.⁸

Responsibility for enforcing the minority language provisions in section 203 jurisdictions is delegated to U.S. attorneys. Research by the Commission indicates that U.S. attorneys interviewed who have the most jurisdictions covered solely under section 203 in their districts are doing little, if anything, to provide continuous, ongoing compliance monitoring. The eight U.S. attorneys interviewed have no compliance procedures, no contact with minority community organizations, and do not monitor elections to determine if minority language assistance is, in fact, being provided. More effective monitoring of the minority language provisions would aid in ensuring that they are implemented in section 203 jurisdictions. Most important, the ability of minority language citizens to participate effectively in the political process would be enhanced.

⁶ See dissent of Commissioner Stephen Horn.

⁷ 28 C.F.R. §55.2(b) (1980).

⁸ See dissent of Commissioner Stephen Horn.

Statement of Commissioner Stephen Horn on the Minority Language Provisions of the Voting Rights Act

I do not concur with the arguments made by the Commission staff and my colleagues in chapter 7, "The Minority Language Provisions of the Voting Rights Act." Nor do I concur with recommendations 1, 2, 3, 4, and 5 in chapter 8 as they pertain to the extension and implementation of that portion of the act.

To argue that the provision of "equal protection of the laws" includes voting rights assistance in the language of some minority group members and not others is to pervert the meaning of a Constitution which was designed to protect the individual. Equal protection is not a matter of group protection; it is a matter of individual protection. The 1970 national census recorded 96 mother tongues where languages other than English were the *primary* languages in the households in which many of our fellow citizens were raised. The 1980 census coded 387 non-English-language possibilities, 180 of which were spoken by various tribes and groups of American Indians. As we can readily see, to continue to aid with specialized electoral services those who are in a few but not most minority language groups is itself discriminatory. To provide *governmental* assistance to aid one or even a handful of speakers of any of these possible 387 languages is also absurd. To assure

equal protection of the laws, there is one solution which is dictated by common sense: "If one wishes to cast a ballot in the United States of America, one should learn as much English as is necessary to fulfill that limited, but fundamental, aspect of citizenship." Such a national policy would not stop a friend or relative who speaks the primary language of the citizen from writing out instructions or from marking a sample ballot for the individual who needs assistance. Such a national policy would not stop community-based ethnic groups from rendering assistance to those less familiar with English than others. Such groups have been readily available for each immigrant wave. What such a policy would stop is the illusion that for every language group in the Nation a government agent must be employed or some form of government assistance must be made available to aid all members who understand English less well than their native language.

Presumably, naturalized citizens had to learn some English in order to receive citizenship. Before this Nation goes the way of Quebec or engages in the bitter language-based quarrels of some of the fragmented states of India, I recommend that we call a halt to what many of us have long recognized as a misguided experiment. I thus urge Congress not to extend the minority language provisions of the Voting Rights Act.

The Voting Rights Act: Unfulfilled Goals - Link Page

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