

**VOTING RIGHTS ACT:
EVIDENCE OF CONTINUED NEED**

HEARING
BEFORE THE
SUBCOMMITTEE ON THE CONSTITUTION
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED NINTH CONGRESS
SECOND SESSION

—————
MARCH 8, 2006
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Serial No. 109–103
Volume III
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C. Exhibits from J. Morgan Kousser
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- Exhibit 18:** Multilingual voting materials order form
- Exhibit 19:** Multilingual Pollworker Recruitment, Los Angeles County, California, Registrar-Recorder/County Clerk
- Exhibit 20:** Multilingual Precinct Targeting
- Exhibit 21:** Multilingual Voter Services, for voters who require language assistance
- Exhibit 22:** Multilingual Voter Requests on File, as of 8/26/05
- Exhibit 23:** Multilingual Voter Instructions and Regulations
- Exhibit 24:** Name tag with language i.d.
- Exhibit 25:** November 2, 2004 General Election Case Study
- Exhibit 26:** Official Absentee Balloting Material (return mailing label)
- Exhibit 27:** Official Sample Ballot and Voter Instructions, General Election - November 2, 2004
- Exhibit 28:** Polling Place, multilingual sign
- Exhibit 29:** Pollworker Employment Application, English 11-99
- Exhibit 30:** Precinct Coordinator Continuing Enhancement Program
- Exhibit 31:** Precinct Voting Card, Multilingual
- Exhibit 32:** Provisional Ballot Envelope
- Exhibit 33:** Registrar of Voting Operations
- Exhibit 34:** Telephone Referral Card (six languages)
- Exhibit 35:** Voter Registration Form (County of LA)
- Exhibit 36:** Voter's Survival Guide: Frequently Asked Questions Concerning Voter Registration and Voting
- Exhibit 37:** Voter Application Card, November 2, 2004 General Election
- Exhibit 38:** We Speak Language Signs (in six languages)

G. Written Statement of Robert Rubin

See "Voting Rights Act: Section 5 of the Act - History, Scope, and Purpose" before the House Judiciary Subcommittee on the Constitution, Serial No. 109-79, 109th Congress, 3323-3329 (2006)

H. Written Statement of Kathay Feng

9. Mid-Atlantic Regional Hearing, October 14, 2005 - Washington, D.C.

A. Transcript

See "To Examine the Impact and Effectiveness of the Voting Rights Act" before the House Judiciary Subcommittee on the Constitution, Serial No. 109-70, 109th Congress, 818-922 (2006)

B. Exhibits from Sam Hirsch

- Exhibit 1:** Voting Rights Analysis submitted October 20, 2003 for the State of Texas by Andy Taylor & Associates, P.C. Houston, TX
- Exhibit 2:** Expert Report by Richard L. Engstrom (April 2, 2002)

Exhibit 3: Report on Texas Congressional Redistricting: Minority Opportunities and Partisan Fairness by Jonathan N. Katz, California Institute of Technology, August 27, 2001

Exhibit 4: Curriculum Vitae of Allan J. Lichtman, May 2003

Exhibit 5: Allan J. Lichtman, Report on Voting-Rights Issues in Texas Congressional Redistricting, November 14, 2003

C. Written Statement and Exhibits from Robert Kengle

Exhibit 1: Charts

D. Written Statement of Mark Posner

E. Written Statement and Exhibits from Kent Willis

Exhibit 1: Compilation of Laws, Legislative Reports and Judicial Decisions Demonstrating the Presence of Government-Sanctioned Racial Discrimination in Virginia

F. Report to the Commissioners: Mid-Atlantic Hearing

10. Mississippi Hearing, October 29, 2005 – Jackson, MS

A. Transcript

See “To Examine the Impact and Effectiveness of the Voting Rights Act” before the House Judiciary Subcommittee on the Constitution, Serial No. 109-70, 109th Congress, 923 - 963 (2006)

B. Written Statement and Exhibits from Carol Rhodes

Exhibit 1: Comment Letter Dated August 26, 2005

Exhibit 2: Summary of Section 5 Cases Litigated

Exhibit 3: “Symposium on Civil Rights in Mississippi,” *Mississippi Law Journal* 57, No. 3 (December 1987)

C. Exhibits from Ellis Turnage

Exhibit 1: List of 88 cases litigated in the U.S. District Court for the Northern District of Mississippi

Exhibit 2: Published Opinions

D. Written Statement and Exhibit from Brenda Wright

For Written Statement: *See* “Voting Rights Act: Section 5 – Preclearance Standards” before the House Judiciary Subcommittee on the Constitution, Serial No. 109-69, 109th Congress, 70-78 (2006)

Exhibit 1: “Symposium on Civil Rights in Mississippi,” *Mississippi Law Journal*, 57, No. 3 (December 1987). *See* Written Statement and Exhibits from Carol Rhodes (Exhibit 3)

E. Report to the Commissioners: Mississippi Hearing

**Orville Burton
Exhibit 1**

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Report of Dr. Orville Vernon Burton for *Moultrie v. Charleston County Council*, C.A.
No. 9 -01 562 11

Orville Vernon Burton
October 5, 2001

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605 W. Washington
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Phone: 217-337-0051

I am Professor of History and Sociology at the University of Illinois at Urbana-Champaign, where my research and writing focus on American History and particularly on race relations. I teach courses in U.S. History, Southern History, race relations, discrimination, ethnicity, family, and community. I use statistical analysis in my own research and writing, and I also teach courses in quantitative techniques at the University of Illinois. I am a member of the graduate statistics faculty and a Senior Research Scientist at the National Center for Supercomputing Applications.

I earned a B.A. degree from Furman University and M.A. and Ph.D. degrees at Princeton University. My primary training was in the History of the United States, with a specialization in the History of the South in the 19th and 20th centuries. For the past twenty-eight years I have taught courses in my specialization at the University level.

I am a recognized and respected scholar of United States history and the history of race relations. I have numerous publications in scholarly books and peer-reviewed journals, I have presented scholarly papers both in the United States and abroad on these subjects, and I have received various awards. I am the author or editor of six books,

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including In My Father's House Are Many Mansions: Family and Community in Edgefield, South Carolina (University of North Carolina Press, 1985, fifth printing 1998; subject of sessions at the Southern Historical Association and the Social Science History Association's annual meetings; nominated for Pulitzer) and two co-edited books on southern communities. I have been recognized by my peers as a leader in my field, both as scholar and a teacher. I am currently the president of the Agricultural History Society, which publishes the premier journal in rural history, and am on the executive committee of the Social Science History Association. I chair the prize committee for the Southern Historical Association's H. L. Mitchell Award for the best book in Labor History, and I served as a member of the Organization of American Historian's ABC-CLIO "America: History and Life" Award Committee, 1997-99, to select the best article published in that two-year period in United States history. I have received fellowships from the Rockefeller Foundation, the National Endowment for the Humanities, the National Science Foundation, the American Council of Learned Societies, the Woodrow Wilson International Center for Scholars, the National Humanities Center, the Carnegie Foundation, and the Pew Foundation. I was selected nationwide as the 1999 U.S. Research and Doctoral University Professor of the Year (presented by the Carnegie Foundation for the Advancement of Teaching and by the Council for Advancement and Support of Education). I am a Pew National Fellow Carnegie Scholar for 2000-2001. At the University of Illinois I was named a University Scholar in 1988 and was designated one of the first three University "Distinguished Teacher/Scholars" in 1999. Last academic year, I served as the General Mark Clark Distinguished Professor of History at the Citadel.

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Race relations and politics in the American South have been my specialty since I received my Ph.D. at Princeton in 1976. I have also researched and written on the Voting Rights Act of 1965 and presented this research to academic conferences in England and the United States. I was part of a large National Science Foundation study of the effects of the 1965 Voting Rights Act in the United States. I headed the research team for South Carolina and was the principal author of chapter seven on South Carolina that is contained in the book resulting from the study, The Quiet Revolution: The Impact of the Voting Rights Act in the South, 1965-1990 (Edited by Chandler Davidson and Bernard Grofman. Princeton: Princeton University Press, 1994. Winner of the 1995 Richard F. Fenno Prize, Legislative Studies Section, American Political Science Association). My article, "Legislative and Congressional Redistricting in South Carolina," was published in Race and Redistricting in the 1990s (Edited by Bernard Grofman. New York: Agathon Press, 1998). I have also contributed the entry for "South Carolina" in the Encyclopedia of African American Culture and History (Edited by Charles V. Hamilton and Jack Salzman. NY: Macmillan, 1996, revd ed. 2000). I have been commissioned to write the entry on "Civil Rights" for the South Carolina Encyclopedia edited by Walter Edgar and sponsored by the South Carolina Humanities Council. The University of South Carolina Press is publishing my introduction to Francis Butler Simkins, Pitchfork Ben Tillman: South Carolinian (originally published by Louisiana State University Press, 1944) for the reprint edition of the Southern Classics Series of the Institute for Southern Studies, University of South Carolina Press. A detailed record of my professional qualifications is set forth in the attached Curriculum Vitae.

Burton Moultrie Report, page 4

I have had extensive experience in analyzing social and economic status, discrimination, intent in voting rights cases, and group voting behavior. I have served as an expert witness and consultant in a number of voting rights cases beginning with *McCain v. Lybrand* and also as a consultant in state redistricting. My testimony has been accepted by federal courts on both statistical analysis of racially polarized voting and socioeconomic analysis of the population, as well as on the history of discrimination and the discriminatory intent of laws. I conducted the extensive ecological regression analysis presented by the plaintiffs and accepted by the court in *Jackson v. Edgefield County, South Carolina School District*, 650 F.Supp. 1176, 1194-97 (D.S.C. 1986). To the best of my knowledge and memory, the last two cases in which I have testified or given depositions are *Vander Linden v. South Carolina*, Civ. No. 2-91-3635-1 and *Elliott Harvey, III v. National Association of Letter Carriers*, C.A. No. 98 CV 2312 (POR). In summer 2000 attorney Laughlin McDonald contacted me about consulting on the Charleston County Council case, especially the change from a district to an at-large method of election.

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occasioned by this statute; c) the larger historical context in which this specific change took place, including the history of official state discrimination; d) the socioeconomic status of African Americans and whites in Charleston County and the continuing effects of historical discrimination.

Pursuant to this investigation I have examined a wide range of sources. For the most part I gathered these materials independently, but in some cases I requested specific documents and examined copies supplied by the attorneys who hired me. I also had considerable material from previous research. As a matter of course, I began by reviewing all peer reviewed published work by historians, political scientists, and sociologists, as well as Masters and Ph.D. theses relevant to the issues being investigated and pertinent to my inquiry. Some of these scholarly works will appear in specific citations. I read the Charleston News and Courier and Evening Post and the Columbia State for various periods from the 1950s and concentrated on the period from 1965 through 1969 that included coverage of relevant legislative proceedings. I consulted various data from the U.S. Censuses of 1940, 1950, 1960, 1970, 1980, 1990, and 2000. I examined the text of pertinent statutes and the Journals of South Carolina House and Senate. I read parts of trial transcripts and depositions from other cases. I searched the relevant files at the Charleston County Library, including the minutes of the County Council and the Charleston Legislative Delegation. I also examined relevant materials at the South Carolina Department of Archives and History, the South Caroliniana Library, the South Carolina Historical Society, the Cooper Memorial Library at Clemson University, and the Avery Research Center for African American History and Culture. I

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reviewed the published opinions and relevant correspondence of the Attorney General of South Carolina and the published school expenditures for African American and white children in Charleston County from 1896 to 1960. I have also conducted interviews. In preparing my report and my testimony in this case, the sources and types of documentation that I have used are those an expert normally consults in investigating questions of this nature. The methodology that I have employed in preparing my report is the same methodology I and other scholars in my field employ when examining issues of the sort investigated here. Finally, the analysis presented here is consistent with related scholarly research. In my analysis for this case, I have used assumptions, methods, and analytical principles consistent with those employed in my past scholarly writing. On the basis of the evidence discussed in the following pages, any expert in my field could legitimately reach a conclusion concerning the purposes and effects of the shift to at-large elections for the Charleston County Council.

According to the Supreme Court in the Arlington Heights case, plaintiffs need not show that race was a predominant factor in the decision, only "that a discriminatory purpose has been a motivating factor." The factors listed by the Court as relevant to a circumstantial proof of discriminatory intent include 1) the historical background of the decision, 2) the views expressed by decision-makers on related issues, 3) the specific sequence of events leading to the decision (including whether there has been a departure from the usual practices or procedures of the decision-making body), and 4) the anticipated or foreseen effect of the change on minority citizens.¹

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This report will first cover the historical background of discrimination in South Carolina and in Charleston specifically. Then I will present the sequence of events leading up to the change from district to at-large and show that the County Council and the Legislative Delegation foresaw the effect of this change on their minority citizens. I will also present the views expressed by the decision-makers.

I. History of Discrimination in South Carolina

South Carolina was the first state to challenge the 1965 Voting Rights Act. The state's attorneys maintained that the Voting Rights Act of 1965 subjected the state to unnecessary intrusive supervision without proof of intentional discrimination. In denying their challenge, and affirming the constitutionality of the act in *South Carolina v. Katzenbach*, Chief Justice Earl Warren stated, "Congress felt itself confronted by an insidious and pervasive evil." He noted the long history of racial discrimination in the voter registration process in South Carolina, directly quoting some of the more outrageous remarks of Benjamin Ryan "Pitchfork Ben" Tillman at the 1895 disfranchising convention as evidence of its discriminatory purpose. Warren stated that "the constitutional propriety of the Voting Rights Act of 1965 must be judged with reference to the historical experience which it reflects."²

That historical experience includes racism and discrimination. The degree to which African Americans have held public office in South Carolina in the century and a quarter since the Civil War was largely determined by state election laws and the manner

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in which they were implemented. "The central fact in the history of black Carolina," states historian I. A. Newby, "has been the racism of white Carolina."³ Another historian, Jack Temple Kirby, found that "Lower South whites, surrounded by black folk, were more preoccupied with race and belligerent in championing white supremacy."⁴ Renowned historian of South Carolina, Francis Butler Simkins, confirmed the intent of his native state's legislation: "Reviewing the South Carolina law in respect to the Negro since 1876, it is apparent that its frank purpose is to perpetuate the division of society into two distinct castes--the white, or dominant ruling class, and the Negro, or subject class." South Carolina's "proud record in interracial harmony," he continued, relied on a policy of "absolute white supremacy."⁵

The 17th century charter for Carolina, which John Locke helped draft, contained two unique colonial provisions: one for religious freedom, the other a specific stipulation for chattel slavery. Locke's Fundamental Constitution of Carolina guaranteed that "every freeman of Carolina shall have absolute power over his Negro slaves of what opinion or religion soever." South Carolina served as the leading advocate for the rights of slaveholders in debates over the Constitution. Under the leadership of John C. Calhoun, South Carolina attempted to "nullify" a federal tariff law in 1832 in order to establish a constitutional precedent against future antislavery legislation. Resentful of dissent on the issue of slavery, antebellum South Carolina established an aristocratic structure of government and largely withheld power from the electorate. Although every white male could vote, the only offices put before the people were those of state representative and U. S. Congressman, and often only one pre-selected candidate was on the ballot.

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Legislative cliques determined who would "run" for governor and which "candidates" would be awarded state offices.⁶

South Carolina was the first state to secede from the Union, and a few months later, South Carolinians fired the first shot of the Civil War at Fort Sumter. After the Confederate defeat, white officials were very clear about the level of African American participation in government. As Governor Benjamin Perry explained, "This is a white man's government, and intended for white men only."⁷ South Carolina, like other recalcitrant Southern state legislatures, enacted "black codes" that severely restricted the rights of freedpersons, requiring agricultural workers to sign away most of their rights as citizens in annual labor contracts with landowners or risk prosecution for vagrancy. The enactment of black codes throughout the South played a key role in persuading Congress to enforce the franchise for African Americans and to implement Reconstruction.⁸

Granted the franchise, South Carolina's black majority elected Republican candidates to the bulk of the seats in a new Constitutional Convention, which then granted the right to vote to every adult male, "without distinction of race, color, or former condition."⁹ Subsequently, African Americans controlled a majority of seats in the lower house of the General Assembly (and from 1874 to 1876 both the senate and the house), and African Americans won elections as lieutenant governor, secretary of state, and state treasurer. Equally important, African Americans were elected to a significant number of local offices, such as sheriff, county commissioner, magistrate, school commissioner, and alderman.¹⁰ Under Reconstruction, the people of South Carolina ratified a new state

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constitution in 1868. This constitution, the handiwork of black and white Republicans, introduced a broad level of democracy to the state. It instituted public education for the first time in the state. It put local government in the hands of the people and held counties "accountable to the local electorate."¹¹ Reconstruction in South Carolina lasted longer than in any other state, and South Carolina's black Republicans achieved as great a degree of political power as did African Americans anywhere.

Bitterly opposed to African American equality, some whites advocated violence to overthrow Republican control. Clashes between whites and blacks occurred throughout the state. Whether through open mob violence or secretive activity by the Ku Klux Klan, physical beatings, arson, and threats of death were common. Democrats even resorted to political assassination and murder. Seven state legislators were murdered between 1868 and 1876.¹² White paramilitary groups rioted against African Americans and assassinated black militiamen and political leaders in cold blood.¹³ In 1876 in the notorious "Red Shirt" campaign, former Confederate generals orchestrated a violent takeover of state government from Republican control. One of those generals, Martin Witherspoon Gary, had announced as early as 1874 that political contests in South Carolina were "a question of race and not of politics."¹⁴ According to historian Eric Foner, Charleston was the only exception to "the Reconstruction pattern that cast blacks as victims of political violence and whites as sole aggressors." In September and October 1876, in Charleston and in the nearby village of Cainhoy, African American Republicans attacked black and white Democrats, resulting in the deaths of seven white and African American Democrats, and the wounding of others.¹⁵

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Elsewhere in the state the Red Shirt campaign of intimidation, voter fraud, and violence paid off: Wade Hampton was elected governor.¹⁶ From Charleston, several African Americans who supported Hampton were elected as Democrats to the South Carolina House. George M. Mears was re-elected in the House every two years from 1880 through 1890.¹⁷

Following this overthrow of Republican government in South Carolina, the legislature adopted laws to institutionalize its control of state politics and to limit political access. Because black-majority counties elected some African American legislators, the white state legislature was determined to combat these successes. In 1882 a new registration law required all citizens to re-register or face permanent disfranchisement; registrars had great discretion in applying the law so that they could avoid striking white voters from the rolls. This discriminatory tactic effectively cut the African-American electorate in half.¹⁸ In addition, the legislature abolished a large number of precincts in heavily Republican counties, requiring voters to travel long distances in order to vote.¹⁹ The legislature adopted a law that was intended to eliminate federal scrutiny of state affairs by requiring separate ballot boxes for state and federal elections.²⁰ A companion statute, the "Eight Box Law," required voters to place ballots for various offices in separate, unmarked boxes, which election officials periodically shuffled.

Another move to restrict African American voting power was through congressional redistricting. The legislature adopted a plan that "packed" African

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Americans into one malapportioned district where they made up 82 percent of the population, thereby diluting African American voting strength in the rest of the state. The "black district," as it was called, incorporated most black neighborhoods of Charleston and ran from the coast to the city of Columbia. Although this one district generally elected an African American Republican to the U.S. House of Representatives until 1896, the gerrymander assured Democrats safe contests for the remaining seats.²¹

Even so, black voters remained numerous enough to be troublesome to white supremacists, and the political movement by Benjamin Ryan Tillman brought about an end to any vestige of African American equality of citizenship. The Tillman movement sought explicitly racist ends, including the segregation of public accommodations and the effective disfranchisement of African American men. Tillman told the nation, in characteristically blunt language, that white South Carolina had triumphed over black South Carolina by the use of shotguns, election fraud, and intimidation, and that white South Carolina was determined, if necessary, to maintain its supremacy by a reapplication of these methods. Tillman's movement to purge the African American vote in South Carolina was as openly racist and its post-disfranchisement regime as rigidly committed to white supremacy as any in Dixie.²²

As part of its efforts to buttress white supremacy, the Tillman movement supported the elimination of Home Rule and the creation of Legislative Delegation System. In 1888, South Carolina Governor J. C. Sheppard, who had been a participant in the terrorist red shirt campaign against African Americans, addressed the legislature and

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declared that the Home Rule power granted counties in the Constitution of 1868 "is not suited to our condition, and is the cause of many of the evils of which the people complain."²³ The repeal of Home Rule in 1890 set the stage for Ben Tillman's abolishing locally elected governments and aggregating power in the county legislative delegation system.

The legislative delegation system was discriminatory and established to disfranchise and dilute the vote of African Americans at the county level. This system of local government can only be understood within the historical context of its establishment; it derived from Tillman. In the minds of many of South Carolina's whites, local control of county government was associated with Reconstruction and the election of African American leaders.²⁴ White supremacists, therefore, preferred to curtail local elections, to give the governor the power to appoint and dismiss local officials, thereby maintaining control of county government.²⁵

Initially Tillman recommended a model of township government where each township elected representatives.²⁶ Realizing, however, that some areas of the state were not secure from African American voting, Tillman made crucial alterations in his original, more democratic, plan. Ultimately Tillman supported a system whereby each county would have a board of commissioners made up of a county supervisor elected at large and chairmen from each of the townships—not elected, but appointed by the Governor. The bill was passed in November of 1893.²⁷ South Carolina Democratic white legislators were still concerned about both the African American and the white

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Republican voting populations. Black citizens continued to vote during this time period. In fact, African American legislators were involved in some of the debates, and the last black state representative did not leave the General Assembly until 1902. Without a doubt, the African American vote was still considered a threat during the time period that the County Legislative Delegation System was established.²⁸

Because of a specific fear of political activism in Charleston and similar areas where the African American vote might be appealed to by opposing groups of whites, Tillman vowed to disfranchise blacks altogether, and he almost reached that goal in his rewriting of the state constitution.²⁹ At the South Carolina Constitutional Convention of 1895, now U.S. Senator Tillman chaired the South Carolina Convention's Committee on the Rights of Suffrage. He wrote into the state constitution various articles of disfranchisement, such a poll tax, proof of payment of all other taxes, and a "petty crimes" provision that disfranchised all those convicted of certain crimes that whites believed African Americans frequently committed.³⁰ In addition, a prospective voter had to satisfy a literacy test and demonstrate an understanding of any constitutional provision read to him by the registrar. The discretion of the registrar was unlimited. As late as 1940 a local executive observed to a journalist, "There are dam few negroes registered in any way.... If a coon wants to vote in the primary, we make him recite the Constitution backward, as well as forward, make him close his eyes and dot his t's and cross his i's. We have to comply with the law, you see."³¹ The disfranchising constitution of 1895 was very effective. "The whites," Tillman announced, "have absolute control of the government, and we intend at any hazard to retain it."³²

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The structure of primary elections is a clear example of the state's maneuvering to keep African Americans from voting. In 1896, when the South Carolina legislature authorized statewide party primaries, the State Democratic Executive Committee prohibited all African Americans from voting in the primary, which was, in the one-party system after disfranchisement, the only election that mattered.³³ The state poll tax requirement never applied to these primary elections, probably because party rules already excluded African Americans.³⁴ When the U.S. Supreme Court overturned the white primary in 1944, Governor Olin D. Johnston called a special session of the legislature to repeal all laws relating to primary elections.³⁵ "After these statutes are repealed," Johnston told the legislature, "we will have done everything in our power to guarantee white supremacy in our primaries."³⁶ After South Carolina passed a constitutional amendment erasing all mention of primaries from the state constitution, the Democratic Party adopted rules excluding African Americans from its "private" primary elections.³⁷

When the NAACP challenged the "private" primary in federal court, Judge J. Waties Waring of Charleston ruled, on July 12, 1947, in their favor because the governor and legislature violated the Fourteenth and Fifteenth Amendments, acting "solely for the purpose of preventing the Negro from gaining a right to vote."³⁸ After the Supreme Court refused to review the case in which the Circuit Court had upheld Judge Waring's ruling, the Democratic Party no longer excluded African Americans on their party rolls, but they did extend the literacy test required for general elections to the primary.

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Furthermore, they would allow qualified African Americans to vote only if they swore an oath: "I believe in and will support the social and educational separation of the races."

In 1948, in *Brown v. Baskin*, Waring overturned that allowance and issued a court order that voting "be opened to all parties irrespective of race, color, creed or condition."³⁹

In 1950, the General Assembly adopted new state regulations of primary elections. Besides the literacy test, electoral devices restored to the primary election laws were statewide full-slate and majority vote requirements, all of which may dilute the votes of African American citizens.⁴⁰ Although these features of the statute were reenacted without comment, they had the same purpose attributed to the statute as a whole in contemporary accounts. "Conservative lawmakers admit that the bill is designed to control Negro voting in primaries."⁴¹

South Carolina's politicians continued to control election laws and voter registration to maintain white supremacy. Congressman and native Charlestonian James F. Byrnes, who eventually became a senator, Supreme Court justice, secretary of state, and governor of South Carolina, cautioned in 1920: "It is certain that if there was a fair registration they [African Americans] would have a slight majority in our state. We cannot idly brush the facts aside. Unfortunate though it may be, our consideration of every question must include the consideration of this race question."⁴² The effect of disfranchising legislation was profound: only 1500 African Americans in South Carolina were registered to vote in 1940.⁴³ Still, state legislators felt threatened. The South Carolina House of Representatives passed a resolution in 1944 denouncing "indignantly

Burton Moultrie Report, page 17

and vehemently" any and all "amalgamation of the White and Negro races by a co-mingling of the races upon any basis of equality." It further resolved an affirmation of "our belief in and our allegiance to established white supremacy as now prevailing in the South" and pledged "lives and our sacred honor to maintain it, whatever the cost, in War and Peace."⁴⁴

Segregation was entrenched in South Carolina society. Whites and African Americans were separate, but not equal. Looking at education as an example, an analysis of educational expenditures in South Carolina from 1896 to 1960 demonstrates the inequality of education. In 1952, per-pupil expenditures for black children were only 60 percent of the amount spent to educate white children.⁴⁵

Teachers in the state also faced discrimination. When African American teachers, who were paid less than white teachers, took the issue to court, Judge Waring found in favor of African American plaintiffs for equalization of teacher pay. South Carolina formed a committee to study this issue; working with this committee was attorney David Robinson, who later played a key role in the state's "Segregation Committee." Once the committee verified that black teachers scored lower on the National Teacher Exam, South Carolina in 1945 adopted use of this exam.⁴⁶

Brown v. Board of Education of 1954 began in South Carolina as *Briggs v. Elliot*. In 1950, when experienced politician James F. Byrnes was a candidate for governor, he anticipated that South Carolina might be ordered to desegregate its school system. He

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recommended legal ways to counter the rulings. He counseled, for instance, that local school districts gerrymander. "The Washington administration and the United States Supreme Court cannot regulate the area or boundaries of our school districts. We must investigate to see if it is practical to establish school districts to include the sections where most of the Negro population resides and other school districts to include sections where most of the white people reside." He wanted local school boards to use waivers for children who needed to go to school outside their district, "a Negro child residing in the school district for whites," or "a white student residing in a preponderantly Negro district." Byrnes thought that "this Gerrymandering of districts" could be used effectively in cities, but less so in rural areas.⁴⁷

After Byrnes won his election, he continued his tactics of a "calculated moderation." Experienced in national politics and in the judiciary, Byrnes brought a sophisticated and subtle approach to resisting racial integration. In order to forestall integration, for example, Byrnes used a significant portion of a new sales tax for the education of African American children, and white leaders throughout the state began equalizing the facilities of white and black schools in a desperate attempt to salvage segregation. Byrnes urged the creation of the so-called segregation committee and staffed it with some of the state's leading legal minds. Chaired by state representative L. Marion Gressette, this special school committee coordinated efforts to maintain the racial status quo.⁴⁸ Byrnes even recommended that South Carolina eliminate from its constitution the provision for public schools, which it did. In 1952 in the general election, the constitutional amendment eliminating public schools was passed, and in

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1954 the General Assembly ratified the amendment. (Despite eliminating public schools from the state constitution, South Carolina chose to continue its public school system.)⁴⁹ South Carolina also repealed its compulsory school attendance laws and refused to provide state funds for any school that capitulated and accepted students under court order.⁵⁰ The South Carolina legislature passed fifteen bills between January and April 1956, including a resolution that gave itself the right to nullify or overrule federal laws.⁵¹ South Carolina's Massive Resistance to integration, a technique of bending a little to prevent larger changes, gave the state another decade of segregation.⁵² By 1963, only Mississippi and South Carolina had not even token integrated schools.

In November 1955, the state went after the NAACP. Governor George Bell Timmerman asked the South Carolina Attorney General to file suit against the group for not registering as an organization in the state. The NAACP State president would not provide names of the membership because of fear of retaliation on the members. South Carolina then barred the NAACP from the state.⁵³

On the eve of the Voting Rights Act, South Carolina was thoroughly in the grip of white supremacy. African American voter registration in South Carolina was weakest in counties with a high percentage of blacks in their population.⁵⁴ Whites kept black registration down and sometimes did not count all the votes cast by African Americans. Charged with telling a black voter during the 1964 presidential election "to place his ballot in the wrong box," precinct manager Wade H. Ratcliffe explained, "I knew this was wrong but we have always done these things."⁵⁵ Only 37 percent of the 1964 black

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voting-age population were registered, and South Carolina elected no black officials in the twentieth century before the Voting Rights Act.⁵⁶

The Voting Rights Act of 1965 and the Federal Court ruling on one-person, one-vote had immense impact on South Carolina.⁵⁷ When the Federal Court ordered the South Carolina General Assembly to reapportion the state Senate on the basis of one-person, one-vote, legislators realized that some counties would no longer have a resident senator. The South Carolina Senate then adopted multimember districts, which had the effect of excluding African Americans. Finally, in the 1970s, after more litigation, the General Assembly passed the Local Government Act beginning a measure of home rule to the counties.⁵⁸

The Voting Rights Act of 1965 was supposed to eliminate voter discrimination, and after South Carolina lost its challenge to the constitutionality of the act, South Carolina's literacy test and "understanding" clause were abolished.⁵⁹ By 1967 African American voter registration had climbed to 51 percent of the age-eligible population.⁶⁰ By and large, South Carolina's white officials conceded that the Voting Rights Act made it impossible to prevent African-American citizens from registering and casting their ballots.⁶¹ Because of the success of the Voting Rights Act, advocates of white supremacy had to turn to election methods that could dilute the black vote, although some barriers to registration and voting continued. Location and hours of operation were problematical because local voting registration boards had the discretion to appoint deputies and set

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office hours. Often offices were not open when African American laborers might be available to register.⁶²

During the 1960s, violence often accompanied demonstrations for Civil Rights in South Carolina. In the Orangeburg Massacre in 1968, three students were killed and twenty-seven were shot, among them at least two Charlestonians, Albert Dawson and Jordan Simmons. SNCC leader Cleveland Sellers was put on trial, convicted, and served time in prison, and did not receive a pardon until a quarter century later. When the patrolmen who had done the shooting were acquitted, the Reverend I. DeQuincey Newman protested that South Carolina "is just about in the same boat as Alabama and Mississippi." Newman continued, "The perpetrators of the tragedy and those who have covered up for them have rendered a great disservice to sometimes heroic efforts that have been made in the area of race relations and interracial cooperation."⁶³

Discrimination in Charleston

As shown above, white South Carolina leaders have had a long history of discrimination against African Americans. The same was true for Charleston County, which did not escape the turmoil of race relations endemic in a system of white supremacy. Charleston experienced a race riot in 1866 when former slaves rioted, and again in 1919 when white sailors and locals went on a rampage against African Americans.⁶⁴ According to historian Walter Edgar, during the modern Civil Rights Movement, "Charleston witnessed rioting before city officials indicated a willingness to

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move forward."⁶⁵ In Charleston, during the turbulent challenges to white supremacy in the 1940s, 1950s and 1960s, frequent mentions were made to the "horrors" of Reconstruction. The Reconstruction era, with its elected local African American officials, was never far from the minds of white Charlestonians as the events of the Civil Rights Movement, often called the Second Reconstruction, unfolded. Charleston champion of aristocratic conservatism, and long-time editor of the Charleston News and Courier, William Watts Ball, argued in 1913 that for South Carolina "socially and politically the presence of this race [African Americans] in majority is perhaps the ruling factor in our progress, or want of it."⁶⁶

Charlestonians got their news from the Charleston News and Courier, called by Judge J. Waties Waring, the uncle of editor Thomas Waring, the "bible of the supremacists." After the court ruling banning the white primary, the editor of the Charleston News and Courier argued, "If we are to retain the primary system in South Carolina with herded negroes voting in them, with white and colored leaders herding them (many if not most of the negro leaders will be preachers from the lower class) we shall have corrupt government, government that is rotten, government that offends the nostrils of decent people."⁶⁷ In his analysis of the newspaper, historian Stephen O'Neill wrote, "Hardly a day went by for six years after *Brown* that [Thomas] Waring did not attack the evils of race mixing, champion states' rights, or in some other way defend the South's case for segregation."⁶⁸ In 1962, after noting that the News and Courier was not covering the black boycott of Charleston businesses (they were asking that the businesses hire some African American sales persons), Time Magazine quoted the Charlotte

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Observer, "The News and Courier's boycott of the boycott is only expected behavior for one of the South's noisiest advocates of segregation. The paper's editorial policy is one long high fidelity rebel yell to hold that color line."⁶⁹

Black Charlestonians endured segregation just as the rest of South Carolina did. Charleston was a segregated city with segregated schools, restaurants, and theaters. Recreational facilities, such as golf courses and parks, were segregated; the best, such as Edisto Park, were available only to whites. Signs directed African Americans to separate restrooms and drinking fountains. "Charleston had a color line that divided its people and institutions."⁷⁰ Esau Jenkins relates two incidents, one in 1938 and the other in the 1940s, of white men shooting African American men. Jenkins attributed these two incidents, where the white men were not held accountable under the law, as motivational in his efforts in 1949 to organize a "progressive movement." Jenkins also remembered that before African Americans organized and registered to vote, they did not have a chance in court.⁷¹

Socioeconomic disparities

Disparities between white and African American socio-economic positions were marked. In 1950, seven thousand African American children were crowded into six schools, necessitating double shifts at four of the schools. In the Charleston area, more than 50,000 African Americans were allowed only 148 hospital beds. According to the 1950 census, the median income for African American families in Charleston County

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was one-third that of whites (\$ 672---\$ 2,007). The percentage of unemployed non-whites was three times higher than that of whites (male 13.9 percent---4.4 percent, female 10.8 percent---2.7 percent).⁷² Whereas only 3 percent of the white households had no running water, 27.5 percent of the non-white households had none. Inside toilets were not available in 73 percent of the non-white households, but such households were just 12.8 percent among whites.⁷³ Also, while 81 percent of the white public schools had more than four teachers, only 27 percent of the African American schools did in 1951.⁷⁴

According to the 1960 Census, the total median income for families (includes whites and non-whites) was \$4,518; while the non-white median family income was only \$2,149. White males fourteen years and older had an unemployment rate of 3.3 percent (3.8 for white females) compared to 8.2 percent (7.5 for non-white females) for non-white males. Only 0.8 percent of whites twenty-five years of age or older had no schooling compared to 8.6 percent of non-whites.⁷⁵ In 1960-61, the number of white students per elementary school was 526; for African American students, that figure was 633. Similarly, an average of 680 white students were studying in a high school, while 810 African American students were.⁷⁶ In 1961-62, two African American high schools enrolled 1,783 students, while three different high schools enrolled 1,528 white students. Student-teacher ratios were 29:1 for blacks and 25:1 for whites.⁷⁷

According to the 1970 census, 44.6 percent of the county's African American families lived below the poverty level, and another 10 percent subsisted just above the poverty level.⁷⁸ In 1980, the median income for Charleston County African American

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families was half of that for white families (\$10,907---\$ 20,400; the comparative income in the City of Charleston was \$10,726 for African Americans and \$23,145 for whites). In Charleston County, 32.2 percent of the African American families were still below the poverty level, while only 6.1 percent of the white families were. As for unemployment, the figure for African Americans was 2.6 percent higher than that for whites (10.9 percent compared to 3.7 percent). Two studies in the 1980s pointed especially to geographically isolated rural areas with high proportions of African American population as impoverished and lacking adequate services such as sanitation or transportation.⁷⁹

The 1990 census shows that socioeconomic disparities were still wide between the African American and whites of Charleston County. Just like a decade ago, the median income for African American families was half of that for white families (\$18,603---\$38,052). One-third of the African American families still lived below the poverty level. The percentage of unemployed African Americans was three times higher than that of whites. Whereas more than 80 percent of whites (25 years and older) graduated from high school, only 57 percent of African Americans did. Moreover, 31.6 percent of African Americans had no vehicles at home and 13.4 percent had no telephone installed, while such households were less than 5 percent among whites.⁸⁰

Segregated schools epitomized the problem. In 1960, the last year South Carolina reported separate official figures for black and white education, half a dozen years after the *Brown* decision, after deliberate efforts of Gov. James Byrnes to keep schools separate and make them less unequal, and after the careful application of the Gressette

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segregation committee's guidelines for "equalization," nevertheless, in Charleston County schools spent \$201.22 on each white student and \$150.20 on each African American student. In 1961-62, according to one historian, Charleston schools spent \$267 for each white, but only \$169 for each African American student.⁸¹

A recent Associated Press story (8 August 2001) published in several South Carolina newspapers documented the lingering effects of discrimination. "Race has been an undercurrent throughout South Carolina history." The report discussed how slavery, then segregation divided African Americans and whites in South Carolina. "Today, a divide remains." The reporter showed that whites who have the same education as African Americans make more money. African Americans score lower on standardized educational tests, African Americans are disproportionately more in jails and juvenile delinquent centers in South Carolina, whites are healthier than African Americans, whose health problems include higher infant mortality rates. The divide is also reflected in the voting patterns of whites and African Americans. "In 400 elections between 1982 and last year, no black candidates were elected to the General Assembly from white majority districts."⁸²

South Carolinians were aware of the relationship of socio-economic status and voting at least as early as 1966 when the University of South Carolina Governmental Review published a report that explained, "people of upper socio-economic status (high income and education, and holding prestigious occupations) tend to vote more frequently, are more interested in political affairs, and are better informed. The education element

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has been identified as uniquely important in providing adequate motivation for political participation." That section of the report concluded that "perhaps the socio-educational circumstances in which most Negroes find themselves are as great deterrents to active, effective political participation as were the legal obstacles and informal intimidations to which they have been subjected for decades."⁸³ Scholars believe, as well, that socio-economic conditions flow in large part from state sponsored discrimination.⁸⁴

Civil Rights Chronology in Charleston County prior to Act 94: The local context

In February 1944, Judge Waring ruled in favor of Charleston African American school teachers' lawsuit that the state could not pay black teachers less than white teachers because of race.⁸⁵

In 1947, Charleston County native John Wrighten (who had attempted to integrate the College of Charleston as an undergraduate) sued to attend the University of South Carolina law school. He prevailed in Judge Waring's courtroom, but, in order to avoid integrating the University of South Carolina, the state established a second law school at South Carolina State.⁸⁶ Until this time all law school graduates were automatically admitted to the state bar in South Carolina. Henceforth, law school graduates would have to have passed a bar exam.⁸⁷

In 1947, Charleston's Judge J. Waties Waring ruled against white primaries, and in 1948 he ruled against the ruse of a segregation oath.⁸⁸ Charleston County African

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Americans were then able to register and vote in Democratic primaries. In 1948, former Charlestonian John McCray's Progressive Democratic Party was especially successful in a voter registration drive. On the eve of the first Democratic primary where African Americans could participate, 4,360 African American voters were added in Charleston County, leading historian Stephen O'Neill to remark that this represented "potentially a revolutionary" change for municipal politics.⁸⁹

After this ruling on the white primary, Charleston Congressman Mendel Rivers initiated impeachment investigations against Waring, who was vilified by whites throughout the state and especially in Charleston. In 1950, the Southern Association for the Advancement of White People collected 20,000 signatures on an impeachment petition, nearly 10,000 of those were from Charleston County.⁹⁰

In 1948 when the Charleston County Council was given some home rule power, a resident of Charleston County sued because he did not want local power. According to University of South Carolina legal scholar James Lowell Underwood, this case against the establishment of the County Council in 1948 argued that "dissatisfaction with political conditions prevalent during Reconstruction spawned a distaste for local government, the level at which abuse of power was considered greatest, and resulted in the omission of detailed local government provisions from the Constitution of 1895."⁹¹

In 1948, A. J. Clement, NAACP president active in the Progressive Democratic Party, ran for County Council.⁹²

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In 1950, with increased voter presence from African Americans, the City of Charleston became more responsive to the black electorate, and Mayor William Morrison hired the first African American policemen.⁹³

To placate demands for integration of the College of Charleston, the city offered scholarships for African American students to attend South Carolina State College in Orangeburg.⁹⁴

In 1950, Progressive Democratic Party candidate A. J. Clement challenged Democratic incumbent Mendel Rivers for Congress.⁹⁵

In May 1950 a hundred members of the KKK drove through Charleston Heights. At this time the city of Charleston itself reported no Klan activity; however, Klan rallies were held in Ladson, Mt. Pleasant, Goose Creek, Red Top, and James Island.⁹⁶

In late May 1951, in a Charleston courtroom, Charleston attorney Robert Figg defended Clarendon County against African American plaintiffs. Charleston's Judge Waties Waring, in the first known opinion by a federal judge that segregation was unconstitutional, dissented in favor of the African American plaintiffs in *Briggs v. Elliott*.

By 1951 African American voting strength was growing. State Senator Oliver T. Wallace, something of a liberal for Charleston, more openly appealed to African

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American voters. Voting machines were set up in churches and in NAACP president A. J. Clement's office to demonstrate balloting.⁹⁷

At a January 21, 1952 meeting with the City of Charleston school board, three African American groups petitioned for a fair distribution of the "equalization fund," and protested the lack of an African American school board member, "there has never been a greater need for a qualified member of the board of District No. 20." The petitioners cited the *Briggs* Clarendon County ruling as legal precedent for claims.⁹⁸

In 1952, African American leaders Herbert Fielding, J. Arthur Brown, and the Reverend Frank Veal ran unsuccessfully for the state legislature from Charleston. The chairperson of the Board of Registration reported that in the weeks before the election, 6,000 new voters had registered, half of them African Americans.⁹⁹

In 1953, the newspaper reported on the 64th anniversary of Lincolntown in the northwestern part of Charleston county near Summerville. This town of about 450 people was "one of the few communities in the United States governed exclusively by Negroes," reminding Charlestonians of African American elected officials and black political participation during Reconstruction.¹⁰⁰

In 1954, African Americans in Charleston openly advocated black representation on the city council and other local governing bodies. In February 1954 African American leader Robert Morrison urged representation of qualified African Americans on school

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boards and outlined for the News and Courier the qualifications of African Americans in Charleston. He noted the problem: "Although Negroes have over seventy percent of the votes in ward #9," he complained, "it is impossible to elect a Negro to the City Council."¹⁰¹

The 1954 *Brown v. Board of Education* decision held that the segregation of schools was unconstitutional. The decision overwhelmed Charleston, where the "city's business and civic leaders, its politicians, and especially its daily paper, the News and Courier, forcefully and prominently elevated the issue of race above all others in their attempt to defend the peninsular city," according to O'Neill. He concluded that for the next two decades, "every community social and political issue was overshadowed or at least strongly influenced by racial questions."¹⁰² The News and Courier reported that *Brown* was the "most radical upheaval since Reconstruction."¹⁰³

Reaction in Charleston following the *Brown* decision was to join with the state, and other Southern states, in a program of "massive resistance" against school desegregation. Governor James F. Byrnes' "Segregation Committee," included two Charlestonians, Robert Figg and Creighton Frampton, who served on the committee from its founding until its official termination in 1966, the year before the Charleston County Council proposed to the Legislative Delegation that it change the method of election to an at-large system.¹⁰⁴

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In the mid-1950s, after the *Brown* decision, white Citizens' Councils were very active in Charleston. The county boasted six organizations, and Micah Jenkins, the local president, served as the state president as well. One historian believes that "the anti-segregation sentiments they [citizens' councils] expressed were shared by most white Charlestonians."¹⁰⁵ (See more on Micah Jenkins below under "Policymakers.")

Charleston was especially successful in drawing just the sort of district lines that James F. Byrnes urged in his 1950 campaign for governor. Byrnes had encouraged local boards to gerrymander districts so that some districts included areas with a large African American majority and other districts included sections where most of the white population resided. Charleston's districts, as shown by Dr. William Gordon, maximized segregation in Charleston County schools. Gordon claimed that "no other configuration of district consolidation would have more effectively separated students by race into separate school districts than those chosen by the county board."¹⁰⁶

In the 1950s Charleston high school students Harvey Gantt, James Blake, and Minerva Brown led an active NAACP Youth Council which in turn invigorated the African American community. In 1955, Realtor J. Arthur Brown became president of the Charleston NAACP and directed massive voter registration drives. Membership in the NAACP grew from 300 to 1,500; by 1960 there were more than 2,000 members.¹⁰⁷

In July, 1955 the NAACP and black parents petitioned to integrate schools in Charleston, North Charleston, and Mt. Pleasant. The newspaper published the names of

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the petitioners, "as a means of intimidation," so that groups like the white Citizens' Council members would know who the troublemakers were.¹⁰⁸

In 1955, after three years of unsuccessful petitions, Charleston African Americans filed suit for the use of Edisto Beach State Park. In answer to their petition the year earlier, the superintendent of Edisto had responded that the park "was established in 1935 for the exclusive use of white persons, and based on custom and precedence, we will have to deny your request." When sued, the Charleston Legislative Delegation wondered whether "to scrap the entire park system, or deal with the race issue in some other manner." They decided to close the state park. The park was closed until 1966.¹⁰⁹

In 1956, in the presidential election, Charleston County ranked among the biggest supporters for the independent candidate, Virginia's Harry Byrd. The Citizens' Councils urged support of the Byrd ticket, and the Citizens' Council President, Micah Jenkins, then a Democrat, was instrumental in getting South Carolina Democrats to pledge their votes to Byrd. Charleston County generally continued to vote for extremely conservative candidates.¹¹⁰

In 1956, when South Carolina State students demanded more equitable funds for African American higher education, the Charleston County School Board voted to revoke all financial aid to Charleston students involved.¹¹¹

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In 1956, Charleston Senator T. Allen Legare co-sponsored the law prohibiting South Carolina municipalities or school boards from hiring members of the NAACP. The Charleston school district then fired teachers Septima Clark, Jessica Pearson Brown, and Henry P. Hutchinson for their membership in the NAACP.¹¹²

In 1957 the first citizenship schools were established on Johns Island by Bernice Robinson. Citizenship schools trained many of the most important civil rights activists. Citizenship schools taught civics and civil rights to adults in the African American community to prepare them to register to vote. Soon Robinson was supervising five citizenship schools, in Charleston Heights, Accabee, on Cannon Street in Charleston, and on Wadmalaw Island where Esau Jenkins's daughter started a citizenship school.¹¹³

In a 1957 special election for the seat of a Charleston representative who had died, African American activist and attorney John Wrighten came in second among the four candidates.¹¹⁴

In 1958, African Americans sued to have the municipal golf course desegregated. After various stalling tactics, the judge ordered desegregation in November 1960. The order was finally implemented in May 1961.¹¹⁵

These challenges to segregation in Charleston in the 1950s disturbed the majority of whites, but the 1960s were much more turbulent. According to historian William D. Smyth, "The 1960s, beginning with the Kress demonstration and ending with the 1969

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hospital workers strike, were marked by even more challenges to Charleston's segregation."¹¹⁶ Returning to Charleston, James Blake, an NAACP Youth leader from the 1950s, observed that except for the few changes such as the integrated golf course, the bus terminal, and the county library, Charleston was "one of the most backward cities on the map." White Charlestonians and decision makers were shaken by the Civil Rights Movement and especially by events that unfolded around them in Charleston County. After careful study of the Civil Rights Movement in Charleston, historian Stephen O'Neill has concluded "as a city also preoccupied with race throughout its history, Charleston saw its very self-identity profoundly threatened by the civil rights movement."¹¹⁷

On April 1, 1960, students sat down at Kress Department Store. The modern Civil Rights movement in Charleston wrought lunch counter sit-ins, regular demonstrations, and protests by African Americans. In the spring of 1960 there were at least eight separate protests involving more than 75 students, who were charged with trespassing.¹¹⁸

On October 11, 1960, the African American PTA, led by Herbert Fielding and others, kept their children out of school in an official boycott because of overcrowding.¹¹⁹ Three days later, black parents sued Charleston District 20 to allow African American children to attend white schools.¹²⁰

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In 1962 the NAACP boycotted businesses that refused to hire African Americans as sales clerks.¹²¹ In response, the National Association for the Preservation of White People counter-demonstrated, picketing the stores along King Street which had agreed to desegregate. Their handbills read, "If you are in favor of preserving your way of life won't you please boycott any store who favors integration. Thank you. The Charleston Chapter of the NAPWP." On October 1 the NAPWP drew a crowd of 600 to hear Red Bethea of Dillon and Lester Maddox of Georgia.¹²² In retrospect, Mayor J. Palmer Gaillard observed, "Our biggest problems were not with the blacks ... but ... with whites." Whites boycotted and sent hate mail to those merchants who desegregated or removed the offensive "Colored Only" signs.¹²³

In May 1962, Arthur Brown sued to desegregate Charleston schools. At this same time, Civil Rights veteran and Charleston's Burke High School graduate, Harvey Gantt, was suing to desegregate Clemson University. January 1, 1963, Gantt integrated Clemson University.¹²⁴

On June 5, 1963, the NAACP announced that Charleston, last large South Carolina city still to have segregated lunch counters, was targeted for demonstrations. The state and Charleston NAACP directed a campaign to "eliminate all state imposed and state upheld racial segregation and discrimination." Among nine demands was "the banning of racial segregation in the schools." The first arrests began June 13 and included DeQuincey Newman of the state NAACP. By July 4, over 500 African Americans were arrested in Charleston, and 229 were already tried and convicted. Fifty-

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five African Americans were arrested trying to integrate Hampton Park and Colonial Lake. When protesters demonstrated in front of the News and Courier to protest its reactionary editorial policy, violence broke out between angry whites and angry protesters, and rioting ensued. The National Guard and the South Carolina Law Enforcement Division occupied Charleston. On September 11, a bomb was tossed at Canaan Baptist Church and a Molotov cocktail at an African American social club. The Mayor of Charleston held firm on segregation of playgrounds and parks, but he agreed to hire more African Americans as city workers.¹²⁵

During the summer of 1963 Charleston police arrested 600 African Americans; bail bonds reported to be \$1.4 million.¹²⁶

On August 22, 1963, Judge Robert Martin found the Charleston public schools were completely segregated and ordered the admittance of the African American children who were plaintiffs to the previously all white schools. When eleven of the children entered the white schools, District 20 in the city of Charleston was the first school district in the state to desegregate. In this desegregation case for Charleston schools, Thomas A. Carrere, school superintendent, "expressed his own belief that genetic differences accounted for Negroes' poor scores on achievement tests."¹²⁷

After Judge Martin's order to desegregate, the school board initiated three responses. It reaffirmed that segregation was in the best interests of all students and instructed its attorney to try to reverse the order. In addition, it instituted a "freedom of

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choice plan," which required African American parents to get the school board's approval to send their children to a desegregated school.¹²⁸ It also decided to participate in the State's tuition grants program to assist parents avoid integration by enrolling their children in private schools.¹²⁹

Many whites chose private schools instead of Charleston city public schools. Charleston's Reverend Eugene Kelly of St. John's Catholic Church criticized the private school movement in Charleston, arguing that it would "perpetuate an evil." He wrote that "the fundamental point is that racial discrimination is contrary to the central teaching of Christ and thus evil, and no amount of legal maneuvering or camouflaging can change that point."¹³⁰

In the 1964-65 school year, the Charleston School District was told it had to totally desegregate, leading to more white flight and more students attending segregation academies.¹³¹ In 1966, only 185 African American students attended desegregated schools in Charleston.¹³²

In 1964, Charleston was among the strongest bastions of support for Republican presidential nominee Barry Goldwater after Lyndon Johnson signed the Civil Rights Act of 1964.¹³³ This election illustrated again that African Americans were voting, and voting differently than most white Charlestonians. According to Esau Jenkins, on Wadmalaw Island nearly all whites voted for Goldwater. Jenkins contended that it was the African Americans on places like Wadmalaw and Johns Islands that voted for

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Johnson and the Democrats in 1964. In 1966 the University of South Carolina Governmental Review confirmed Esau Jenkins's observations that in South Carolina "all of the predominantly Negro precincts, except one ... gave majorities to President Johnson in 1964."¹³⁴

This phenomenon of increasing black voting was noticed. The white "Charleston Citizens' Council" put out a brochure in 1965, "Why Must Greater Charleston Organize?" and their first answer as to why the Citizens' Councils should organize was "(1) that the integrationists and bloc voters are themselves organized to a dangerous pitch." They listed as their goals, "local resistance to un-Constitutional integration," a "protest against the race-mixing mania of the times," reversal of the "'Black Monday' decision of 1954 and repeal of the misnamed 'Civil Rights' Act of 1964," opposition to "forced integration in the Greater Charleston area," and the "maintenance of racial integrity."¹³⁵ In 1967, the News and Courier characterized the Citizens' Council as "instituted to fight for states' rights and racial integrity."¹³⁶

June 1965, the Charleston County Legislative Delegation, in "a break with tradition" according to the News and Courier, "in effect appointed a Negro to the board of trustees of Charleston School District 20." The paper reported that the seventy-one year old Methodist minister, who was not a member of the NAACP, was the first African American "who has won a public school trustee post for Charleston" in the twentieth century.¹³⁷

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In 1965, Herbert Fielding and others formed the Democratic Party's Political Action Committee (PAC). Historian Stephen O'Neill described the PAC as the "black wing of the Broad Street machine."¹³⁸

In 1967, black leaders Fred Moore, Lilliemae Marsh Doster, and Reginald Barrett formed a rival to PAC. This "Committee of 100" considered themselves more progressive than the PAC and less dependent upon white politicians' wishes.¹³⁹

In April 1967, Judge Robert Martin ruled that the Charleston School Board had failed to comply with his directives, and he struck down the freedom of choice plans that required parents to make a request from the school board if they wanted to transfer their children. For the 1967-68 school year, every parent could select the school they wanted their child to attend.¹⁴⁰

On July 30, 1967, Dr. Martin Luther King was the speaker at a voter registration drive. On the same day, about 15 miles away, near the predominantly African American community of Ravenel, the Ku Klux Klan held a rally.¹⁴¹

In 1967, Charleston Senator Charles Gibson introduced a bill to consolidate the Charleston County School districts. Debate over this bill dominated the South Carolina Legislature, set off a record filibuster, and divided both the Charleston Legislative Delegation and the people in the County. The discussion of the act included issues of race, busing of children, and transfer of teachers to different districts. The bill was

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approved 8 June 1967 as Act No. 340. (See the relevant discussion under "Policymakers.")

In 1968 some three thousand protesters participated in the Southern Christian Leadership Conference's Poor People's March in Charleston.¹⁴²

On March 17, 1969, racial tensions festering in Charleston erupted in the 1969 Hospital Strike, described by a major labor historian as "one of the South's most disruptive and bitter labor confrontations since the 1930s."¹⁴³

The effect of this history has been one of political alienation for much of the African American community. According to historian Walter J. Fraser, when Joseph P. Riley ran for mayor of Charleston in 1975, he "hoped to overcome" the alienation from government of African Americans and especially to attract those young African Americans who "see most vividly the cruel contrast of our dual society." In his first mayoral bid Riley told the newspaper, "In the city of Charleston ... black people have never had a piece of the action."¹⁴⁴

In the midst of the turbulence of the Civil Rights Movement in Charleston, local decision makers, like politicians everywhere, had to have noticed a new phenomenon: **increases in African American voter registration.**

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In 1956 there had been 200 African Americans registered on Johns Island; by 1960 there were 700, and "voter turn-out was often one hundred percent." Also, in 1956, in Ward 11 of the City so many African Americans had registered to vote that a few were slated and elected to Democratic Party offices in that ward.¹⁴⁵

Many African Americans from Charleston County had attended Highlander Folk School, and in 1959 Highlander students came to Charleston to work on a voter drive before the June 1959 election. They assisted some 1,422 African Americans in registering to vote.¹⁴⁶ Charleston Clerk of Court, A. J. Tamsberg, wrote to Charleston News and Courier editor, Thomas R. Waring, about the increasing strength of the African American vote, "Frankly I doubt the advisability of publishing this information in full, thereby making it available to negro leaders. Some of it is quite startling."¹⁴⁷

Whereas Esau Jenkins had estimated that 5,000 African Americans were registered to vote in 1954 in Charleston County, he believed in 1960 there were more than 10,000. Jenkins and the NAACP estimated nearly 14,000 in 1964. Jenkins announced in the News and Courier March 1965 that "We are hoping to double our efforts this time."¹⁴⁸

During the 1967 mayoral primary, the News and Courier stated, "Mayor J. Palmer Gaillard's slate includes a Negro candidate from Ward 9, a predominantly Negro residential area."¹⁴⁹ The next day, the paper reported that in "Wards 9, 10, 11: 5000 of

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7000 voters are Negroes. Ward 12: Largest in city: 5299 registered voters, about half Negro."¹⁵⁰

This interest and notice of increasing voter registration of African Americans accompanied another vivid concern: **Bloc Voting**. White political leaders were concerned about African Americans voting as a bloc, but not of whites doing the same. When politicians used the term *bloc vote*, they were not referring to the white bloc vote.

In the midst of all this turmoil about civil rights, the white people of Charleston were very concerned about the potential voting power of the African American community, what the newspaper referred to the "bloc vote." As early as 1950, the Charleston News and Courier cautioned white South Carolinians about the increasing strength of the African American bloc vote. One editorial asked if officeholders in South Carolina would "henceforth be elected in primaries in which negroes as a bloc shall cast the deciding vote?...Shall government in South Carolina in the future be the product of election in which the colored voters will have and will exercise the balance of power?" The editorial was commenting on a dispatch from William D. Workman, Jr., correspondent of the News and Courier, published a few days earlier on the 1950 Democratic primary, where Olin Johnston beat Strom Thurmond for the Senatorial nomination. Workman had carefully analyzed voting in Columbia's Ward 9, "the population of which is overwhelmingly colored," and the home of former Charleston African American newspaper editor, John McCray. Workman's in-depth study of Columbia's Ward 9 had to resonate with Charlestonians aware of the predominantly

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African American wards in Charleston. As white Charlestonians were warned by the News and Courier, "it is as well to face as certain that the herded or 'bloc' vote of negroes will be much larger in future primaries."¹⁵¹

When white leaders in Charleston recognized the need to improve the African American schools in order to maintain segregation (following the recommendations of the Gressette Segregation Committee), NAACP opposition helped defeat the school bond referendum in May 1957. In this, the first demonstration of African American political power in Charleston since Reconstruction, President Arthur Brown claimed a "moral victory for the NAACP." The newspaper reported that the bond issue failed largely because of "Negro opposition" as a bloc vote.¹⁵²

In 1959, the Charleston News and Courier, in an article entitled "Bloc Voting," warned that those who instructed African Americans voters to be "bloc conscious" disserved the black community. The paper was referring to the NAACP's distributing sample ballots and identifying the lesser of evils among Democratic candidates in the primary.¹⁵³

In June 1965 Albert Watson, Republican candidate for Congress, reported that he was not looking for Negro support. His political advertisements contended that the Democratic Party was "courting minority bloc votes."¹⁵⁴

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In 1965, when Herbert Fielding and others formed the Democratic Party's Political Action Committee (PAC), they hoped to pull the African American community together in political unity. According to historian O'Neill, PAC believed, "By speaking with one voice and delivering the 'bloc vote' of African Americans... they could wield more influence with the city's white Democratic leadership."¹⁵⁵

In a 1966 report, The University South Carolina Governmental Review analyzed African American voting in the Democratic primary of 1964. One section of the report was entitled "Bloc Vote?" The published report explained that in the 1964 presidential election some of the predominantly African American precincts voted for President Lyndon Johnson "by overwhelming percentages of 80, 90, and even 100 percent. Evidence from other sources indicated that as many as 90 to 95 percent of the Negroes in South Carolina ... voted for President Johnson."¹⁵⁶

In 1967, one editorial in the Evening Post feared that school consolidation "is only the first payment for the bloc vote. They have others up their sleeves."¹⁵⁷ In the legislative debate on the Charleston County School Consolidation Bill, Republican Senator Eugene Griffith of Newberry County commented specifically on the Democrats' "bloc Negro vote."¹⁵⁸ And at that time the News and Courier reported, "The Negro vote, over 96 percent Democrat, obviously played a major role in the Democrat victories."¹⁵⁹

In May of 1968, when an African American challenged Congressman Mendel Rivers in the primary, the newspaper wrote, "Republican sympathizers who refrain from

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voting in the Democratic primary might leave the decision to bloc voters."¹⁶⁰ A little over a week later, the paper remarked, "The time has not yet come—at least, not in South Carolina—when a black man's candidate has built in advantage."¹⁶¹ Commenting that Herbert Fielding, the only African American candidate for the House, came in last of the fourteen Democratic candidates in the primary, the paper reported that a Democratic Party official "pointed out that while Fielding did well in the predominately Negro wards, he wasn't the top vote-getter in some of the larger Negro districts." The article also noted that no Republicans voted in "the 1st Precinct for the city of Charleston's predominantly Negro Ward 9."¹⁶²

After the general election of 1968, the newspaper attributed the Democratic victory for state and local candidates in Charleston County to the bloc vote of African Americans.¹⁶³ Four days later the paper again characterized the African American community as bloc voting for Democrats and "pulling the master lever."¹⁶⁴ Following the 1968 elections, Republican Party County Chair James Edwards reflected, "We were caught in a crossfire created by the bloc vote composed of the minorities of our county on one side and the embittered George Wallace supporters on the other."¹⁶⁵ In January of 1969, the newspaper editorialized against the renewal of the Voting Rights Act and the unfairness of its efforts "to enlarge the number of Negro voters."¹⁶⁶ In May of that year, County Republican Party chairman and former councilman Micah Jenkins "denounced the 'bloc' vote." He said that any party "which owes its election to the support of such groups cannot best serve the interest of all people." (Jenkins was on County Council and

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was chair of the committee that recommended the change from district to at-large when the issue was first proposed.)¹⁶⁷

It was in this context of turbulent racial considerations that the Charleston County Council recommended, and the Legislative Delegation changed, the method of election from district to at-large. All County Council members and all legislators were white men at that time. With this general background of changing racial dynamics in Charleston, especially more African American voters and the fear of minority bloc votes, this report now looks at the sequence of events leading up to the change from district elections to at-large in 1969.

II. Sequence of Events leading to Act 94, the Change of Method of Election from District to At-Large

Both the general background of race relations as well as these specific events in Charleston have impact on political decision-making. At the time when the Charleston County Council changed its method of election from a district system to at-large, there was a "heightened awareness of race."¹⁶⁸ A review of this sequence leaves no doubt that racial considerations were very much in the mind of Council Members and members of the Legislative Delegation when the change to at-large elections was proposed in 1967 and enacted in 1969. Indeed, in the very year that the Charleston Legislative Delegation, meeting in Columbia, was proposing the change of method of election of County Council to at-large, a state Election Law Study Committee was hearing expert testimony. Under

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the headline, "Professor Says Constitution Anti-Negro," the Columbia State reported on Clemson University Political Science Professor Jack E. Tuttle's explanation that "South Carolina's 1895 constitution was tailor made to prevent Negroes from voting.The primary purpose of the 1895 constitution is to disfranchise the Negro," Tuttle testified "Everything else is secondary."¹⁶⁹ Race was very much at the forefront of discussions in both Charleston and in the South Carolina General Assembly in 1967.

The change in Charleston County from a district method of election to an at-large system has a complex legislative history. Unlike counties controlled entirely by their Legislative Delegation, Charleston was granted a degree of home rule in 1948. Charleston was allowed an elected County Council which had some control over local affairs, including the power to set their budget.¹⁷⁰ By the early 1960s Charleston County Council had eight council members elected under a district system. The city of Charleston constituted one district; three residents were elected from that multimember district. The area east of the Cooper River comprised a single-member district. Two council members were elected by voters from the multimember district west of the Ashley River and outside the corporate limits of Charleston. Two council members were elected from two single-member districts in the North Charleston area. "One member shall be a resident of the area of the county included in St. Philip's and St. Michael's Public Service District as constituted on March 16, 1956, and shall be elected by the qualified electors residing in that area of the county. One member shall be a resident of the remainder of the county lying between the Ashley and the Cooper Rivers and shall be elected by the qualified electors residing in that area of the county."¹⁷¹ In 1963, the state

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legislature amended the 1962 Act to add an additional member from North Charleston to the County Council making a total of nine council members. That third member of the North Charleston district as elected from the combined two existing North Charleston single-member districts and could live in either district. However, the other two members of the North Charleston area continued to be elected from each single-member district.¹⁷² The first county councilman elected to that at-large seat within the North Charleston "district" was John E. Bourne, Jr.

The change to at-large elections had its origins in the 1967 session of the General Assembly. In 1966, while on County Council, Bourne led a Republican charge that captured three of the four Charleston County State Senate seats in the newly apportioned Senate. Shortly after taking his seat in the 1967 legislature, Senator Bourne introduced **Senate Bill S131** to amend Section 14-1162, Code of Laws of South Carolina, 1962, as amended, "to provide that members representing a certain area north of the City of Charleston shall be elected at large." In the Senate there were no objections; the bill was placed on the "Local and Uncontested Senate Calendar," and, after its third reading on 8 February 1967, it was sent to the House.¹⁷³ According to the newspaper, "Bourne said the bill would put the North Charleston councilmen on the same basis as those from other areas of the county, all of whom run at large." At that time council members ran at-large only within their multimember district; the council member from East of the Cooper River was elected from a single-member district, and that would not change under Bourne's proposal.¹⁷⁴ On 9 February 1967, the Charleston News and Courier reported that "All three Charleston County Council members from the north of the city limits

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henceforth will run at large, if the House approves a bill passed yesterday by the Senate." Although the newspaper speaks of "at-large," Bourne's bill intended for the three North Charleston council members to run at-large within the district of North Charleston, just as three council members ran for election in the multimember district of the City of Charleston.¹⁷⁵

In the meantime, another development, this one for a comprehensive change in the method of election, was unfolding in the County Council's Legislative Study Committee. Before Bourne's Bill S131 was even sent to the House, the local newspaper indicated that the County Council's Legislative Study Committee (later referred to as the Government Study Committee) was considering changes for council, including having all County Council members elected at-large throughout the county. The newspaper reported on February 6, 1967 that the County Council's Legislative Study Committee, "headed by Republican Councilman Micah Jenkins," would soon submit a report to the Legislative Delegation asking for more authority and that the Legislative Delegation looked favorably on the proposed request.¹⁷⁶ On 8 February the newspaper reported that Jenkins's committee would recommend a "strong county manager form of government." Under the council committee's proposed plan, Chair of the Committee Jenkins disclosed, "Six county councilmen and a chairman nominated by petition would be elected in a non-partisan election and would run at large for four year terms." According to the article, "Partisan election within districts is currently the rule. The chairman is elected by the Council."¹⁷⁷

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On 12 April 1967, in an article subtitled "Jenkins Proposal to be submitted today," the paper explained that the number of council members would remain at nine, as it was presently constituted: "County Council shall be composed of nine members. One councilman shall represent East Cooper; City of Charleston, three; North Charleston, three; and West Ashley, two. The councilmen all would be at-large delegates." According to the newspaper, "The proposal [was] drawn up by Councilman Micah Jenkins and his Government Study Committee of County Council."¹⁷⁸ On 13 April in an article discussing County Council's meeting with the General Assembly Delegation about their proposed request, the newspaper reported that "House members could not agree on amendments to a bill earlier introduced in the Senate by Sen. John E. Bourne Jr. Bourne's bill would have council members from North Charleston 'run at large.' Rep. LeMond asked that the bill be amended to have all council members run at large throughout the county—one of key items asked for by the council during its appeal to the delegation earlier in the morning."¹⁷⁹ On 16 April 1967, The Charleston News and Courier editorialized, "the council is now asking that elections be 'at large.' Members still would come from the city, the North Area, and the regions west of the Ashley and east of the Cooper, but they would be elected in a countywide vote."¹⁸⁰

Responding to the County Council's request, R. E. Scarborough, Chair of the House Delegation, presented an amended bill to the full House, now requiring all council members to run at-large with residency requirements and increasing the pay of council members.¹⁸¹ The News and Courier gave the salary issue predominance, but the newspaper also warned that "Future candidates for Charleston County Council are likely

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to have to seek votes throughout the county, rather than in their home districts." The newspaper reported that the "predominately Democratic Charleston County House Delegation tacked an amendment onto a bill by Charleston Republican Sen. John E. Bourne Jr. to make it mandatory that council candidates run at large. In his Senate bill, Bourne had sought to have only the three councilmen from North Charleston run at large instead of by districts. But the Democrats in the House didn't like Republican Bourne's proposal. Their amendment to his bill makes it mandatory that council candidates run at large throughout the county."¹⁸² This amended bill established the at-large election with the residency requirements for one representative East of the Cooper River, three from the City of Charleston, three from the North Charleston area, and two from west of the Ashley River. This was a dramatic alteration. The House amendment of Bourne's bill changed from the idea that the two members who ran from single-member districts in North Charleston would run at-large within the North Charleston area (just like the third member of that multimember district) to the idea that all members of the County Council run at-large in the entire county.

The amended S131 bill was sent back to the Senate and considered on June 8, 1967. Senator Bourne recommended that the Bill be referred to the Charleston Senators. Then on June 28, the Senate refused "to concur in the amendments proposed by the House."¹⁸³ On July 5 Representative Scarborough "insisted upon the amendments," and a Committee of Conferences was established to work out differences and come up with a compromise.¹⁸⁴ According to the News and Courier, "Legislation changing the election process for Charleston County Council members goes to a Senate-House conference

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committee Thursday morning for an effort to reconcile differing provisions. As passed by the Senate, all three North Charleston members henceforth would run at large. At present, one is an 'at large' seat and the other two have a residence restriction. The House totally rewrote the bill to make all nine council members run countywide but reside in one of the four appropriate districts."¹⁸⁵

The Conference Report split, however, with a Majority Report recommending that the Senate concur with the House-amended Senate Bill 131. "A six-man conference committee of Charleston Senate and House members over-rode the objections of two of its members yesterday with a 4-2 favorable vote on a bill that would have all county councilmen run at large and get twice as much money." Bourne, however disagreed; "A former member of council from North Charleston, Bourne felt all three councilmen in the area should run at large within that district." He did not approve of the House amendment that provided "that all councilmen be elected by all the county voters." Representative Scarborough wanted people to know that the Charleston County Council approved of the change. "Scarborough said after the meeting that Jenkins, chairman of the committee, again restated that County Council unanimously had approved the pay increase and the requirement that they run at-large."¹⁸⁶

The House adopted the Majority report.¹⁸⁷ However, the next day the Senate did not: "However, both Bourne and Cabell officially will refuse to accept the report today, thus killing the bill."¹⁸⁸

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In the next Legislative Session, an almost identical bill was introduced on 18 April 1968 as **House Bill 2891**, "to require members to be elected from the county at large, to designate residency requirements and increase compensation for council members." After its three readings the bill was sent to the Senate on 24 April. It was read for the first time in the Senate on 24 April, was placed on the Local and Uncontested Calendar, and received its second reading the next day.¹⁸⁹ On 25 April the paper noted the bill "that would have Charleston County Council candidates run at-large" cleared the House. On 1 May 1968, the paper reported that the bill "would double council members' salaries....At the same time, the amendment would require anyone now seeking a council seat to run at-large, both in the primary and general election."¹⁹⁰

On 1 May 1968, Republican Senators Cabell, Grice, Worsham, and Bourne made amendments about the timing of the bill, moving up its effective date. The newspaper reported, "The proposed at-large election of members of Charleston County Council would become effective this year under an amendment agreed to yesterday by Charleston's four Republican senators." The paper elaborated on the Senators' amendments. "A bill that would require Charleston county councilmen to run for election countywide was amended yesterday by Charleston's four Republican senators, but its Senate passage was delayed. Basically the senators' revision of the House-passed bill would require at-large elections in this year's four council contests. The House bill would make the effective date Jan. 1, 1969....The senators have indicated they don't intend passing the bill, which also includes doubling the salaries of the council members, until they learn the fate of their council measure in the House." (The Senate had sent to

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the House a separate bill strengthening the county management form of government.) The article added that the House Delegation had received a telegram from a "Republican candidate for council in the city, stating that he endorses the at-large elections this year."¹⁹¹

On 9 May 1968, the Charleston News and Courier described the bill to change the method of election to at-large for county council as "controversial" and "unresolved"; the House Delegation "decided to pass over another Senate-amended bill dealing with at-large elections for the Council members. The House version of the bill set the effective date at Jan. 13, 1969. However the senators would have the at-large elections go into effect immediately, which would effect [sic] up-coming elections for four council seats."¹⁹² After the third reading on June 27, 1968, amended House Bill 2891 "returned to the House with amendments of the Senate." Amendments as to the effective date of the bill did not change the method of election and residency requirements, which remained the same as the House-amended Bill S131 from 1967. The House did not act on the Senate-amended H2891 bill.¹⁹³

Newspaper discussion in 1969 focused more on the salary increase for County Council members than on the change from district to at-large elections. For instance, the title of the first article to discuss the change was "Charleston County Council Seeks Big Salary Increase." Barbara S. Williams, staff reporter for the newspaper, wrote, "Charleston County Council members yesterday asked local legislators to more than double their salaries and last night agreed to indicate their willingness to run for election

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at-large." Chair of the House Delegation, Representative F. Julian LeMond, "observed that last year the proposed pay raise was tied to a provision that council members run at-large." Noting that "the old council was on record as favoring elections at-large for all members, the new council was asked for some expression by the legislators." On 7 January 1969, the County Council voted "seven to one to endorse the at-large elections." The lone dissenter was a district representative from North Charleston, Councilman Miner W. Crosby.¹⁹⁴

On 26 January 1969 in her column, "Dimensions," Barbara S. Williams noted that the County Council was now twenty-one years old. Representative Joseph P. Riley, Jr., reported for a special legislative committee and suggested that County Council should set its own salary. A long article by Williams discussed the salary issue on 5 February and only in one sentence under the heading "At-large Elections" was the change of method of election mentioned: "The lawmakers also have indicated they are willing to go that high if raising the salary ceiling is coupled with a requirement that the members run at-large."¹⁹⁵ On 12 February 1969, Williams's column, entitled "Legislators Reach Accord on Lifting Salary Ceiling" (and then in smaller letters the subtitle, "At-Large Elections Planned for Council"), announced that "While the bill agreed to by the House hasn't yet been drafted, it was indicated yesterday that councilmen still would be required to live in about the same districts now represented. They would be voted on by all the residents of the county, however." House members who supported raising the Council salary ceiling imposed by the Legislative Delegation "pointed out that council would be responsible to

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the same persons who elected the legislators under the stipulation that the members run at large."¹⁹⁶

On 18 February 1969, **House Bill 1262** "to provide for election 'at large' in the county and to increase council members' compensation" was introduced and referred to the Charleston delegation.¹⁹⁷ On 19 February, the newspaper reported that "A proposal that would have the effect of giving North Charleston three at-large seats on county council will be offered to local legislators here today." Discussing the bill introduced the previous day, the reporter explained that it "would put all council elections on a county-wide basis. That bill retains the current residency requirements, but allows all Charleston County residents to vote on all members of council. An amendment will be presented to the bill in a legislative delegation meeting today that would remove the district residency requirements within North Charleston and allow any resident in that area to run for any of the three allotted seats." As reported, "The existing law provides that councilmen live in a specified area and be elected by the residents of that area. The countywide election bill for council introduced yesterday retains the other district residency requirements....All would be voted on by all residents of the county."¹⁹⁸

House Bill 1262 received a second reading on 20 February 1969, and the Delegation proposed and adopted an amendment to alter the wording "by striking the three sentences beginning with 'one' on line eight and ending with 'Rivers' on line fifteen and inserting "Three members shall be residents of the area of the county between the Ashley and the Cooper Rivers not included in the City of Charleston." This wording for

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House Bill 1262 is basically the same as the 1968 **House Bill 2891** and the 1967 amended **Senate Bill 131** and is identical to the previous bills in the method of election and areas of residency requirements.¹⁹⁹

After a third reading in the House, the bill was sent to the Senate on 21 February 1969, was read for the first time on 25 February, and placed on the Local and Uncontested Calendar.²⁰⁰ Then Senator Robert B. Scarborough asked the Senate to adjourn debate on the bill until he could read the House amendments. According to the News and Courier, "The amendment would have the effect of giving North Charleston three at-large seats on council. It removes the boundaries and allows anyone within the area to run for any of three seats designated for that section."²⁰¹ Apparently Senator Scarborough was satisfied with the amendment, especially since it was basically the same as the bill he had supported and sponsored the previous two legislative years as a Representative. The bill passed on March 5, the title changed to Act 94, and on March 18, 1969 was so entered. This change in the method of election and the areas of residency requirement was the culmination of a process that had begun in 1967 with the recommendation of Micah Jenkins's county council committee and with John Bourne's Senate Bill S131 as amended by the House.²⁰²

Motivation for Change of Election:

Ordinarily when incumbent members of a governing body propose a change of election from the method from which they themselves were successfully elected, they

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provide a reason. In this case, in April 1967 when the County Council members recommended to the Legislative Delegation that they change the method of election for County Council from district to at-large, they did not provide an explanation. A question we need to ask is why the County Council proposed in 1967 to change from a district to an at-large method of election. In my own research and the research of other historians writing about a change from district to at-large elections, there are four commonly offered explanations for such a change.²⁰³

First, proponents often argue that the move to at-large elections was motivated by a desire for good government. Second, an at-large system was perhaps selected because it was politically advantageous to participants, that is, a change from a district system to an at-large election system gave a partisan advantage. Third, the county might argue it had to adopt an at-large system to satisfy the one-person, one-vote principle. Fourth, and finally, given the timing and sequence of events, one might expect racial vote dilution to be a part of the motivation, as it was in other jurisdictions that went to at-large systems of election at that time.

First of all, in all my research in contemporary journals, newspapers, minutes of the Legislative Delegation, and minutes of the County Council, I found not a single reference by either a member of the County Council or the Legislative Delegation making the argument for at-large elections as a good government reform. Generally, decision makers who promote "good government" as an argument will state that the change from district to at-large promotes the election of a better candidate who has a

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broader view of the whole, and responsive to the interests of the county as a whole, rather than a merely parochial candidate who is elected by a specific district.

To the contrary, two Council members presented persuasive arguments for districts. Regarding district elections, Council member J. Mitchell Graham, long-time chair, explained in December of 1965 that Charlestonians liked districts. The existing election plan gave Charlestonians "the guarantee of representation from their own districts as the council members are elected from representative areas from the county."²⁰⁴ In 1967 John Bourne also liked districts. Remarking that he "studied at great length the advantages and disadvantages of county councilmen running county-wide," he stated his conclusion for the newspaper: "many good and capable men who would like to serve in county government would be precluded because of the expense, time and work involved in a county-wide race. It is my opinion, having served on County Council, that all councilmen feel a responsibility to all county affairs and are not sectional or biased in their opinions concerning county-wide government." Thus, Bourne's good government argument was for districts.²⁰⁵ No council member nor legislator at the time offered a differing opinion. With no evidence to support this good government justification for a change, I discount it.

Second, one might hypothesize a partisan advantage in at-large elections. In this case, however, no partisan advantage was present. Neither Republicans nor Democrats in the County Council or the Legislative Delegation offered any partisan political justifications for the change. The struggle for party power between Democrats and

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Republicans did not affect the change to at-large elections in 1967-69; indeed, the Charleston Republicans controlled the Senate Delegation, the Democrats the House Delegation, and both were elected from a multimember district system. Since both Democrats and Republicans wanted at-large elections, party advantage was not a reason for the change. On 3 May 1968, reporter Barbara S. Williams wrote, "The response from the [County Council] candidates on whether they would be willing to run on an at-large basis this year, had no apparent relationship to party affiliation. Both Democrats and Republicans favor the idea, and candidates from both parties also expressed opposition."²⁰⁶

The third possible rationale for changing to at-large elections in the 1960s was the idea that it was necessary to satisfy the one-person, one-vote principle resulting from *Reynolds v. Sims* court ruling in 1964.²⁰⁷ As early as 1966 some jurisdictions in the South were going to at-large elections citing the one-person, one-vote ruling as their justification. However, the explanation that the move to an at-large council system was mandated by the one-person, one-vote ruling does not hold up. When the defendants in *Smith v. Paris* in 1966 in Alabama claimed that the purpose of the at-large election resolution was to comply with the one-person, one-vote principle, Judge Frank Johnson dismissed the excuse as "nothing more than a sham," observing that the jurisdiction kept the same malapportioned districts as residency requirements for candidates in the at-large system that replaced the district system, rather than adjusting "the population disparities between the beats [districts] themselves" while retaining the traditional district system.²⁰⁸

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In Charleston also this reasoning seems to be a sham. When the change to at-large was first proposed in 1967 by the County Council and debated in the legislature as House-amended Senate Bill S131, neither council members nor legislators mentioned that the change had anything to do with one-person, one-vote. Since the one-person, one-vote explanation was not invoked until nearly a year later, it appears somewhat disingenuous to claim it as the rationale. When the newspaper explained on 25 April 1968, "The county Council bill was re-introduced this year in view of the recent U.S. Supreme Court decision that applies the one-man, one-vote rule to local governments,"²⁰⁹ it was the very first time that it mentioned the one-person, one-vote issue in relationship to the proposed change. But the change from district to at-large election system for the Charleston County Council was the same bill introduced in 1967 without any such connection to one-person, one-vote.

On 1 May 1968, the paper reported that "The House passed bill was revived here recently in view of the U.S. Supreme Court decision applying the one-man, one-vote rule to local governments. Rep. R. B. Scarborough said he believed the council's legality could be questioned unless the members were elected at large. However, the House bill on the at-large elections would delay the effective date until Jan. 1, 1969."²¹⁰ Two days later, the paper explained, "Several of the council candidates questioned the wisdom or necessity for the county-wide races. In the past, the nine-member council has been elected on a district basis." In response, House Delegation chairman Robert B. Scarborough and Senate Delegation chairman Nat W. Cabell said that "they don't believe the court decision leaves any choice in the matter."²¹¹ But the truth is that they knew

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otherwise because of a clarification they received from the State's Attorney General in a letter dated 15 April 1968.

In 1968, after the Supreme Court held that one-person, one-vote explicitly applied to local government in *Avery v. Midland County*,²¹² Chair of the Charleston House Delegation, Robert B. Scarborough, sent a letter of inquiry on 11 April 1968 to the South Carolina Attorney General, Daniel R. McLeod. Scarborough included a copy of the proposed 1968 House Bill 2891 (which was identical to the 1967 Amended Senate Bill 131 and basically identical to the 1969 House Bill 1262 that became law). Scarborough wrote that "Because of the recent Supreme Court's decision concerning County Government in Texas," the House Delegation was "concerned with the legality of Charleston County Council," composed of nine councilmen from four districts. He requested an opinion on the at-large system proposed for the 1968 session and asked for "your thoughts as to the constitutionality of the make up of County Council if the enclosed or similar type of Bill is not enacted."

In his response letter of 15 April 1968, Attorney General Daniel R. McLeod made several points. One, that at-large elections solved the one-person, one-vote rule. Second, that even with at-large elections, residency districts could be malapportioned. Third, that district elections were also a legal alternative if they were to meet acceptable tolerance standards. McLeod elaborated, "I would assume that greater tolerance would be permitted in county council representation than is permitted in the case of the State Legislature or in Congressional districts; but, in any event, there must be some

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reasonably corresponding relationship between the number of person in each district."²¹³
In short, the South Carolina Attorney General determined, and so advised Scarborough, that *Reynolds v. Sims* and/or *Avery vs. Midland County* did not require at-large elections.

Again in 1969, Chair of the House Delegation, Representative F. Julian LeMond, noted that, "as a result of recent court decisions, council is 'walking a tight rope before someone attacks' the manner in which the members are elected. In early January 1969, Councilman John P. O'Keefe made a motion that "if the delegation feels it is Constitutional and necessary," that the council would agree to at-large elections."²¹⁴

At this same meeting, however, Representative Joseph P. Riley, Jr., informed the County Council and the Legislative Delegation that the county council did not have to change from a district to an at-large election method because of the one-person, one-vote principle. It is very important to note a statement in the 8 January News and Courier. "Rep. Joseph P. Riley, Jr., suggested that members could either all run at-large or the body could be reapportioned every 10 years."²¹⁵

From Riley's statement, County Council knew that they could keep districts as long as they reapportioned correctly. And, the Legislation Delegation had the letter from South Carolina Attorney General McLeod, explained above, that the one-person, one-vote rule did not mean district elections were no longer allowed.

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Likewise, the newspaper preferred to ignore that district elections were allowed as long as districts were apportioned correctly. In February 1969, Barbara Williams wrote about the proposed salary increase, "Council members, according to a recent court decision are going to have to run at-large," and that the legislative delegation believed that if council members "are going to have to run county-wide, an increase certainly would be warranted."²¹⁶

Not long after this, political leaders in Charleston County, wanting to consolidate county and city government, chose a district method of election in a mixed plan with some at-large seats. In early November 1969, the Charleston County Charter Commission proposed twelve equal population "councilmanic" districts and three at-large seats. The newspaper reported that "The charter would require that within six months of each official federal or state census council would have to be reapportioned on the basis of population."²¹⁷ So, to merge city and county government, political leaders were willing to consider a district method of election and finally did recommend a district election method for the 1974 referendum on county and city consolidation.²¹⁸ Clearly, if they really thought the one-person, one-vote ruling gave them no choice in moving to an at-large method of election for county council, then it is difficult to explain why they immediately proposed districts in order to get consolidation.²¹⁹ That the County was willing to go to district elections to get consolidated county government is further evidence that the one-person, one-vote was not a true reason.

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The evidence at the time contradicts the claims that the county had to adopt at-large elections to satisfy the one-person, one-vote ruling. To reiterate, in 1967 when the County Council first recommended the change from district to at-large elections, and again in 1967, when the at-large system was introduced as amended Senate Bill 131, not one mention was made of the one-person, one-vote concern. The one-person, one-vote principle served as an excuse, not a valid reason. Other forces were at work in 1967-69 in Charleston County.

By dismissing these three arguments as fallacious and disingenuous, we are left with the reasoning that the at-large system was adopted for discriminatory purposes. This is the only reasonable explanation that fits the evidence for the shift from district to at-large elections in Charleston County. In addition to fitting the evidence, this explanation fits the totality of circumstances, that is the history of discrimination in Charleston and in South Carolina.

First, the at-large plan adopted was effective in diluting the increasingly large African American vote for members of the Charleston County Council because the preferred candidate of the African American community would usually have to run head-on against a white candidate supported by the white community, which was in the numerical majority. Staggered terms increased the problem for an African American candidate. In addition, as opposed to the first plan proposed by Micah Jenkins, Chair of County Council's Legislative Study Committee, as revealed to the press on 8 February 1967, these elections were partisan. This meant more time and more money for

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candidates who had to campaign twice, for the primary and for the general election. Moreover, if a candidate did not receive a majority of the votes in the primary, a runoff election was required.

At this time, the full slate law was still in effect, though there was discussion of repealing this dilution-enhancing device. A newspaper report on the full slate law in January 1969 quoted African American leader Bernard Fielding, "the law makes it virtually impossible for any minority member to be elected."²²⁰ By calling attention to the discriminatory effects of the full slate law, Fielding was also calling into question the dilutive effects of at-large elections. The paper elaborated some weeks later that "Some Negroes take the position a member of their race would have little or no chance in a head-on race against a white opponent."²²¹ And then, less than two weeks later, the paper explicitly linked the at-large elections with the full-slate law: "During a discussion in a State Election Law Study Committee meeting yesterday, a member of the legislative council said the full-slate law would apply to countywide council races."²²²

Furthermore, because Charleston County is large, a hundred miles in length, with rivers separating some of the residential areas, it is difficult to campaign throughout the entire county. African Americans are generally not as high on the socio-economic scale as whites in Charleston County, and the expenses of an at-large campaign are staggering, many times as expensive as a district election, where a candidate can win by expended time and effort canvassing door-to-door. Moreover, the centers of significant financial resources in Charleston are disproportionately controlled by whites.

Racial Bloc Voting:

The problem with at-large elections is the accompanying presence of racial bloc voting. When whites have a majority of the voting-age population, and if whites deliberately vote against candidates from the African American community, as whites did in Charleston County, then they can prevent African Americans from winning office by using an at-large method of election. The dilutive effects of at-large voting are enhanced by the use of staggered terms, such as in Charleston County, and of the full-slate law that was in effect in South Carolina at the time. If voting is racially polarized, then at-large elections prevent minorities from electing candidates of their choice.

Responding to white charges of African American bloc voting in 1951, NAACP President A. J. Clement protested, "We do not like bloc-voting, but you have taught us many of its advantages. You have used it for 50 years against us....You voted for all of your political candidates as a solid bloc on a platform of racism... you put men into office and statutes on the books that make me go in side doors, sit in galleries, ride in the rear of buses."²²³

In 1990-91, while serving as an expert witness in a Charleston County school board case, I analyzed elections in Charleston County, South Carolina. I have also studied analyses of elections in Charleston County by Dr. James Loewen, by Dr. John C. Ruoff, and by Dr. Harold Stanley. All of these statistical analyses demonstrate that racial polarization was the dominant trend in elections when a white candidate opposed an

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African American. Moreover, in 1974 when the Department of Justice objected to the "racially motivated annexations" to the City of Charleston, it cited the dilutive effect of the city's at-large election system "with the readily apparent pattern of racial bloc voting in Charleston."²²⁴ Again in 1975, the Justice Department objected to the first three plans submitted by the city "on grounds of a potential unnecessary vote dilution of minority votes through their at-large feature, which in the context of Charleston's history of racial bloc voting," was detrimental to African Americans electing candidates of their choice.²²⁵ In 1974 the Justice Department objected to a mixed plan for the Charleston County Council with the merger of city and county government. According to the Justice Department objection, "there is a cognizable racial minority and a history of voting along racial lines." The Justice Department recommended that "methods of election such as those proposed here have an impermissible dilutive effect on black voting strength if, as is also apparent here, available alternative methods of election such as single-member districting would allow a fair opportunity for the election of representatives directly responsive to the needs of the minority population."²²⁶

III. Anticipated or foreseen effect of the change on minority citizens

During this time period members of the County Council and the Legislative Delegation were astute and savvy politicians. They understood the electoral procedures under which they ran and knew the probable electoral impact of a change from district to at-large elections. When changing the elective system, Charleston County might have adopted a single-member district or mixed plan, had it not considered the racial

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implications. Charleston County political leaders knew that a single-member district system raised a genuine threat of African Americans winning seats on the county governing body because the Charleston News and Courier reported on the growing strength of the African American vote. Furthermore, historians and political scientists had for some time adopted the view that at-large elections dilute minority votes. Charles A. Beard, for example, as early as 1912 in his classic American City Government, argued that at-large elections "substantially exclude minority representation."²²⁷ This view was common in standard textbooks of the 1960s, and scholars had communicated that at-large elections diluted minority representation to city and county officials through the National Civic Review.²²⁸ And even before House Bill 1262 was introduced in 1969, the Charleston News and Courier carried an article that specifically denoted that at-large elections are a discriminatory device. When Congressman William M. McCulluch, Republican from Ohio, introduced a bill in the U.S. Congress to extend the Voting Rights Act of 1965, he noted that for those who opposed African American voting, "A whole arsenal of racist weapons has been perfected." The paper continued, "He listed among those weapons gerrymandering, consolidation of counties, *at-large elections* [my emphasis], full-slate voting, increased filing fees, and physical and economic intimidation."²²⁹

The idea that an at-large system minimizes the electoral chances of minority candidates, as compared with a single-member district plan, was commonplace in the 1960s. The men on County Council and the Legislative Delegation had to have been familiar with the City of Charleston's change in 1954 from districts to at-large elections

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following the elimination of the white primary and increasing African American voter registration. African Americans were then urging representation on city council. That year, the same year as the *Brown* decision, the City Council of Charleston changed from a single-member district to an at-large election system, and, according to African American leader Herbert Fielding, this change was in response to black candidates and the increasing African American black registration in certain city wards.²³⁰ Historian Walter J. Fraser, Jr. analyzed the move to at-large elections for the city council. "As in other urban areas of the state, the number of aldermen were reduced and Charleston's twenty-four City Councilmen were cut to twelve at-large aldermen. This was important for keeping the Broad Street power establishment in power in view of the continuing white flight to the suburbs, and the increasing political assertiveness of a black population approaching 50 percent in the city. At-large aldermen represented the various city wards, but did not necessarily have to reside in those wards. Henceforth the mayor could hand-pick his slate of candidates and if half lived below Broad Street and none came from the primarily black wards of the city, this was perfectly legal."²³¹ According to historian Millicent Brown, the change for the city to at-large elections diminished "the likelihood that the four heavily black city wards (#9, #10, #11, and #12) could elect candidates to the city council unless they were endorsed by the white majority. The restructured system was implemented just as black voter awareness and participation had increased."²³²

According to Political Scientist Everett Carl Ladd, Jr., when he was in South Carolina in 1963 researching his book, Negro Political Leadership in the South, "At the

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time of my work the question of single member districts versus multiple member districts came up repeatedly. It was a very salient issue in terms of black political participation." Ladd elaborated, "These basic facts all came together in the research that I did in discussions with black and white leaders in both North and South Carolina. It was generally acknowledged that blacks had a far greater opportunity to secure equitable representation in either municipal council seats, on the one hand, or legislative seats, on the other, if one operated with a vehicle of single member districts....Indeed, there were concrete instances when the franchise was extended to blacks in the urban south in the 1940's and 1950's, of cities that elected their representatives – their councilmen, rather – on the basis of a ward or single element district system previously going to an at large system for the precise purpose of diluting black votes, preventing the election of black candidates."²³³

Along these same lines in Charleston County, when African American voting strength increased, the school board of trustees changed from elected to appointed positions in the predominantly African American school districts. Esau Jenkins, who ran for school trustee on Johns Island in 1956 soon after returning from Highlander Folk School in the mid-1950s, came in third of four candidates. Jenkins explained that "The reason why I ran is because I wanted the Negroes to know that it is their privilege to go into any office they're qualified to hold. They are taxpayers and they have just as much right to run for public office as the white persons. I ran because some Negroes thought that if a Negro name ever was placed on a voting machine, that person would be killed." Jenkins actually finished ahead of one white man, and, apparently in reaction to Jenkins's

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unexpected showing, white policy makers decided to change the school board from elected to appointed so there would be no similar challenges. Referring to his able campaign, Jenkins summarized, "That scared some of the white folks here, and the man who is on the county council decided that they would change voting for trustees on the school board. They would have it be appointed because Johns Island strength was growing too much." Esau Jenkins's analysis was right on target; in 1956, the South Carolina General Assembly upon recommendation of the Charleston Legislative Delegation abolished elected school trustees and made the trustees appointed in St. John's District No. 9 and also in another predominantly African American school district No. 23, St. Paul's.²³⁴

The 1965 Voting Rights Act, and South Carolina's failed attempt to block the Act, put white Charlestonians on notice that the black vote will be counted. In response to the Voting Rights Act, a number of counties in South Carolina (such as Sumter, Edgefield, Colleton, Horry, Chester) opted for an at-large elected system to dilute the effect of the black vote (These were struck down in the 1980s through litigation because vote dilution violated the Voting Rights Act).²³⁵ Like these other South Carolina counties, the change in the method of election to the Charleston County Council was enacted when African Americans registration was increasing after the 1965 Voting Rights Act and when African Americans were gaining significant political strength and influence. In Charleston County the 1960 Voting Age population was 77,909 whites and 35,499 nonwhites. Pre-Voting Rights registration was 50,310 for whites (64.6 percent of eligible whites) and 13,976 for nonwhites (39.4 percent of eligible nonwhite voters).²³⁶ In 1967

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registration was 54,648 for whites (70.1 percent of eligible whites) and 17,991 for nonwhites (50.7 percent of eligible nonwhite voters).²³⁷ This was the year the County Council proposed to change the method of election to at-large from district.

The population figures for the City of Charleston itself, from which all eligible voters cast ballots on all three County Council seats, are instructive. In 1950, Charleston, with 70,174 citizens, was 56 percent (39,287) white.²³⁸ By 1960, with 65,925 residents, the city had become 51 percent (33,612) non-white.²³⁹ By 1970, the City of Charleston had 66,945 denizens, 45.4 percent non-white (36,576 white and 30,369 non-white, of which 30,251 were African American)²⁴⁰ Thus, without the annexation of largely white areas, the city would have had an even higher concentration of African Americans in 1970 than it did in 1960. However, the new mayor in 1960, J. Palmer Gaillard, had promised change. According to historian Stephen O'Neill, "the change Gaillard promised was intended to preserve white electoral power in the city." Annexation preoccupied the first months of Mayor Gaillard's administration as he brought into the city white areas west of the Ashley River. "By the end of 1960, these first additions to Charleston in 111 years had added 12,521 people to the city, nearly everyone white." Working with the Mayor, Harold Petit, a founder of Charleston's Citizens' Councils, headed suburban residents who worked for Mayor Gaillard's annexation plan. The News and Courier went beyond the usual code words to warn that if whites from other areas were not annexed, "greater Charleston is headed for serious trouble....They know the College of Charleston could become dominated by votes of slum dwellers if suburban people don't join the

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city." Thus, according to O'Neill, "Gaillard's successful dilution of the black vote" impeded African American political advances.²⁴¹

Historian Walter J. Fraser, Jr. concurs in O'Neill's analysis. From 1959 to 1969, Gaillard tripled the size of the city from 5 to 18 square miles "through mergers and annexations that encompassed the burgeoning suburbs and growing shopping malls west of the Ashley River. Already populated by white ethnic groups who had left the city for the countryside years before, the area was adding people daily who were new to the region and employed in the expanding north area. Through such an annexation program Gaillard added thousands of white voters loyal to the city administration – thereby diminishing the effect of black voters in municipal elections – while he 'packed' the City Council with friendly black aldermen under the at-large system."²⁴² In 1974, the U.S. Department of Justice found that City of Charleston's annexations were "racially motivated" because they "changed the majority population of the city from black to white." This Justice Department objection led to the city's 1975 change of method of election from at-large to single-member districts and the election of a number of African American candidates to the City Council.²⁴³

There is no doubt that policy makers were conscious of the importance of the African American vote and knew that its concentration in certain areas would be especially influential if district elections were used. In the same legislative session where Senator Bourne introduced Senate Bill 131, and where the House amended the bill so that all council persons run at-large in the county, the controversial Charleston school

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consolidation bill set off a filibuster, and the debate included a number of references to the increased strength and influence of the African American vote. Also during this same 1967 session, there arose a concern over where to place the black majority Williamsburg County with the realignment of senate districts with mandated one-person, one-vote reapportionment. According to Government Affairs Editor of the Columbia State, Philip G. Grose, this was "racially tinged." According to Grose, those supporting the move of Williamsburg, "reportedly feared a Williamsburg-Clarendon-Sumter combination would result in a Negro voting majority in the district."²⁴⁴ According to State reporter Paul Clancy, the legislators from different counties explained that they did not want Williamsburg as part of their Senatorial district because they "have no community of interests." But these were code words cloaking a racial purpose; "one of the reasons not given but strongly implied is fear of the county's predominantly Negro population at election time."²⁴⁵ Thus, the legislative session where the House Delegation amended Senator's Bourne bill so that County Council would be elected at-large was a session where legislators were concerned about aligning a black majority county so that the African American vote would be diluted.

Changes in voting patterns for local offices would also have been noticed. It could not have escaped John E. Bourne's attention that in the 1966 election in which he won the State Senate race as a Republican, that Miner Crosby, a Democrat, beat Republican Roberts for one of the district seats in North Charleston for the County Council. Crosby's opponent won two of the three wards that voted in the district, but lost by enough votes in the one ward with a substantial African American population that he

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lost to Crosby.²⁴⁶ This would certainly help to explain Bourne's Senate Bill S131 to make the other two single-member district elections in the North Charleston area voted on by all the members of the North Charleston area. The North Charleston area was predominantly white and was becoming even more so. North Charleston had the one Council seat that was voted on by all residents, which Bourne had won in 1964, and now Bourne wanted to change the method of election so that it would be similar to the City of Charleston where all voters in the city of Charleston voted for all three council members, thereby diluting the heavily black wards. Savvy politicians could have foreseen that Micah Jenkins would lose his district race in his bid for re-election in 1968. He lost by 290 votes, and his district contained heavily black areas like Johns Island.²⁴⁷

With the high proportion of the peninsula city's population now African American, the likelihood looked promising that African Americans would capture at least one of the seats on the Charleston County Council under the multimember district plan. Moreover, as shown, the newspapers emphasized the African American growing political strength and influence. It is implausible to think that the decision makers in 1967-1969 did not know the implications of the increasing number of black voters, particularly how the increasing segregation patterns in the city and county concentrated African Americans into natural constituent voting districts.

Ironically, in the first election after the method of election was changed to at-large, the first African American, Lonnie Hamilton, III, was elected to the Charleston County Council. This was not an unusual occurrence in the South at this time. At the

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same time that recognition of the growing impact of the African American vote motivated elected bodies to go to at-large elections, the increased influence of African American voters meant that Southern governing bodies were becoming more willing to appoint or slate an African American for election. Since African Americans were voting primarily for Democrats, and since the Republican Party was growing in Charleston, the leaders of the Democratic Party found themselves in something of a dilemma after they recognized that 1965 Voting Rights Act was going to be enforced.

In his 1972 deposition, Dr. Everett Carl Ladd, Jr., when asked why some African Americans were elected from at-large systems, helped to clarify the particular situation of the Democratic Party in Charleston. Ladd explained that one reason "might be that a political party wished to secure black votes and made some concessions in order to secure them. Now if you have a situation of strong antipathy between blacks and whites where whites are likely to punish a party if it goes too far in courting black votes, well presumably in that context the political party is going to give just as little as it possibly can out of its self interest in order to get black votes, on the one hand, but not turn off, or turn away, white voters."²⁴⁸ And, in 1967, Democratic Governor Robert McNair announced his intention of appointing African Americans both to state-wide office and to local draft boards;²⁴⁹ thus, as shown earlier, the Charleston Legislative Delegation had recommended the appointment of an African American to the school board for District 20, and the only African American member of a draft board in South Carolina in 1967 was from Charleston.²⁵⁰ In a 1972 deposition, former chair of the Charleston Democratic Party (March 1968-October 1971) Dr. Gordon Stine was asked whether there were "still

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numbers of white voters who are reluctant to vote for black candidates in Charleston County," he responded, "I would have to say I think so, probably because of the nature of the individual." Attorney Armand Derfner had Dr. Stine read an article, "GOP 'Negative leadership' Is Rapped By Stine" written by Barbara S. Williams after the 1970 general election. Derfner read, "While the white community as a whole felt it was time to have black representation, many, Stine said, felt there only should be one and Fielding was better-known." Stine acknowledged that basically this was "an accurate summary" of what he told Williams.²⁵¹

Partisan politics influenced the vote, but did not change the racial polarization, and politicians had to balance between the races. The 1967 slating process of African American St. Julian F. Divine for black ward 9 in the City by Mayor Palmer Gaillard's machine is illustrative of the problems white Democrats faced with the increasing black voter registration. The Committee of 100 (see above) ran three of their own candidates in wards with the highest black registration in the primary, including one challenging St. Julian Divine. The paper reported that those "three wards that have the largest percentage of Negro voters" expected the heaviest voter turnout. The racial atmosphere was tense. The Committee of 100 sent merchants a circular encouraging them to vote for their candidates. In direct reference to the earlier protests of the Charleston Civil Rights Movement, especially the traumatic riot of 1963, they claimed Mayor Gaillard used police and force after riots started. "Would you prefer to negotiate with respected Negro leaders to stop the trouble before it starts? Thereby preventing destruction of your homes, the killing of your loved ones and the destruction and utter ruin of your

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business?" According to the News and Courier, this was interpreted by some merchants as "injecting racially oriented riots and their control into the primary." Despite some organized African American opposition to St. Julian Divine, Divine won in this at-large election because he was on the Gaillard slate.²⁵²

Thus in 1970, in the first at-large election to Charleston County Council, Democratic policy makers slated popular high school teacher Lonnie Hamilton, III, to represent North Charleston. The eight-year veteran of the Charleston County Council, Miner W. Crosby, the only member to vote against changing the method of election from district to at-large, lost in the primary to Hamilton. According to the News and Courier, Crosby "blamed Democratic party bosses for his defeat."²⁵³ Hamilton believes that he was able to win because Congressman Mendell Rivers, who was a noted segregationist Democratic Party leader, placed his hand on Hamilton's shoulder during a campaign rally at the auditorium and told people he was supporting Hamilton and they should vote for him.²⁵⁴ In a deposition in 1990, attorney Robert N. Rosen asked Hamilton, "Did you have the support of any of the political figures in the community? I mean, for example, did Gedney Howe go out of his way to support you in the primary or – " Hamilton answered, "They all – yeah, I got the support to [sic] the political figures at the time." Throughout his deposition Hamilton stressed the uniqueness of his situation in 1970 and in subsequent elections. In 1970, he explained, "I happened to have had all of the elements then of satisfying things that – those kinds of qualities that people were looking for at the time. It will probably never happen again in the history probably of the county."²⁵⁵ Hamilton also testified to the continuing importance of race in elections in

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Charleston. When asked if "racism played any role in any of your elections," Hamilton responded, "Racism was there, but the thing that helped me with the racism was the fact that I had – I had been working with these same racist people's children." He then gave an example, a "white man came up to me and told me that he didn't like me, and, you know, he called me the favorite word, but that he'd never lie to his daughter and he'd promised his daughter that he would vote for me." Hamilton believed that some white Charlestonians would not vote for a black candidate and some African Americans would not vote for a white.²⁵⁶ Thus, Lonnie Hamilton confirmed political scientist Dr Everett Carl Ladd, Jr.'s theories as the situation in Charleston County.

IV. Views Expressed by Policymakers on Related Issues

This section of the report will examine some of the viewpoints of politicians involved in setting up the at-large elections: Micah Jenkins, John E. Bourne, Jr., Nathan Cabell, and George Grice, all members of the County Council or of the Charleston Legislative Delegation. As noted by Charleston NAACP leader J. Arthur Brown in 1964, "the local power structure can and does set the stage for whatever happens."²⁵⁷ I will also look at the school consolidation bill because the same Legislative Delegation enacted that bill also, and the views of the decision-makers, as expressed on this related issue, are relevant in showing that discriminatory purpose was a motivating factor.

Micah Jenkins

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In 1967, when the County Council's Legislative (sometimes called Government Study) Committee proposed the shift to at-large elections, that committee was chaired by Republican Micah Jenkins who had led the white citizens' council movement in Charleston and South Carolina in the mid-1950s.²⁵⁸ In 1956, an article in the News and Courier discussed Jenkins' involvement in white organizations opposed to integration, "He was chairman of the States Right League which later became the Citizens Council." According to another 1956 newspaper article, Jenkins was leader of "a third party movement in South Carolina by serving as state chairman of the Federation of Constitutional Government."²⁵⁹ Furthermore, Jenkins was described as a major player in white supremacist groups in Charleston, South Carolina, and in the South by historians; one historian notes that Jenkins was among the Citizenship Council "notables serving on either the executive board or the advisory board" of the Federation for Constitutional Government, which was a "'national' coordinating organization for white resistance groups."²⁶⁰ In addition, as the chair of the Religious Affairs Committee of the Charleston Grass Roots League, Jenkins prepared Bulletin No. 3 accusing the National Council of Churches of supporting "the Supreme Court's left-wing segregation ruling."²⁶¹ One historian described the purpose of the Citizens' Councils as the same as "other white supremacy groups...Its members wear business suits instead of bedsheets," a description echoed in the deposition of former Charleston State Senator Charles Gibson. When asked about the Citizens' Council of Greater Charleston of 1967, Gibson replied, "I know generally citizens councils around the south were ... I always considered they were members of Klan and has (sic) suits on instead of sheets."²⁶²

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John E. Bourne, Jr.

It was Senator John E. Bourne of North Charleston who introduced Senate Bill S131 that would have had all three members of the County Council from the North Charleston area run at-large within the North Charleston multimember district in 1967. In 1967 also, Senator John E. Bourne pushed for passage of a Republican bill that would have required all voters to reregister before the 1968 primary or general elections. According to press accounts, the Republicans were making a "stubborn fight to trim Negro strength in 1968 elections." As the newspaper reported, "Sen. John E. Bourne Jr. of Charleston was even more specific in spelling out GOP fears that adoption of the amendment would keep thousands of illiterate Negroes on the rolls to vote Democratic next year." In opposing a Democratic amendment to postpone implementation of reregistration until after the fall elections, Bourne protested, "If we pass this amendment it seems to me we will be slapping the federal registrars on the back and saying, 'We were glad to have you. You did a good job.'"²⁶³ Also, in 1967, as the designated "workhorse" of the 31-hour Republican filibuster against the School Consolidation bill introduced by Senator Charles Gibson, Senator Bourne made several statements that reveal his views on race at that time. According to Bourne, the Consolidation bill had "overriding political implications that have not come out and may not come out." Bourne pointed out that District 20 was 82 percent African American, and he worried that "the Department of Health, Education and Welfare is seeking to force racial balance by breaking down school district lines."²⁶⁴ Both the Columbia State and the Charleston News and Courier reported that Bourne "also raised the specter of forced racial integration by busing if the county's eight districts are merged into one. District 20 is 82 per cent Negro, while the

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St. Andrews district is 84 per cent white, he stressed." The paper quoted Bourne's prediction that "Orders from the great white fathers in Washington to wipe out 'these imbalances' wuld [sic] follow consolidation."²⁶⁵ About three weeks later Bourne repeated the warnings that consolidation would lead to busing and integration.²⁶⁶ In 1986, in the deposition of former state senator Charles Gibson, the attorney for Charleston County School District, Robert N. Rosen, asked, "And the people who were talking race, and I can use John Bourne as an example because he is in the newspaper, you know, I guess we have to assume some of the newspaper reports are vaguely correct, that he was talking about busing and using race as an issue." Gibson answered, "Right."²⁶⁷

In 1978, the newspaper quoted Bourne's opponent in the North Charleston mayoral race, Miner W. Crosby. The headline read, "North Charleston mayoral candidate and others blasted John E. Bourne's administration as racist at a Democratic Breakfast Club Friday." The paper quoted Crosby as saying of Bourne, "He's very much a racist. For some reason or other, he doesn't like black people." President of the North Charleston NAACP, the Rev. Omega Newman, and NAACP political action chairman, Walter Jenkins, "cited various ways the city of North Charleston discriminates against minorities." Although more than 16,000 African Americans were North Charleston city residents, "Bourne has never appointed one black person to the North Charleston sewer district or one black in a top position in city government." Interestingly, a major issue in the 1978 North Charleston mayoral election was the African American demand for single-member district elections to City Council. Buck Miller, a white Democrat, said,

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"The election system in North Charleston makes it impossible for a black to be elected." Crosby, in 1969 the only member of the Charleston County Council who had voted against the move to at-large elections, proposed for the city a mixed plan with six single-member districts. Crosby wanted "equal representation" for the North Charleston City Council. According to the NAACP president, "Crosby and many of the challenging candidates promise to vote for single-member districts if they are elected."²⁶⁸ Bourne opposed this demand from the African American community in North Charleston for single-member districts.

Nathan Cabell and George Grice

State Representative Nathan Cabell and then College of Charleston President George Grice were among white leaders who obtained a new charter for the College of Charleston in order to block its desegregation. Both Cabell and Grice helped establish private segregated schools in Charleston during the 1960s.²⁶⁹ In 1964, when five segregated private schools were established in the wake of the 1963 Charleston school desegregation order, Cabell withdrew his daughter from public school, and, according to one scholar, offered "advice to those who wanted to establish segregated academies." He arranged for the leaders of the segregation academy movement to meet with Governor Donald Russell "to secure state approval for the leasing of church property for private schools." In 1963, Senator Cabell was Chairman of the Board of Charleston Academy, Inc., an association with the purpose of organizing private "segregation" institutions.²⁷⁰ At a Legislative Delegation meeting in 1963, Cabell accused Charleston's Senator T. Allen Legare of attempting to appoint an African American to the school board. Legare

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responded, "I did not take my children out of the public schools in the City of Charleston and place them in another school district outside the city and leave my fellow citizens to face the problem alone, as Mr. Cabell did."²⁷¹ In his 1986 deposition, former State Senator Charles Gibson remarked on Mr. Cabell's quotation in an editorial of 9 January 1968 where Senator Cabell wanted to reestablish the districts before consolidation because consolidation would result in busing children between districts and the assigning of teachers. Cabell was quoted in the editorial as saying anyone who opposed him was "a racial extremist," whereupon, Gibson commented, "God knows he ought to recognize one."²⁷²

As president of the College of Charleston, George Grice resisted integration.²⁷³ Grice was the segregated academy's "educational advisor" when the College of Charleston offered refresher courses for whites teaching in private schools.²⁷⁴ Grice lent the resources and the prestige of the college to the private segregation school movement. He helped found "College of Charleston Prep" (8-12 grade) and let "that segregation academy use the College's facilities."²⁷⁵ As state senator in 1967 George Grice opposed the Gibson School Consolidation Bill and warned that the removal of district lines would be "regretted forever," and would permit the federal government to enforce "50 percent integration" in all the schools.²⁷⁶ He attempted to amend the bill so that District 20 (82 percent African American) was excluded from consolidation.²⁷⁷ In a series of articles, the paper reported on Senator's Grice's continued opposition to the consolidation bill and on his warnings against integration, specifically that the bill would "speed up" desegregation.²⁷⁸ The Columbia State reported, "Grice, former president of the College

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of Charleston, warned that public education will suffer if the school districts are consolidated. He said increased integration will result and more private schools will be established."²⁷⁹ Grice argued that consolidation would "lead to bussing students from one school to another to accomplish 'racial balance' under Supreme Court and Washington edicts."²⁸⁰

School Consolidation

The reaction of the above politicians to the Gibson School Consolidation Bill introduced in 1967 is an excellent gauge for racial attitudes by decision makers who were in the Legislative Delegation. As the newspaper coverage makes clear, and as the deposition of Gibson states explicitly, the issue behind many of the code words was race.²⁸¹ Although Gibson's bill was intended to move money around, not people, he found it necessary to amend the bill to ensure against student and teacher transfers and to assure people that it would not lead to desegregating the schools in 1967. Dean of South Carolina Law School Robert Figg, who had been the counsel working for the state in the *Briggs* desegregation case, and Dr. G. Creighton Frampton, who as Charleston School Superintendent had worked with Figg on the state's defense of segregated education (both Figg and Frampton were among the original members of Senator's Marion Gressette's Segregation Committee and both worked with the committee through its entire tenure until 1966), helped develop a compromise to end the Republican filibuster. They (and Senator Gressette) were brought in to help amend the bill so that it would be "more palatable."²⁸²

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The Gibson School Bill was amended by the same House Delegation that amended Senate Bill S131 to change the method of electing county council to at-large. The motivation behind the amendments to the Gibson School Bill has been carefully researched by Dr. R. Scott Baker, who concludes, "The Act of consolidation was a fitting conclusion to a quarter century of shrewd white resistance, testimony to the ability of whites to limit the impact of NAACP litigation. By equalizing expenditures and maintaining constituent district boundaries, consolidation stymied the NAACP's attempt to achieve meaningful desegregation in Charleston." Baker showed that "Equalization was always a means to a larger end: the maintenance of racial separation in education. By blocking desegregation across district lines, consolidation embedded schools in racially segregated and economically unequal social environments."²⁸³

In March 1967 the News and Courier reported that the school board would be elected by the county at-large, but with residency requirements. A Board of trustees would head each constituent district. The legislators kept in place the appointed and elected methods that existed at the time, which meant that District 20, the City of Charleston, which had been appointed by the Governor upon recommendation of the Legislative Delegation since 1951, would continue as appointive. We have already discussed how District 9 (St. John's) and District 23 (St. Paul's) had their election of trustees abolished in 1956 after Esau Jenkins nearly won in a race for school board trustee. Following the activism of the Civil Rights Movement in Charleston, the legislature in 1964 also abolished elected school board trustees for the only other

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predominantly African American District (St. James-Santee). All other school district trustees were elected.

Racial motivation is all too obvious when the trustees were to be an elected board, except in four districts, 20, 23, 9, and 1. Thus, in the Gibson School Consolidation Bill, Act 340, this racial distinction was incorporated, denying African Americans the vote where they might have the majority and determining vote for school trustees. In these four predominantly African American districts, they would be appointed. It was not until 1974 that these predominantly African American school districts were allowed to elect their trustees.²⁸⁴

The very same Legislative Delegation that enacted the Consolidation School Bill, Act 340, that set up elected trustees for white school districts but appointive trustees for black school districts (and an at-large system for the County Consolidated district) is the Delegation that amended Senator Bourne's Bill S131 to make the Charleston County Council elected at-large county-wide. Because the Consolidated School Act created "constituent districts" and maintained a different method of selecting trustees to those constituent districts—that is predominantly white school constituent districts elected trustees while the predominantly African American constituent districts had their trustees appointed, there is a clear racially discriminatory purpose. It is reasonable to infer, therefore, that the at-large election system for County Council by the same legislators was established, similarly, for a racially discriminatory purpose, that is, to prevent Charleston County African Americans from electing candidates of their choice to County

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Council. Thus, the at-large election system was a means to ensure white control of election to County Council.

Aftermath of Act 94:

In my study of the issue, there is no one clear answer as to the motivation for preserving the at-large system; for a variety of reasons the at-large system has not been changed. In the thirty years since the change from districts to at-large elections, there have been a number of times that African Americans have wanted to change to a single-member district system of election. African American legislators proposed bills to change the method of election from at-large to single-member districts, but were unsuccessful in these endeavors. I would confirm that, among a number of different factors in that history, it is clear that the desire of some people to dilute the black vote has continued to play a part in the continuation of at-large elections.²⁸⁵

The County Council went to great length and expense to deny Charleston County a referendum on the method of election during the implementation of the South Carolina Home Rule Act No 283. Early in 1976 during the home rule debates, Barbara S. Williams wrote, "The recent city election is an example of the fact that single-member districts do give minority groups a better chance for election."²⁸⁶ Charleston County Council Chair, James A. Stuckey, was adamant against single-member districts and strongly opposed having a referendum on the changes being made under Home Rule. "We would lose our method of election" if a referendum were held, Stuckey claimed.

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The paper reported that Stuckey believed, "if the voters select the at-large method of election, the Justice Department will disapprove it and order the single-member district method."²⁸⁷ Although citizens approached the County Council and asked for an election, Council voted to stay at-large. As provided under Act 283, Charleston citizens presented a petition with 14,115 signatures; according to Representative Wheeler M. Tillman the petition was originally spearheaded by "black members on the delegation."²⁸⁸ However, when the Board of Voter Registration examined the signatures, they rejected over two-fifths, thus finding the petition short of the 10 percent needed for a referendum.²⁸⁹ The petitioners quickly gathered additional signatures, but the Election Committee would not accept them because the deadline had passed. Native Charlestonian, Republican Governor James Edwards, intervened and also supported a referendum on the method of election.

In late 1976, the newspaper reported there were three lawsuits on home rule from Charleston County.²⁹⁰ The Election Commission successfully sued to extend the deadline for the referendum on the method of election. However, County Council appealed that decision, and the State Supreme Court sided with the County Council's rejection of the referendum. House Representative Wheeler Tillman then initiated a second petition for a referendum and got more than 17,000 signatures. County Council sued Tillman and again the Court sided with County Council that the second petition for a referendum was invalid as it was after the deadline.²⁹¹ In June 1977 the Justice Department rejected Charleston's implementation of home rule, declaring that "the council's present method of election is invalid." The newspaper cited a Justice Department official who said "the

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decision was based on the department's belief that the present election method dilutes black voting strength and therefore violates the Voting Rights Act of 1965."²⁹² The County again appealed its case to the Justice Department, but Justice objected again. The paper quoted a letter by Assistant Attorney General Drew S. Days, "There is substantial support for single-member district elections in the county but this sentiment ... has not even been brought to a vote." Moreover, he contended that in Charleston County, "we are presented with a serious problem of potential dilution of minority voting strength through continuation of the old election system in a context where change and improvement seemed to be promised to the electorate." The paper noted that "County Council, insistent that the at-large method of election now used is better, has resisted the referendum attempts."²⁹³

Despite the Justice Department's objection, the Charleston County Council proceeded to hold elections under the at-large system. Thus, in 1978, both the Justice Department and African American plaintiffs filed a case against the County Council for not having sought preclearance for their Home Rule change. County Council claimed that, although some of the County Council's powers had been changed, they did not change the method of election from that established under Act No. 94 in 1969 and therefore they could still use at-large elections. The Court agreed with the County Council.²⁹⁴ One argument that County Council had used against holding a referendum on Home Rule was that it would be too costly, yet they willingly went to the huge expense involved in defending the at-large method of election.

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Finally in 1989, the county did have a referendum on the method of election. The referendum to change to district elections did not pass, but African Americans strongly supported the change to single-member district in this close vote. Lonnie Hamilton concurred that he had supported the referendum for single-member districts and that the African American community wanted district elections.²⁹⁵

Conclusion:

Section I of this report examined the general background of discrimination in South Carolina and in Charleston. The report then turned to specific events in Charleston to ascertain the climate of race relations prior to Act 94. This was the local context for the change in Method of Election. A look at this chronology has demonstrated that the decision makers during this time were very concerned about increased African American voting strength and were fearful that African Americans would vote as a "bloc." Section II of the report presented the sequence of events in the Charleston County Council and the South Carolina General Assembly leading to the change from districts to at-large elections for the Charleston County Council. This section also questioned the rationale for this change. My research has persuaded me that the goal of hindering African American office holding played a substantial role (along with other, non-racial factors) in the introduction of the issue in 1967 and in the passage of Act No. 94 in spring 1969. The clear explanation for the change is that it was intended to dilute the growing strength of the African American vote. At-large elections occasioned by this statute were

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accompanied by a significant pattern of racial bloc voting in Charleston County. This combination is, to a significant degree, racially discriminatory.

Section III examined the anticipated and foreseen effects on minority citizens of the change from districts to an at-large method of election. This section included an analysis of the racially motivated annexations to the City of Charleston. Section IV looked at the views expressed by policy makers on related issues, especially school consolidation. Racial motivation is all too obvious in the school consolidation issue because racial distinction was incorporated. The constituent district trustees were to be an elected board if the school district was white and an appointed board if the school district was predominantly African American.

In conclusion, in Charleston County, South Carolina, as in other Southern communities I have investigated, at-large elections have served as a device to dilute the African American vote, to deny them the opportunity to elect candidates of their choice, and thus minimize the impact of the 1965 Voting Rights Act.

Notes:

¹ *Village of Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. (1977) 252, 265-68, 97 Supreme Court Reporter, pp. 555-68.

² *South Carolina v. Katzenbach*, 383 U.S. 301 (1966). South Carolina filed the original complaint. At the Court's invitation, Alabama, Georgia, Louisiana, Mississippi, and Virginia filed briefs as *amicus curiae* supporting South Carolina's claim that certain provisions of the Voting Rights Act were unconstitutional. Numerous other states filed briefs supporting the constitutionality of the act. 383 U.S. 301, 308-309, 310n, 329-330 (1966).

³ I. A. Newby, *Black Carolinians: A History of Blacks in South Carolina, 1865-1968* (Columbia: University of South Carolina Press, 1973), 15.

⁴ Kirby concluded that while the upper South practiced some moderation and restraint in race relations, in South Carolina, and especially in low country counties like Charleston, the tone was much more racist. Jack Temple Kirby, *Rural Worlds Lost: The American South, 1920-1960* (Baton Rouge: Louisiana State University Press, 1987), p. 247.

⁵ Francis Butler Simkins, "Race Legislation in South Carolina since 1865," *South Atlantic Quarterly*, XX (June 1921), pp. 177, 168.

⁶ See James M. Banner, Jr., "The Problem of South Carolina," in Stanley Elkins and Eric McKittrick, eds., *The Hofstadter Aegis: A Memorial* (New York: Alfred A. Knopf, 1974), pp. 76-80.

⁷ Orville Vernon Burton, "The Black Squint of the Law: Racism in South Carolina" in David R. Chesnut and Clyde N. Wilson eds., *The Meaning of South Carolina History: Essays in Honor of George C. Rogers, Jr.* (Columbia: University of South Carolina Press, 1991), p. 166; Laughlin McDonald, "An Aristocracy of Voters: The Disfranchisement of Voters in South Carolina." *South Carolina Law Review* 37 (1986): 558.

⁸ Joel Williamson, *After Slavery: The Negro in South Carolina During Reconstruction, 1861-1877* (Chapel Hill: University of North Carolina Press, 1965), 72-79; Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper and Row, 1988), 200; Burton, "Black Squint," pp. 166-167; Orville Vernon Burton, et al., "South Carolina," p. 192 in *The Quiet Revolution: The Impact of the Voting Rights Act in the South, 1965-1990*, edited by Chandler Davidson and Bernard Grofman (Princeton: Princeton University Press, 1994).

⁹ McDonald, "An Aristocracy of Voters," p. 560.

¹⁰ Bernard E. Powers, Jr., *Black Charlestonians: A Social History 1822-1885* (Fayetteville: University of Arkansas Press, 1994); and "Community Evolution and Race Relations in Reconstruction Charleston, South Carolina" *South Carolina Historical Magazine*, 95:1 (January 1994), 27-34; William Hine, "Frustration, Factionalism, and Failure: Black Political Leadership and the Republican Party in Reconstruction Charleston, 1865-1877" (Ph.D. dissertation, Kent State University, 1979); Foner, *Reconstruction*, pp. 352-354, 357, 538; Thomas Holt, *Black Over White: Negro Political Leadership in South Carolina During Reconstruction*. (Urbana: University of Illinois

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Press, 1977), esp. 97; Williamson, After Slavery, esp. 363-417; Burton, "Whence Cometh Rural Black Reconstruction Leadership: Edgefield County, South Carolina," The Proceedings of the South Carolina Historical Association, 1988-1989 (Aiken: The South Carolina Historical Association, 1989), pp 27-38.

¹¹ James L. Underwood, The Constitution of South Carolina, II: The Journey Toward Local Self-Government (Columbia: University of South Carolina Press, 1989), pp. 47-50; McDonald, "An Aristocracy of Voters," p. 560.

¹² Walter B. Edgar, ed., Biographical Directory of the South Carolina House of Representatives, Volume 1: 1692-1973. Columbia: University of South Carolina Press, 1974), 141, 407, 409, 420-422; Emily Bellinger Reynolds and Joan Reynolds Faunt, eds., Biographical Directory of the Senate of the State of South Carolina, 1776-1964 (Columbia: South Carolina Archives Department, 1964), 62.

¹³ Foner, Reconstruction, pp. 352-354, 357, 538; Holt, Black Over White, esp. 97; Williamson After Slavery, esp. 363-417; Orville Vernon Burton, "Race and Reconstruction: Edgefield County, South Carolina." Journal of Social History 12, 1978, pp. 27-38; George C. Rable, But There Was No Peace: The Role of Violence in the Politics of Reconstruction (Athens: University of Georgia Press, 1984), pp. 165-172.

¹⁴ William J. Cooper, Jr. The Conservative Regime: South Carolina, 1877-1890 (Baltimore: The Johns Hopkins University Press, 1968), p. 89. Burton, et.al., "South Carolina," pp. 192-94; See also Orville Vernon Burton, In My Father's House Are Many Mansions: Family and Community in Edgefield, South Carolina (Chapel Hill: University of North Carolina Press, 1985), pp. 228, 290.

¹⁵ Foner, Reconstruction, pp. 573-74.

¹⁶ Burton, "Race and Reconstruction," pp. 42-44; Foner, Reconstruction, pp. 570-575; Richard M. Gergel, "Wade Hampton and the Rise of One Party Racial Orthodoxy in South Carolina," The Proceedings of the South Carolina Historical Association, 1977, 7-8; Robert J. Kaczorowski, The Politics of Judicial Interpretation: The Federal Courts, Department of Justice and Civil Rights, 1866-1876 (New York: Oceana, 1985), pp. 57-61; Kermit L. Hall, "Political Power and Constitutional Legitimacy: The South Carolina Ku Klux Klan Trials, 1871-1872," Emory Law Journal 33: 1984, 936-941; Simkins and Woody, South Carolina During Reconstruction; Williamson, After Slavery; Burton, "Ungrateful Servants? Edgefield's Black Reconstruction: Part I of the Total History of Edgefield County, South Carolina." (Ph.D. dissertation, Princeton University, 1976).

¹⁷ George B. Tindall, South Carolina Negroes, 1877-1900 (Columbia: University of South Carolina Press, 1952), pp. 309-10.

¹⁸ Tindall, South Carolina Negroes, pp. 54, 69; J. Morgan Kousser, The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910 (New Haven: Yale University Press, 1974), pp. 32, 49-50, 85-87, 89, 91-92.

¹⁹ Tindall, South Carolina Negroes, pp. 31, 39.

²⁰ Current law allowed congressional regulation of elections to national office, and Democratic reliance on violence, intimidation, and fraud to carry state and local elections would not bear federal scrutiny.

²¹ Tindall, South Carolina Negroes, p. 54; Kousser, Shaping of Southern Politics, p. 32 and "The Voting Rights Act and the Two Reconstructions," in Bernard Grofman

and Chandler Davidson, eds., Controversies in Minority Voting: The Voting Rights Act in Perspective (Washington, D.C.: The Brookings Institute, 1992), pp. 598-602; McDonald "Aristocracy of Voters," p. 568. Kousser shows that the proportion of the five other districts was also black majority and probably the sixth as well. Dilutive and disfranchising methods allowed Democrats to control the outcome of the other districts.

²² Journal of the Constitutional Convention of the State of South Carolina ... 1895 (Columbia, 1895), p. 469. While in the U.S. Senate Tillman declared, "We have done our level best. We have scratched our heads to find out how we could eliminate every last one of them. We stuffed ballot boxes. We shot them. We are not ashamed of it." Richard Maxwell Brown, Strain of Violence: Historical Studies of American Violence and Vigilantism (New York: Oxford University Press, 1975), pp. 85-86, 89; Francis State Butler Simkins, Pitchfork Ben Tillman: South Carolina (Baton Rouge: Louisiana State University Press, 1944), 407, 531-534; and Simkins, "Ben Tillman's View of the Negro," Journal of Southern History 3 (May 1937), p. 161, 167-168; Stephen Kantrowitz, Ben Tillman and the Reconstruction of White Supremacy (Chapel Hill: University of North Carolina Press, 2000); James G. Banks, "Strom Thurmond and the Revolt Against Modernity" (Ph.D. dissertation, Kent State University, 1970), pp. 26, 29-30, 60-73. C. Vann Woodward, Origins of the New South, 1877-1913 (Baton Rouge: Louisiana State University Press, 1951), p. 333. One of Tillman's native Edgefield County political lieutenants was J. Strom Thurmond's father.

²³ J. C. Sheppard to the General Assembly in Journal of the S. C. House (1886), p. 50. Underwood, The Constitution of South Carolina, pp. 67-69, 73, 80-81, 265.

²⁴ Powers, Black Charlestonians and "Community Evolution and Race Relations in Reconstruction Charleston, South Carolina" South Carolina Historical Magazine, 95:1 (January 1994), 27-34; Hine, "Frustration, Factionalism, and Failure"; Williamson, After Slavery; Burton, "Ungrateful Servants?" See also My Father's House, "Race and Reconstruction," 31-56, and "The Rise and Fall of Afro-American Town Life: Town and Country in Reconstruction Edgefield County, South Carolina," in Toward a New South? Studies in Post-Civil War Southern Communities, edited by Orville Vernon Burton and Robert C. McMath, Jr., pp. 152-92 (Westport, Conn: Greenwood Press, 1982).

²⁵ First Request for Judicial Notice: Document List Regarding Historic Racial Discrimination in South Carolina in U.S. v. Charleston County (C.A. 2-01 01155 11), Moultrie v. Charleston County Council. (C.A. 9-01 562 11) (hereinafter referred to as First Request for Judicial Notice), II. Court Decision, 109: Vander Linden v. Hodges 193 F. 3d 268 (4th Cir. 1999), p. 73; Underwood, The Constitution of South Carolina, pp. 67, 265.

²⁶ Underwood, The Constitution of South Carolina, pp. 67, 265.

²⁷ John Gary Evans shepherded Tillman's legislation through the General Assembly in 1893 (Acts 1893, 481ff). Evans, state senator from Aiken County, colleague of Tillman's since the Farmers' Movement days of the 1880s, and Tillman's successor in the Governorship in 1894, was the nephew of Confederate General Martin Gary and lived at Gary's home, Oakley Park, from which Gary had directed the Red Shirt paramilitary movement. The home was made a "Shrine" and was noted in the local Edgefield paper as "the only shrine to the Red Shirt movement in the world." The Citizen News, Thursday, 30 November 1995, p. 3, "Tour of Homes set this Sunday."

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²⁸ Tindall, South Carolina Negroes, pp. 309-10. This helps explain why there are so many exceptions and variances in the Act; counties like Charleston and Beaufort where there were large African American populations were exempt from parts of the law. That variance was allowed at all in the County Government Act is suspect in itself. Underwood, The Constitution of South Carolina, see pp. 68-104, esp. p. 92-95; Columbus Andrews, Administrative County Government in South Carolina, (Chapel Hill: University of North Carolina Press, 1933), pp. 34-40, esp. p. 37. See The Charleston News and Courier, "Vengeance on Charleston," Dec. 9, 1893; "Tillmanites Grow Tired," Feb. 13, 1894; "Home Folk in Washington," March 9, 1894; "The Negro in Politics," March 25, 1894; "Under Negro Rule Again," Jan. 11, 1895; "The Republican Challenge," Jan 8, 1895; "Who separated 'The Decent White People,' Governor?," Jan 6, 1895; "A Dangerous Experiment," Dec. 18, 1893; "A Delusion and a Snare," April 19, 1894.

²⁹ The history of the 1895 Disfranchising Convention is well known. See especially Burton, "Black Squint," pp. 161-185.

³⁰ Tindall, South Carolina Negroes, p. 82; Kousser, Shaping of Southern Politics, pp. 150-151; McDonald, "Aristocracy of Voters," p. 571; Burton, "Black Squint," pp. 1991, 161, 170.

³¹ Quote from Burton, "Black Squint," p. 171.

³² Simkins, Pitchfork Ben Tillman, pp. 289-291; Kousser, Shaping of Southern Politics, p. 147; Burton, "Black Squint," pp. 169-170; Tillman, "Message of Benjamin R. Tillman to the General Assembly ...1892," (Columbia, 1892), p. 24.

³³ In 1876 three counties, Anderson, Pickens, and Oconee, adopted a primary system. In 1878 Martin Gary proposed that African Americans be excluded from the political process by barring them from the Democratic party primary. Charleston News and Courier, 4 June 1878. Eight more counties followed in 1878, nine in 1880, and four in 1882. In 1886 the Democratic party held the first primary for Congress.

³⁴ Tindall, South Carolina Negroes, 1952, 89; Frederic Ogden, The Poll Tax in the South (University, Alabama: University of Alabama Press, 1958), pp. 42, 123, 188.

³⁵ *Smith v. Allwright*, 321 U.S. 649 (1944).

³⁶ V. O. Key, Jr., Southern Politics in State and Nation (New York: Alfred A. Knopf, 1949), p. 627.

³⁷ Rules Adopted by State Convention, May 15, 1946 (Columbia: Democratic Party of South Carolina), p. 2.

³⁸ Tinsley E. Yarbrough, A Passion for Justice: J. Waties Waring and Civil Rights (NY: Oxford University Press, 1987), pp. 65-66; *Elmore v. Rice*, 72 F.Supp. 516, 527 (E.D.S.C. 1947), *aff'd sub nom Rice v. Elmore*, 165 F.2d 387 (4th Cir. 1947), *cert. denied*, 333 U.S. 875 (1948).

³⁹ *Brown v. Baskin*, 78 F.Supp. 933 (E.D.S.C. 1948), 80 F.Supp. 1017 (E.D.S.C. 1948), *aff'd*, 174 F.2d 391 (4th Cir. 1949). Key, Southern Politics, pp. 628-632. Fraser, Charleston! pp. 398-99.

⁴⁰ S.C. Acts (1950), No. 858. In addition to restoring previously eliminated provisions of the state's election code, the statute includes numerous revisions. Debate over the bill was infused with racial comments. "The white primary is gone," lamented a legislator from Chesterfield County, and "we have a problem of biracial voting in our state." Charleston News and Courier, 9 February 1950, 11A; see also 24 February, 1B; 15

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March, 1A; 14 April 1950, 1A. The newspaper also commented that the regulation of primary elections had been removed in 1944 "to avoid having the white primary outlawed in the courts." Charleston News and Courier, 14 April 1950, 1A. Under the full-slate requirement, Section 7(13), "if a voter marks more or less names than there are persons to be elected or nominated to an office...his ballot shall not be counted for such office." Section 10 provided that "no candidate shall be declared nominated in a first primary election unless he received a majority of the votes cast for the office for which he was a candidate," and Section 11 required a runoff primary in the event that candidates failed to secure the requisite majority. Both the full-slate and runoff requirements date from the days of the white primary; see South Carolina Code (1942), Sec. 2365-2367. The first adoption of both devices seems to have been in S.C. Acts (1915), No. 118, Sec. 1.

⁴¹ Charleston News and Courier, 12 February 1950, 4B.

⁴² Burton, "Black Squint," pp. 170-171.

⁴³ Gunnar Myrdal, An American Dilemma: The Negro Problem and Modern Democracy (New York: Harper and Brothers, 1944), p. 488n. Historian I. A. Newby puts registration at 3,000 (0.8 percent of voting age African Americans in South Carolina). Newby, Black Carolinians, p. 291.

⁴⁴ Journal of the House of Representatives of the Second Session of the 85th General Assembly of the State of South Carolina being the Regular Session, Beginning Tuesday, January 11, 1944, resolution dated February 29, 1944, pp. 569-570.

⁴⁵ Burton, "Black Squint," pp. 175-177, see table 9.2; Orville Vernon Burton, "Foreword" to Benjamin E. Mays, Born to Rebel (Athens: University of Georgia Press, Brown Thrasher Edition, 1987), p. xxiii, Table 2. School expenditures are calculated from the Annual Reports of the South Carolina Department of Education.

⁴⁶ Duwall v. School Board, C.A. No. 1082 (E.D.S.C.); R. Scott Baker, "Ambiguous Legacies: The NAACP's Legal Campaign Against Segregation in Charleston, South Carolina, 1935-1975," (Ph.D. dissertation, Columbia University, 1993), pp. 69, 80-93; Millicent Ellison Brown, "Civil Rights Activism in Charleston, South Carolina, 1940-1970," (Ph.D. dissertation, Florida State University, 1997), p. 38.

⁴⁷ The Byrnes statement on "gerrymandering of districts" from the 1950 radio address is in a file pertaining to the 1950 gubernatorial campaign, in the Papers of James F. Byrnes, Cooper Memorial Library, Clemson University. Interview with Dr. Marcia Synott, March 3, 2001; Deposition of Dr. Marcia Synott, *U.S. Plaintiffs, Richard Ganaway, et al., Plaintiffs-Intervenors v. Charleston County School District and State of South Carolina*; Plaintiffs' Proposed Post-Trial Findings of Fact," in *U.S. Plaintiffs, Richard Ganaway, et al., Plaintiffs-Intervenors v. Charleston County School District and State of South Carolina*, C.A. No. 81-50-8; pp. 24-36; Baker, "Ambiguous Legacies," p. 176, 265-66.

⁴⁸ Burton, "Black Squint," p. 177; Newby, Black Carolinians, pp. 274-313; John G. Sproat, "Firm Flexibility: Perspectives on Desegregation in South Carolina," in Robert H. Abzug and Stephen E. Maizlish, eds., New Perspectives on Race and Slavery in America: Essays in Honor of Kenneth M. Stampp (Lexington: University of Kentucky Press, 1986), pp. 164, 166-169.

⁴⁹ "Negro Leaders Jubilant Over Court Decision," Charleston Evening Post, 17 May 1954, 2A; "S.C. Now in Position to End Public Schools," (7A) and "Byrnes is

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'Shocked' at Court's Decision," (1 and 6A) 18 May 1954, 7A, both Charleston News and Courier.

⁵⁰ 1952 Code of Laws of South Carolina, Section 21-2 (1960 Supplement); Plaintiffs' Proposed Post-Trial Findings of Fact, *United States of America, Plaintiff, Richard Ganaway, et al., Plaintiff-Intervenors, v. Charleston County School District and State of South Carolina*, C.A. No. 81-50-8, p. 195.

⁵¹ Walter Edgar, South Carolina: A History (Columbia: University of South Carolina Press, 1998), p. 523; Stephen O'Neill, "From the Shadow of Slavery: The Civil Rights Years in Charleston," (Ph.D. dissertation, University of Virginia, 1994), pp. 154-58.

⁵² Sproat, "Firm Flexibility."

⁵³ Brown, "Civil Rights Activism," p. 272.

⁵⁴ Fowler, Presidential Voting, pp. 43-47; Donald R. Matthews and James W. Prothro, "Social and Economic Factors and Negro Voter Registration in the South," American Political Science Review, 57 (1963): 4-44; Michael Ray Cline, "The South Carolina Negro Vote in the Presidential Elections of 1952 through 1964" (M.A. thesis Political Science, University of South Carolina, 1966).

⁵⁵ Camden Chronicle, 19 February 1965, p. 1.

⁵⁶ This was a higher proportion than other states of the deep South. U.S. Commission on Civil Rights 1968, 222-23; Columbia Record, 16 March 1965, 1B. The U. S. Commission on Civil Rights. Other sources suggest that there were a few African American elected officials in black majority districts. Burton, et al., "South Carolina," pp. 197-8, 200-201.

⁵⁷ O'Shields v. McNair, 254 F. Supp. 708 (D.S.C. 1966).

⁵⁸ See Burton, et al. "South Carolina," pp. 202-205; Underwood, The Constitution of South Carolina, pp. 116-75; Walter A. Edgar, South Carolina in the Modern Age (Columbia: University of South Carolina Press, 1992), pp. 117-119; Michael A. Maggiotto, "Reapportionment and Voting Rights," in Graham and Tyler, eds., Local Government in South Carolina, Vol. II, pp. 87-106; Bryant Simon, "The Devaluation of the Vote: Legislative Apportionment and Inequality in South Carolina, 1890-1962," The South Carolina Historical Magazine, 97 No. 3 (July 1996), pp. 227-245.

⁵⁹ 383 U.S. 301, 308-309, 310n, 329-330 (1966).

⁶⁰ Columbia State, 14 December 1965, 14B; 26 December 1965, 3D.

⁶¹ U.S. Commission on Civil Rights 1968, 61-64, 72-73, 86-87, 95-96, 117-118, 167-168.

⁶² Columbia State, 26 December 1965, 3D and 18 October 1967, 9B; Columbia Record, 16 March 1965, 1B. Burton, et al., "South Carolina," pp. 200-01. Whites as well as blacks registered at a higher rate after the passage of the Voting Rights Act.

⁶³ Quoted in Jack Bass and Jack Nelson, The Orangeburg Massacre (1970; 2nd ed. Macon: Mercer University Press, 1984), p. 197.

⁶⁴ Fraser, Charleston! pp. 279-80, 363; Arthur I. Waskow, From Race Riot to Sit-In: 1919 and the 1960s (Garden City, NY: Doubleday and Co., 1966), pp. 12-16, 180, 210; O'Neill "From the Shadow of Slavery," p. 43.

⁶⁵ Edgar, South Carolina, p. 540.

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⁶⁶ Anthony Harrigan, ed. The Editor and the Republic: Papers and Addresses of William Watts Ball (Chapel Hill: University of North Carolina Press, 1954), pp. 18-19; Howard H. Quint, Profile in Black and White: A Frank Portrait of South Carolina (Washington, D.C.: Public Affairs Press, 1958), p. v.

⁶⁷ "Before You South Carolinians," Charleston News and Courier, 9 December 1950. Judge Waring's quote is from 1954 and cited in Stephen O'Neill, "To Endure, but Not Accept: The News and Courier and School Desegregation," The Proceedings of the South Carolina Historical Association, 1990, p. 87.

⁶⁸ See O'Neill, "To Endure, but Not Accept," pp. 87-89.

⁶⁹ "Paper Curtain," Time Magazine, 22 May 1962, in Integration File, Vertical Files, South Carolina Room, Charleston Public Library.

⁷⁰ O'Neill, "To Endure, but Not Accept," pp. 87-94; William D. Smyth, "Segregation in Charleston in the 1950s: A Decade of Transition," South Carolina Historical Magazine, p. 99.

⁷¹ "Mr. Esau Jenkins: 'Here's A Man Being Shot For A Dog,'" and "We didn't have a chance when we go into court." in Carawan, Ain't You Got a right to the Tree of Life?, pp. 145-46, 154.

⁷² In 1950 and 1960, 99 percent of Charleston County's non-white population was black. U. S. Department of Commerce. Bureau of the Census, Census of Population: 1950, Volume 2, Characteristics of the Population, Part 40, South Carolina (Washington, D.C., 1952), pp. 46-51, 74, 140, 192; U.S. Census of Housing 1950, Part 40, p. 26; O'Neill, "From the Shadow of Slavery," pp. 84-85;

⁷³ U. S. Department of Commerce. Bureau of the Census, Census of Housing: 1950, Volume 1, General Characteristics, Part 40, South Carolina (Washington, D.C., 1953), pp. 45, 48, 54.

⁷⁴ Eighty-Third Annual Report of the State Superintendent of Education of the State of South Carolina 1951 (Columbia, 1951), pp. 240-245, 248-249, 270-277.

⁷⁵ U. S. Department of Commerce. Bureau of the Census, Census of Population: 1960, Volume 1, Characteristics of the Population, Part 42, South Carolina (Washington, D.C., 1961), pp. 150, 162, 1666, 170.

⁷⁶ Ninety-Third Annual Report of the State Superintendent of Education, State of South Carolina 1960-1961 (Columbia, 1961), pp. 116-119, 124-131, 148, 170; Stephen Lowe, "Brown on Trial: School Desegregation in Charleston, South Carolina, 1960-1964," The Avery Review III:1 (Spring 2000), p. 34.

⁷⁷ Ninety-Fourth Annual Report of the State Superintendent of Education, State of South Carolina 1961-1962 (Columbia, 1962), pp. 116-119, 124-131, 142, 162.

⁷⁸ U. S. Department of Commerce. Bureau of the Census, 1970 Census of Population, Volume 1, Characteristics of the Population, Part 42, South Carolina (Washington, D.C., 1973), p. 293; Leon Fink and Brian Greenberg, Upheaval in the Quiet Zone: A History of Hospital Workers' Union, Local 1199 (Urbana: University of Illinois Press, 1989), p. 130.

⁷⁹ U. S. Department of Commerce. Bureau of the Census, 1980 Census of Population, Volume 1, Characteristics of the Population, Part 42, South Carolina (Washington, D.C., 1983), pp. 384, 410, 423; Pockets of Poverty in Charleston County,

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South Carolina; Berkley-Charleston-Dorchester Council of Governments, Report on Economically Less Developed Areas in the Berkeley-Charleston-Dorchester Region.

⁸⁰ U. S. Department of Commerce. Bureau of the Census, *1990 Census of Population and Housing, Population and Housing Characteristics for Census Tracts and Block Numbering Areas, Charleston, SC MSA* (Washington, D.C., 1993), pp. 245, 261, 277, 294, 375, 407.

⁸¹ All school expenditures and ratios were calculated from the Annual Reports of the State Superintendent of Education. For 1959-60, from the Ninety-Second Annual Report of the State Superintendent of Education, State of South Carolina, 1959-1960 (Columbia, 1960), pp. 156, 160, 274-77. Per student spending for 1961-62 from Cox, "1963—The Year of Decision," p. 168;

⁸² Bruce Smith, Associated Press writer, "Racial Divide Smaller, but Persistent," Greenwood Index-Journal, 19 August 2001, 1, 5 A; "Race an Issue throughout State's History," Greenville News, 19 August 2001, 1, 4 G.

⁸³ Donald L. Fowler, "Negro Voting—1966, S.C. Democratic Primary," The University of South Carolina Governmental Review (Bureau of Governmental Research and Service) No. 3, August, 1966, quotations from pp. 3, 4.

⁸⁴ William Julius Wilson, When Work Disappears: The World of the New Urban Poor (New York: Alfred A. Knopf, 1996) and Wilson, The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy (Chicago: University of Chicago Press, 1987); Joe R. Feagin, Racist America: Roots, Current Realities, Future Reparations (New York: Routledge, 2000); Cheryl Harris, "Whiteness as Property," Harvard Law Review, 106:8(June 1993), pp.1707-1791; Douglas S. Massey and Nancy A. Denton, American Apartheid (Cambridge: Harvard University Press, 1993); Charles Abrams, Forbidden Neighbors: A Study of Prejudice in Housing (NY: Harper, 1955).

⁸⁵ *Duval v. School Board*, C.A. No. 1082 (E.D.S.C.); O'Neill, "From the Shadow of Slavery," p. 100; Brown, "Civil Rights Activism," p. 41; Baker, "Ambiguous Legacies," pp. 80-81.

⁸⁶ Brown, "Civil Rights Activism," pp. 47-49; O'Neill, "From the Shadow of Slavery," p. 100.

⁸⁷ Brown, "Civil Rights Activism," p. 49.

⁸⁸ *Elmore v Rice*, 72 Supp. At 528; *Brown v. Baskin*, 78 F.Supp. 933 (E.D.S.C. 1948), 80 F.Supp. 1017 (E.D.S.C. 1948), *aff'd*, 174 F.2d 391 (4th Cir. 1949). Key, Southern Politics, pp. 628-632. Fraser, Charleston!, pp. 398-99.

⁸⁹ O'Neill, "From the Shadow of Slavery," p. 110; Brown, "Civil Rights Activism," pp. 237-46. Brown gives the numbers as 3,036 Charlestonians and 1,001 North Charlestonians for a total of 4,727 newly registered African American voters. On McCray and the Progressive Democrats see Patricia Sullivan, "Southern Reformers, The New Deal, and the Movement's Foundation," in Armistead Robinson and Patricia Sullivan, eds., New Directions in Civil Rights Studies (Charlottesville: University of Virginia Press, 1991), pp. 87, 88; and Days of Hope: Race and Democracy in the New Deal Era (Chapel Hill: University of North Carolina, 1996) pp. 8, 170-71, 189-91; Robert A. Garson The Democratic Party and the Politics of Sectionalism, 1941-1948 (Baton Rouge: Louisiana State University Press, 1974), p. 117; Orville Vernon Burton,

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"South Carolina Democratic Party (PDP)," in Waldo E. Martin and Patricia Sullivan, eds., Civil Rights in the United States, vol 2 (NY: Macmillan, 2000), pp. 693-94.

⁹⁰ O'Neill, "From the Shadow of Slavery," p. 106.

⁹¹ Underwood, The Constitution of South Carolina, p. 265 n. 224. Citing *Gaud v. Walker*, 214 S.C. 451, 464, 53 S.E. 2d 316, 321 (1949).

⁹² Brown, "Civil Rights Activism," p. 250.

⁹³ "Four Negro Policemen Go on the Beat Today," Charleston News and Courier, 29 August 1950.

⁹⁴ Brown, "Civil Rights Activism," pp. 250-52.

⁹⁵ *Ibid.*

⁹⁶ Smyth, "Segregation in Charleston in the 1950s," pp. 110-11.

⁹⁷ O'Neill, "From the Shadow of Slavery," p. 117; Brown, "Civil Rights Activism," p. 254.

⁹⁸ Brown, "Civil Rights Activism," pp. 72-77.

⁹⁹ "Local Voters Ballot Today," 8 July 1952 and Bryan Collier, "Negroes Eliminated; 10 Men Apparently win House Seats," 9 July 1952, both in Charleston News and Courier, cited in Brown, "Civil Rights Activism," pp. 264-67.

¹⁰⁰ "Lincolntonville to Celebrate 64th Anniversary," Charleston News and Courier, 23 April 1953.

¹⁰¹ Charleston News and Courier, 14 February 1954; Brown, "Civil Rights Activism," pp. 270-71.

¹⁰² O'Neill, "From the Shadow of Slavery," p. 90.

¹⁰³ Charleston News and Courier, 18 May 1954, quoted in Brown, "Civil Rights Activism," p. 76.

¹⁰⁴ Edgar, South Carolina, p. 523.

¹⁰⁵ Smyth, "Segregation in Charleston in the 1950s," pp. 110-11, 127; Cox, "1963—The Year of Decision," p. 303; O'Neill, "From the Shadow of Slavery," p. 138.

¹⁰⁶ For Byrnes' explanation of the gerrymandering, see his quoted radio address in the above Section: History of Discrimination in South Carolina. "Byrnes Withholds Specific Comment," Charleston News and Courier, 18 May 1954, 6A; Brown, "Civil Rights Activism," p. 67; O'Neill, "From the Shadow of Slavery," p. 96; Baker, "Ambiguous Legacies," p. 176, 265-66. Dr. Gordon was the expert witness for the plaintiffs in *U.S. Plaintiff, Richard Ganaway, et.al., Plaintiffs-Intervenors v. Charleston County School District and State of South Carolina*, C.A. No. 81-50-8.

¹⁰⁷ Smyth, "Segregation in Charleston in the 1950s," pp. 110-11; Cox, "1963—The Year of Decision," p. 352.

¹⁰⁸ O'Neill, "From the Shadow of Slavery," pp. 152, 155-56; Brown, "Civil Rights Activism," p. 76-77.

¹⁰⁹ *Brown v. South Carolina State Forestry Commission*, 226 F. Supp., 646 (E.D.S.C. 1963), *aff'd*, 331 F. 2d 142 (4th Cir. 1964); W.D. Workman, "S.C. May Eliminate State parks as Result of Negroes Court Action," Charleston News and Courier, 26 July 1955 cited in Brown, "Civil Rights Activism," p. 150; Cox, "1963—The Year of Decision," pp. 342-45, 263-64. O'Neill, "From the Shadow of Slavery," pp. 154-55, 158, 166. See also Robert F. Morrison, "Beach for Negroes," Letters to the Editor, 27 April

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1952, "Possible Court Action Hinted in Negro Park Controversy," 24 November 1952, "Negro Spokesmen Dislike Park Site," 17 December 1952, "Negroes Threaten Court Fight to Open State Parks," 2 July 1953, "Court Action to Open State Parks to Negroes Advocated," 3 July 1953, "Negroes Seek Use of Edisto State Park," 17 August 1953, "Entry to Edisto Park or Court, NAACP Writes" and "Legislators to Consider Request That Edisto Be Opened to Negroes," both 28 August 1953, all in Charleston News and Courier.

¹¹⁰ "Man in the News: Independence Key to Micah Jenkins," Charleston News and Courier, 28 August 1956 and Charleston Evening Post, "Micah Jenkins, Conservative," 23 June 1956, both in Micah Jenkins file, Vertical Files, South Carolina Room, Charleston Public Library; Fowler, Presidential Voting in South Carolina; Cline, "The South Carolina Negro Vote."

¹¹¹ Brown, "Civil Rights Activism," p. 79.

¹¹² O'Neill, "From the Shadow of Slavery," p. 169; Brown, "Civil Rights Activism," p. 78; Baker, "Ambiguous Legacies," pp. 177-78; Smyth, "Segregation in Charleston in the 1950s," p. 112. See the Minutes of the County Board of Education, May 24, 1956, exhibit in *U.S. and Ricahrd Ganaway, et al. v. Charleston County*.

¹¹³ Simon Cuthbert-Kerr, "'You Don't Have to Make the X for Me, Because I can Write my Own Name': Septima Clark, Citizenship Education, and Voter Registration in the South Carolina Sea Islands, 1954-1963," The Avery Review, III:1 (Spring 2000), 56-80; Smyth, "Segregation in Charleston in the 1950s," p. 113; Brown, "Civil Rights Activism," p. 124.

¹¹⁴ "Special Election Results," Charleston News and Courier, 4 December 1957 cited in Brown, "Civil Rights Activism," p. 274.

¹¹⁵ *Cummings v. City of Charleston*, 288 F.2d 817 (4th Cir. 1961); O'Neill, "From the Shadow of Slavery," pp. 212-14; Brown, "Civil Rights Activism," p. 151-57; Baker, "Ambiguous Legacies," p. 192.

¹¹⁶ Smyth, "Segregation in Charleston in the 1950s," p. 122.

¹¹⁷ O'Neill, "From the Shadow of Slavery," pp. 2, 90.

¹¹⁸ Cox, "1963—The Year of Decision," p. 352; O'Neill, "From the Shadow of Slavery," p. 198; Brown, "Civil Rights Activism," pp. 81, 166; Baker, "Ambiguous Legacies," pp. 198-201.

¹¹⁹ Brown, "Civil Rights Activism," p. 82; Baker, "Ambiguous Legacies," pp. 204-5.

¹²⁰ Brown, "Civil Rights Activism," p. 84; O'Neill, "From the Shadow of Slavery," p. 224; Lowe, "Brown on Trial," pp. 34-6.

¹²¹ Brown, "Civil Rights Activism," pp. 170-75.

¹²² Cox, "1963—The Year of Decision," pp. 416, 419-20.

¹²³ Edgar, South Carolina, p. 540.

¹²⁴ *Brown v. Charleston District Twenty School Board*, 226 F. Supp. 819 (E.D.S.C. 1963); Brown, "Civil Rights Activism," p. 102.

¹²⁵ O'Neill, "From the Shadow of Slavery," pp. 218, 225-38; Cox, "1963 – The Year of Decision," pp. 404-18; Brown, "Civil Rights Activism," pp. 176-216; Baker, "Ambiguous Legacies," pp. 213-18; Alada Shinault-Small, "Several Rungs Up the Ladder—The Struggle for Civil Rights in Charleston Summer 1963," The Avery Review,

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2:1(Spring 1999): 8-29, see p. 22-25 for a chronology of the events of the 1963 Charleston movement; see files on the Charleston Movement of 1963 and particularly the riot at the Avery Research Center, College of Charleston.

¹²⁶ Cox, "1963—The Year of Decision," p. 421.

¹²⁷ Cox, "1963—The Year of Decision," p. 168; "Fund to Aid District 20 in Court Battle is Cut," *Charleston News and Courier*, 29 April 1965, 1B..

¹²⁸ Brown, "Civil Rights Activism," p. 96.

¹²⁹ Lowe, "Brown on Trial," pp. 33-55; Cox "1963—The Year of Decision," pp. 161, 230-31, 243-44; O'Neill, "From the Shadow of Slavery," pp. 239-40; Baker, "Ambiguous Legacies," p. 225; Brown, "Civil Rights Activism," pp. 90, 93.

¹³⁰ Cox, "1963—The Year of Decision," pp. 186, 217-230, 235-37, 240-43.

¹³¹ Cox, "1963—The Year of Decision," p. 169.

¹³² Gary Orfield, *Public School Desegregation in the US, 1968-1980* (Washington: Joint Center for Political Studies, 1983), p. 23; Brown, "Civil Rights Activism," p. 98.

¹³³ Fowler, *Presidential Voting in South Carolina*.

¹³⁴ Carawan, *Ain't you got a right to the tree of life?* p. 150. Fowler, "Negro Voting," p. 1.

¹³⁵ "Why Must Greater Charleston Organize?" Prepared by: Organization Committee, Greater Charleston Citizens' Council in Associations file, Vertical Files, South Carolina Room, Charleston Public Library.

¹³⁶ *News and Courier*, 31 January 1967, 1B.

¹³⁷ "Negro Named to School Board," *Charleston News and Courier*, 9 June 1965, 1B.

¹³⁸ O'Neill, "From the Shadow of Slavery," pp. 290-91, Brown, "Civil Rights Activism," pp. 275-76.

¹³⁹ Brown, "Civil Rights Activism," p. 276-77.

¹⁴⁰ Baker, "Ambiguous Legacies," p. 255-56.

¹⁴¹ "Dr. King Will Speak Here Today," and "Klan Holds Rally Near Ravenel," *Charleston News and Courier*, July 30, 1967.

¹⁴² O'Neill, "From the Shadow of Slavery," p. 248-249.

¹⁴³ Leon Fink and Brian Greenburg, *Upheaval in the Quiet Zone: A History of the Hospital Workers' Union, Local 1199* (Urbana: University of Illinois Press, 1989), chap. 7, pp. 129-58, quotation from p. 130; Leon Fink, "Union Power, Soul Power: The Story of 1199B and Labor's Southern Strategy," *Southern Changes* 5:2 (1983), 9-20; for the background of the racial atmosphere, see the excellent documentary, "You Got to Move." On the conditions leading to the strike and the strike itself, see Steve Estes, "'I Am Somebody': The Charleston Hospital Strike of 1969," *The Avery Review* 3:1 (Spring 2000), 8-32;

¹⁴⁴ Fraser, *Charleston!*, p. 428.

¹⁴⁵ Smyth, "Segregation in Charleston in the 1950s," p. 113; Brown, "Civil Rights Activism," p. 124; Carawan, *Ain't you got a right to the tree of life?* p. 150, 152. See also the excellent documentary on politics and African American life in Charleston in the 1960s, "You Got to Move." Bernice Robinson and Bill Saunders are interviewed about

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politics and discrimination in Charleston at the time the County Council method of election is changed to at-large.

- ¹⁴⁶ Baker, "Ambiguous Legacies," p. 114.
- ¹⁴⁷ A. J. Tamsberg to Thomas R. Waring, 1959, in the Papers of Thomas R. Waring, South Carolina Historical Society, Charleston, South Carolina.
- ¹⁴⁸ Brown, "Civil Rights Activism," p. 124; "Negro Leaders Call Local Voter Registrations Fair," Charleston News and Courier, 25 March 1965, 10B; Carawan, Ain't you got a right to the tree of life? p. 2.
- ¹⁴⁹ Editorial, "City Election," Charleston News and Courier, 12 June 1967, p. 8A.
- ¹⁵⁰ "Three Aldermanic Seats up for Grabs in Primary," News and Courier, 13 June 1967, 1A, 2A.
- ¹⁵¹ "Before You South Carolinians," Charleston News and Courier, 8 August 1950 commenting on earlier published article, "Johnston and the Negro Vote."
- ¹⁵² Baker, "Ambiguous Legacies," p. 188-89.
- ¹⁵³ "Bloc Voting," Charleston News and Courier, 11 and 12 March 1959, cited in Brown, "Civil Rights Activism," p. 126, n. 30 p. 132.
- ¹⁵⁴ "Favored to Win," Charleston News and Courier, 15 June 1965, 3A.
- ¹⁵⁵ O'Neill, pp. 290-91; Brown, "Civil Rights Activism," pp. 275-76.
- ¹⁵⁶ Fowler, "Negro Voting," p. 2.
- ¹⁵⁷ "Figg Wrote School Bill," Evening Post, 15 March 1967.
- ¹⁵⁸ Charleston News and Courier, 22 February 1967.
- ¹⁵⁹ Charleston News and Courier, 17 February 1967.
- ¹⁶⁰ Charleston News and Courier, 8 May 1968.
- ¹⁶¹ Charleston News and Courier, 19 May 1968.
- ¹⁶² "County Officials Suffer Defeat," Charleston News and Courier, 12 June 1968, 1A, 6A.
- ¹⁶³ Charleston News and Courier, November 20, 1968.
- ¹⁶⁴ Charleston News and Courier, November 24, 1968.
- ¹⁶⁵ "Edwards Says Rivers Reneged," Charleston News and Courier, 4 January 1969.
- ¹⁶⁶ Editorial: "Stop Discrimination," Charleston News and Courier, 26 January 1969.
- ¹⁶⁷ "County Republicans Name Jenkins Party Chairman," News and Courier, 13 May 1969, 1B.
- ¹⁶⁸ O'Neill, "From the Shadow of Slavery," pp. 2, 90.
- ¹⁶⁹ "Professor Says Constitution Anti-Negro," Charleston News and Courier, 11 January 1967, 8A.
- ¹⁷⁰ Underwood, The Constitution of South Carolina, see chap. 4 "Prelude to Home Rule: Charleston County, 1948," pp. 106-115.
- ¹⁷¹ Charleston County, Section 14-1162, 1975 Cumulative Supplement, chap. 26, pp. 455-56.
- ¹⁷² No. 304, "An Act to Amend Sections 14-1162 and 14-1163 of the 1962 Code....," S.C. Statutes at Large, pp. 570-73.

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- ¹⁷³ Journal of the Senate of the First Session of the 97th General Assembly ...1967, (February 2, 7, 8), pp. 226, 304-5, 317. (Hereinafter referred to as Senate Journal) The bill received its second reading on February 7, and third reading February 8. pp. 304-305, 317. Journal of the House of Representatives of the First Session of the 97th General Assembly ..., 9 June 1967, p. 340 (hereinafter referred to as House Journal).
- ¹⁷⁴ "Bourne Seeks Change In Election of Council," Charleston News and Courier, 3 February 1967, p. 8A. Bourne intended the three members from North Charleston to be elected by all members of the North Charleston area, not at-large by the entire county. Later newspaper accounts, however, simply talk about electing the North Charleston council members at-large.
- ¹⁷⁵ "Senate Gives Nod to Council Bill," Charleston News and Courier, 9 February 1967, 1B. The South Carolina Department of Archives and History was unable to locate the initial S131 proposed by Senator Bourne. Interview with John E. Bourne, Jr. August 15, 2001.
- ¹⁷⁶ "Delegation Favors More Authority to Council," Charleston News and Courier, 6 February 1967 1B.
- ¹⁷⁷ "Council Desires Are Spelled Out," Charleston News and Courier, 8 February 1967, 10A.
- ¹⁷⁸ "County Council Request Expansion of Powers" Charleston News and Courier, 12 April 1967, p. 1-2A. Previously the newspaper referred to the Committee as the Legislative Study Committee.
- ¹⁷⁹ "Council Proposal May Face Delay," Charleston News and Courier, 13 April 1967, pp. 1-2A.
- ¹⁸⁰ "Changing County Council," Charleston News and Courier, 16 April 1967, 14A.
- ¹⁸¹ House Journal, 1 June 1967, p. 1508.
- ¹⁸² "Delegation Prepares Council Bill," 1 June 1967, 17C.
- ¹⁸³ Senate Journal June 8, p. 1462, June 29, p. 1906.
- ¹⁸⁴ Senate Journal July 5, 1967, pp. 2221-2, 243-44; House Journal, July 5 1967, p. 2083.
- ¹⁸⁵ "Disputed Bill Goes to Committee," Charleston News and Courier, July 6, 1967, 1B.
- ¹⁸⁶ "Committee Gives Nod to Bill," Charleston News and Courier, July 11, 1967, 1B, 6B.
- ¹⁸⁷ House Journal July 13, 1967, pp. 2356-2357.
- ¹⁸⁸ Senate Journal July 14, 1967, pp. 2240-41, House Journal, 1967, July 14, p. 2361. "Delegation Fails to Agree on County Council Legislation," Charleston News and Courier, 14 July 1967, 1B, 6B.
- ¹⁸⁹ House Journal 1968, April 18, 1968, p. 1079, April 23, p.1136, April 24, p. 1157; Senate Journal 1968, April 24, p. 940, April 25, p. 962, May 1, p. 1019.
- ¹⁹⁰ "Senators Agree to Amend At-Large Election Bill," Charleston News and Courier, 1 May 1968, 1B.
- ¹⁹¹ "Council Bill is Delayed in Senate," Charleston News and Courier, 2 May 1968, 2B.

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- ¹⁹² "House Group Holding Up Two Bills," Charleston News and Courier, 9 May 1968, 22A.
- ¹⁹³ Senate Journal 1968, April 24 (p. 940), April 25 (p. 962), May 1 (p. 1019). Read in the House April 18, 23, 24, 1968 and read in the Senate April 24, 25 and June 27, 1968. Jacket Cover of House Bill 2891, South Carolina Department of Archives and History (hereinafter referred to as SCDAH).
- ¹⁹⁴ "Charleston County Council Seeks Big Salary Increase," Charleston News and Courier, 8 January 1969.
- ¹⁹⁵ "Council Asks Delegation to Put Ceiling on Salary," Charleston News and Courier, 2 February 1969, 1B.
- ¹⁹⁶ "Legislators Reach Accord On Lifting Salary Ceiling: At Large Elections Planned for Council," Charleston News and Courier, 12 February 1969.
- ¹⁹⁷ House Journal 18 February 1969, p. 318.
- ¹⁹⁸ "Change to Be Proposed On Council Seats," Charleston News and Courier, 19 February 1969, 1B.
- ¹⁹⁹ House Journal 1969, Feb. 20, p. 50. See the House Amended Bill in House Journal 1967, June 6, "S. 131—Amended...", pp. 1545-46; and the draft for House Bill 2891 dated April 9, 1968 attached to letter from R. B. Scarborough to Honorable Daniel R. McLeod, Attorney General, April 11, 1968, in the South Carolina, Attorney General's Office, Opinions, 1878-1994, Box 114, File Reapportionment, S110031, SCDAH. The two bills are identical, and the wording for the area of North Charleston read, "Three members shall be residents of the area of the county lying north of the City of Charleston, as now constituted, between the Ashley and Cooper Rivers extending to the Dorchester and Berkeley County lines."
- ²⁰⁰ House Journal February 21, 1967, p. 357; Senate Journal February 25, 1969, p. 313.
- ²⁰¹ "Council Bill Hits Snag in Senate," Charleston News and Courier, 27 February 1969, 11C.
- ²⁰² House Reading were Feb. 18, 20, 21 and Senate Reading Feb. 25, March 4 and 5, 1969. Jacket Cover to House Bill 1262, Acts, Legislative Records, SCDAH; House Journal February 18 1969, p. 318, February 19, p. 333, February 20, p. 350, February 21, p. 357, March 18, p. 532; Senate Journal February 25, 1969, p. 313, March 4, p. 383, March 5, p. 393, March 18, p. 459.
- ²⁰³ See for example, the essays in Chandler Davidson, ed. Minority Vote Dilution (Washington, D.C. Howard University Press, 1984) and Chandler Davidson and Bernard Grofman, eds., Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990 (Princeton: Princeton University Press, 1994) and the books by J. Morgan Kousser, Colorblind Injustice: Minority Voting Rights and the Undoing of the Second Reconstruction (Chapel Hill: University of North Carolina Press, 1999); Frank R. Parker, Black Votes Count: Political Empowerment in Mississippi after 1965 (Chapel Hill: University of North Carolina Press, 1990); Steven F. Lawson, In Pursuit of Power: Southern Blacks and Electoral Politics, 1965-1982 (New York, Columbia University Press, 1985); see articles by Peyton McCrary, "The Dynamics of Minority Vote Dilution: The Case of Augusta Georgia, 1945-1986," Journal of Urban History, 25:2 (January 1999): 199-224; McCrary and Steven F. Lawson, "Race an Reapportionment, 1962: The

Case of Georgia Senate Redistricting, Journal of Policy History, 12:3 (2000): 293-320; J. Morgan Kousser, "How to Determine Intent: Lessons from L. A.," Journal of Law and Politics 7: 591-732. Several articles have appeared in law journals, for example, Peyton McCrary and J. Gerald Hebert, "Keeping the Courts Honest: The Role of Historians as Expert Witnesses in Southern Voting Rights Cases," 16 (1989): 101-28 and McCrary, "Discriminatory Intent: The Continuing Relevance of 'Purpose' Evidence in Vote-Dilution Lawsuits," Howard Law Journal 28 (1985): 463-93; and McCrary "Yes, But What Have They Done to Black People Lately? The Role of Historical Evidence in the Virginia School Board Case," Chicago-Kent Law Review 70:3 (1944): 1275-305.

²⁰⁴ Columbia State and Record, combined Sunday edition, 5 December 1965, D3. Graham served seventeen years on County Council and served longer than any other member as the Chair of the Council. He had been chair from 1957-65, but had given up the chairmanship for health reasons briefly in 1965. He was chair again in 1967 when the Council recommended changing to an at-large election method. Charleston News and Courier, "Graham to Quit Chairmanship," 19 December 1964, 1B and "County Council Getting New Look," 28 February 1974, 15E.

²⁰⁵ "Committee Gives Nod to Bill," Charleston News and Courier, 11 July 1967, 1B, 6B. Ironically for a "good government" argument, in 1974, several members who had supported the change to at-large election were accused of embezzlement. "Price, Balliet Indicted," 9 January 1974; "It's A Sticky Problem," 28 April 1974, p. 21C; "County Council Getting New Look," 28 July 1974, p. 15E, all in Charleston News and Courier.

²⁰⁶ "Majority of Candidates Favor At-Large Election," Charleston News and Courier, 3 May 1968. It appears at least two of the candidates who supported district elections won over candidates who supported the at-large system.

²⁰⁷ 377 US 533 (1964).

²⁰⁸ 257 F. Supp. 905; see discussion in Peyton McCrary, Jerome A. Gray, Edward Still, and Huey L. Perry, "Alabama," in Chandler Davidson and Bernard Grofman, eds., Quiet Revolution, pp. 40, 399 (n. 25).

²⁰⁹ "2 More Local Bills Cleared by House," Charleston News and Courier, 25 April 1968, 1B.

²¹⁰ "Senators Agree to Amend At-Large Election Bill," Charleston News and Courier, 1 May 1968, 1B.

²¹¹ "Majority of Candidates Favor At-Large Election," Charleston News and Courier, 3 May 1968.

²¹² 390 US 474 (1968).

²¹³ R. B. Scarborough, Chairman to Honorable Daniel R. McLeod, Attorney General, 11 April 1968, and Daniel R. McLeod, Attorney General to Honorable R. B. Scarborough, Member, House of Representatives, 15 April 1968, and "A Bill: To amend Section 14-1162 and 14-1165, Code of Laws... to require members to be elected from the county at Large, to Designate Residency Requirements and Increase Compensation for Council Members," House, Attorney: Lipton; Stenographer: Ballinger; Date: 4-9-68, all in South Carolina, Attorney General's Office, Opinions 1878-1994, Box 114 File Reapportionment s110031, SCDAH. See also the letter of Grady L. Patterson, Jr., Assistant Attorney General to Hon. W. O'Dell Venters (House Representative from

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Florence), 16 February 1966, on his inquiry as to the constitutionality of Senate Bill No. 524 on the application of *Reynolds v. Sims*.

²¹⁴ "Charleston County Council Seeks Big Salary Increase," Charleston News and Courier, 8 January 1969, 1,7A..

²¹⁵ Ibid.

²¹⁶ "County Council Reaching Manhood," Charleston News and Courier, 26 January 1969, 10A.

²¹⁷ "Twelve Council Districts Outlined," Charleston News and Courier, 9 November 1969.

²¹⁸ See the File on City-County Consolidation, in the Vertical Files, Charleston County Public Library.

²¹⁹ The 1966 Public Administration Service, "Local Government in Charleston County, South Carolina," (1313 East Sixtieth Street, Chicago Il) recommended county-city merger, and in their report they also recommended that the consolidated government adopt at-large elections. They included no discussion nor rationale for this election system, and at no point in this report did consultants ever say that it required one-person, one-vote. For newspaper coverage of the city-county merger, see the Charleston City-County Consolidation file, Vertical Files, South Carolina Room, Charleston Public Library. Apparently the referendum was defeated by the areas outside the city who voted against merger. The two areas used for comparisons were Jacksonville, Florida and Nashville, Tennessee. Jacksonville adopted a mixed plan (district and at-large) and Nashville adopted a district election system. Don H. Doyle, Nashville Since the 1920s (Knoxville: University Tennessee Press, 1985), pp. 190, 207-9, Richard Martin, Consolidation: Jacksonville Duval County, The Dynamics of Urban Political Reform (Jacksonville, Florida: Crawford Publishing Company, 1968).

²²⁰ "Controversial full-slate law recommendations," Charleston News and Courier, 4 January 1969.

²²¹ "Opposition Mounting to Repeal of Full Slate Law," Charleston News and Courier, 31 January 1969.

²²² "Legislators Reach Accord on Lifting Salary Ceiling," Charleston News and Courier, 12 February 1969.

²²³ A. J. Clement, "Letter to the Editor, Charleston News and Courier, 21 July 1951; Brown, "Civil Rights Activism," p. 256.

²²⁴ "First Request for Judicial Notice," III. Objections Under Section 5 of the Voting Rights Act, 16, Charleston City Council, September 20, 1974, p. 78.

²²⁵ "First Request for Judicial Notice," III. Objections Under Section 5 of the Voting Rights Act, 20, Charleston City Council, February 18, 1975, pp. 79-80.

²²⁶ "First Request for Judicial Notice," III. Objections Under Section 5 of the Voting Rights Act, 16, Charleston County Council, September 24, 1974, pp. 78-79. Ladd Deposition, 10 March 1972, pp. 3, 10,12, 23 discusses in general the inability of African American candidates in the South to attract white voters. For South Carolina and racial bloc voting see, Burton, et al., "South Carolina," pp. 212-13; James W. Loewen, "Racial Bloc Voting and Political Mobilization in South Carolina," Review of Black Political Economy 19 (1990): 23-37; John C. Ruoff, "Racial Polarization and Participation in Voting in South Carolina Elections, 1992-2000," June 26, 2001 Presented to Election

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Laws Subcommittee, Judiciary Committee, S.C. House of Representatives, Prepared on Behalf The Southern Poverty Law Center.

²²⁷ Charles A. Beard, American City Government: A Survey of Newer Tendencies (New York: The Century Company, 1912), pp. 95-97.

²²⁸ A 1960s standard political science textbook, Edward C. Banfield and James Q. Wilson, City Politics (Cambridge: Harvard University Press, 1963), pp. 87-96, develop this argument in more detail. See Paul T. David, "1 Member vs. 2, 3, 4 or 5," National Civic Review, LV (February 1966), pp. 75-81.

²²⁹ "Bill Would Extend Voting Rights Act," Charleston News and Courier, 31 January 1969, 15A.

²³⁰ Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Regular Session of 1954, Second Part of Forty-Eighth Volume of Statutes at Large, No. 721 (R848m H2121), pp. 1795-96; House Journal 1954, March 16 (pp. 987-88, 1005-6), March 17 (p. 1039), March 24 (p. 1323), March 27 (p. 1372); Senate Journal 1954, March 17 (pp. 718, 720), March 23 (p. 930), March 24 (pp. 934, 953), March 26 (p. 989); Interview with Herbert Fielding, August 11, 2001; 14 February, "Session Opens in Secrecy, Adjourns in Controversy," 4 March, "Delegation Favors Council Reduction Plan," 17 March, "General Assembly Directs \$1 Million Bond Issue for Bridge Construction Here," 26 March, all 1954, Charleston News and Courier; Brown, "Civil Rights Activism," pp. 270-71.

²³¹ Fraser, Charleston! p.408.

²³² Brown, "Civil Rights Activism," p. 250. Brown has the date wrong, she has the City Council going at-large in 1950.

²³³ Deposition of Professor Everett Carl Ladd, Jr. 10 March 1972, pp. 5, 8 in Stevenson v. West, CA 72-45; Everett Carl Ladd, Jr., Negro Political Leadership in the South (Ithaca, NY: Cornell University Press, 1966).

²³⁴ Carawan, Aint You Got a Right to the Tree of Life?, p. 152; Act. No. 890 (R1103, H2252), "An Act to Amend Section 21-1631 of the Code of Laws of South Carolina, 1952, Relating to the Election or Appointment of Trustees of School Districts in Charleston County, So as to Make Further Provision for the Appointment of the Trustees of St. John's School District No. 9 and St. Paul's School District No. 23, in the County," 19 April 1956, Statutes at Large of South Carolina: General and Permanent Laws - 1956, pp. 2143-44.

²³⁵ Burton, et al. "South Carolina," Table 7.8A, pp. 207-11, 228-30.

²³⁶ According to unofficial figures published in the Charleston News and Courier, 1 November 1964.

²³⁷ U.S. Commission on Civil Rights, Political Participation (Washington, D.C. 1968), pp. 252-53.

²³⁸ U.S., Census of Population: 1950 Volume 2 Characteristics of the Population, Part 40 South Carolina (Washington, D.C., 1952), p. 47

²³⁹ U.S., Census of Population: 1960 Volume 1 Characteristics of the Population, Part 42 South Carolina (Washington, D.C., 1961), p. 38.

²⁴⁰ U.S., 1970 Census of Population Volume 1, Characteristics of the Population Part 42 South Carolina (Washington, D.C., 1973), pp. 39, 55, 67, 77, 200. One historian has the 1970 old peninsula city population as 46,575, of whom nearly two-thirds were

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non-whites and another argues that 42 percent of whites left the old peninsula city in the 1960s. See O'Neill, "From the Shadow of Slavery," pp. 209-212 and Baker, "Ambiguous Legacies," pp. 235-36.

²⁴¹ O'Neill, "From the Shadow of Slavery," pp. 209-212.

²⁴² Fraser, Charleston! pp. 420-21.

²⁴³ First Request for Judicial Notice, III. Objections Under Section 5 of the Voting Rights Act, No. 16, p. 78 (September 24, 1974); Burton, et al., "South Carolina," p. 207.

²⁴⁴ Columbia State, 26 April 1967, 1, 13A.

²⁴⁵ Columbia State, 30 April 1967, 3D.

²⁴⁶ "Election Returns from Charleston County," Charleston News and Courier, 9 November 1966. Interviews with Lonnie Hamilton, 3 and 15 August 2001; Interview with Rev. LeRoy Fayell, 3 August 2001. Using the 1970 registration data for those precincts north of the City of Charleston and east of the Ashley and west of the Cooper rivers, there were a total of 14,391 whites and 4,235 non-whites registered to vote. In St. Michael and St. Phillip precinct, there were 1,008 African American and 334 whites. Azalea precinct had 759 non-white voters.

²⁴⁷ "Election Changes Council," Charleston News and Courier, 7 November 1968, 9B.

²⁴⁸ Ladd Deposition, 10 March 1972, p. 15; "Study: Race Important in South Carolina Voting," Associated Press Newswires, Wednesday, July 25, 2001.

²⁴⁹ "Appointment of Negroes Suggested," Charleston News and Courier, 19 April 1967, 4C; Columbia State, 14 April (p. 1) and 9 (p. 7B) and 24 (p. 3B) June 1967.

²⁵⁰ "Negro Named to School Board," Charleston News and Courier, 9 June 1965, 1B; "Appointment of Negroes Suggested," Charleston News and Courier, 19 April 1967, 4C.

²⁵¹ Deposition of Dr. Gordon Stine, March 9, 1972, in *Leverne Stevenson, et al, v John C. West, etc.*, C.A. No. 72-45, pp. 3-4, 32, 36-38.

²⁵² "Voters Urged to Cast Ballots," Charleston News and Courier 12 June 1967, 1B; County Officials Suffer Defeat," Charleston News and Courier, 12 June 1968, 1A, 6A; O'Neill, "From the Shadow of Slavery," pp. 295-97.

²⁵³ "Challenger Crosby," Charleston News and Courier, 16 April 1978, 1E.

²⁵⁴ Interview with Lonnie Hamilton, III, 3 and 15 August 2001.

²⁵⁵ Deposition of Lonnie Hamilton, 5 June 1990, pp. 16, 19, 23, 26, 34, 45,55-56, 58-59, 63 Charleston, S.C. NAACP v. Charleston County School Board, C.A. No. 2:88-2938-1.

²⁵⁶ Hamilton Deposition, pp. 21-2, 45.

²⁵⁷ Columbia State, 28 August 1964; Baker, "Ambiguous Legacies," p. 231.

²⁵⁸ Especially relevant to Micah Jenkins's role as chair of the County Council committee that recommended in 1967 the change to at-large elections is the 1965 Citizens' Council's answer to "What can a Citizens' Council do?" According to a brochure the Council distributed, "Through its own committees and individual members it can identify and disseminate lawful ways of resisting destructive applications of statutes and edicts." Brochure entitled "Why Must Greater Charleston Organize?"

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Prepared by: Organization Committee, Greater Charleston Citizens' Council in Associations file, Vertical Files, South Carolina Room, Charleston Public Library.

²⁵⁹ "Man in the News: Independence Key to Micah Jenkins, Charleston News and Courier, 28 August 1956 and Charleston Evening Post, "Micah Jenkins, Conservative," 23 June 1956, both in Micah Jenkins file, Vertical Files, South Carolina Room, Charleston Public Library.

²⁶⁰ Quint, Profile in Black and White, pp. 44-45, 47-48, 137-38, quotation p. 45; Neil R. McMillen, The Citizens' Council: Organized Resistance to the Second Reconstruction, 1954-64 (Urbana: University of Illinois Press, 1972), pp. 75-6, 78, 117-18, 313, quotation note 6, pp. 117-18; Smyth, "Segregation in Charleston in the 1950s," p. 127.

²⁶¹ Quint, Profile in Black and White, p. 44.

²⁶² *Ibid.*, p. 46 and Deposition of Charles M. Gibson, 16 December 1986, pp. 68-69, *U.S. v. Richard Ganaway, et al.*, CA No. 81-50-8.

²⁶³ "GOP Loses Fight to Cut Negro Vote," Charleston Post and Courier, 2 June 1967, 1A, 13A.

²⁶⁴ "School Bill Clears Senate," Charleston News and Courier, 8 June 1967, 1, 8A; "County School Bill Passes Senate, 23-5," Charleston Evening Post, 1 March 1967.

²⁶⁵ "GOP To Caucus On Bill Today," Charleston News and Courier, 2 March 1967; "School Merger: Charleston Bill Passes," Columbia State, 2 March 1967.

²⁶⁶ Charleston Evening Post, 23 March 1967, 2B; Gibson deposition, pp. 113-14.

²⁶⁷ Gibson Deposition, p. 128.

²⁶⁸ Quotations from "Crosby Blasts Bourne Administration as 'Racist'," 29 April 1978, 3A; see also "Challenger Crosby," 16 April 1978 1E, both in Charleston News and Courier.

²⁶⁹ R. Scott Baker, "Ambiguous Legacies," pp. 232-3; Brown, "Civil Rights Activism," p. 93; see also, "College Issue May Cost Charleston Unit Charter," Baltimore African American, 20 August 1949.

²⁷⁰ Charleston News and Courier, 10 November 1963; Baker, "Ambiguous Legacies," p. 233; Cox, "1963—Year of Decision," p. 233, 235.

²⁷¹ Columbia State, 24 (p. 8B) and 25 (p. 1B) September 1963 quoted in Cox, "1963—Year of Decision," p. 236.

²⁷² Editorial, Charleston Evening Post, 9 January 1968, 2B; Gibson deposition, p. 109.

²⁷³ See for example, President Grice's Statement to the Trustees, n.d. (probably 1965), Box 45, folder 8, the Papers of George Grice, College of Charleston.

²⁷⁴ Baker, "Ambiguous Legacies," p. 233 citing Charleston News and Courier, 3, 4, 7, 8, 9, 10, 11, 12, 22 September, 25 October, and 11 December 1963; Edmund L. Drago, Initiative, Paternalism, and Race Relations: Charleston's Avery Normal Institute (Athens: University of Georgia Press, 1990), pp. 274-75.

²⁷⁵ Baker, "Ambiguous Legacies," p. 234; Drago, Initiative, Paternalism, and Race Relations, 274-75.

²⁷⁶ Charleston News and Courier, 4 March 1967; Baker, "Ambiguous Legacies," p. 268.

²⁷⁷ "School Consolidation Bill May Go To House Today: Delay In Debate Expected," Charleston News and Courier, 19 April 1967.

²⁷⁸ "By House Members: School Bill Given Key 2nd Reading," Charleston Evening Post, 20 April 1967.

²⁷⁹ "Charleston School Bill Passes House," The State, 21 April 1967.

²⁸⁰ "Foes Fail to Stall School Bill," Charleston News and Courier, 21 April 1967.

²⁸¹ In a meeting reported in the Charleston News and Courier, Senator Worsham used the code words of states' rights, "There's a lot of talk today about states rights. Now the city rights have been taken away and the majority should rule." Charleston News and Courier, 20 February 1967. See Gibson Deposition, pp. 63, 70, 87-93, 158-59.

²⁸² Gibson Deposition, pp. 51-53, 56, 63 "palatable" quotation; Deposition of Dr. Creighton Frampton, 14 March 1986, US, *Richard Ganaway, et al. v. Charleston County School District*, Case Number 81-50-8, pp.39, 68; Baker, "Ambiguous Legacies," pp. 267-70; Plaintiffs' Proposed Post-Trial Findings of Fact, *U.S. and Richard Ganaway, et al. v. Charleston County School District*, pp. 211-12.

²⁸³ Baker, "Ambiguous Legacies," p. 270.

²⁸⁴ Act 844 (R294, H1931), "An Act to make Additional Provisions . . .," 22 March 1952, pp. 2085-87, and Act 379 (R256, H1150), pp. 546-661, both in Statutes at Large of South Carolina; Article 4, 1960 Cumulative Supplement, pp. 53, 185; Act 890 (R1103, H2252) "An Act to Amend Section 21-1631 of the Code of Laws of South Carolina, 1952, Relating to the Election or Appointment of Trustees of School Districts in Charleston County, So as to Make Further Provision For the appointment of the Trustees of St. John's School District No. 9 and St. Paul's School District No. 23, in the County, 19 April 1956, Statutes at Large of South Carolina: General and Permanent Laws – 1956, pp. 2144; Article 4, Charleston County, ch 27, S.C. Code 1962, 1975 Cumulative Supplement, pp. 211-12, 371-74; Act 1037 (R1272, S838) "An Act to Amend Section 21-1631 of the 1962 Code, Relating to the Elective or Appointment of Trustees of School Districts in Charleston County, So As to Make Further Provision for the Appointment of the Trustees of St. James Santee School District No. 1., 24 April 1964, Statutes at Large of South Carolina: General and Permanent Laws – 1964, p. 2368; Act No. 340 (R472, S20) "An Act to Abolish the School District of Charleston County and to Abolish the County Board of Education of Charleston County," Statutes at Large of South Carolina: General and Permanent Laws – 1967, 8 June 1967, pp. 470-476; Act No. 936 (R983, S612) "An Act to Amend Act No. 340 of 1967 . . . , 13 March 1970, Statutes at Large: General and Permanent Laws – 1970, pp. 2032-4; Act No. 397 (R644, H1870) "An Act to Amend Section 21-1631 . . . So as to Provide that All Trustees Shall Be Elected," Statutes At Large: General and Permanent Laws –1973, pp. 692-93; Act No. 914 (R945, H2556) "An Act to Amend Section 21-1631, As Amended . . . To Delete References to Appointments of the Trustees of School District No. 20 of Charleston County . . . , " Statutes At Large: General and Permanent Laws –1974, pp. 1978-79; "Editorial: Break with the Past," "School Bill Clears Senate," Charleston News and Courier, 19 February, 24 March, and 8 June 1967.

²⁸⁵ Interview with Herbert Fielding, August 11, 2001. Mr. Fielding stated that several bills were introduced to change the election of County Council to single member

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district. See House Journal, 1978 House Bill 3661 introduced by Reps. Robert R. Woods, Tillman, Kohn, Bradley, Washington and Rawl, p. 3747; February 21, p. 856, March 14, p. 1210, March 15, p. 1264, March 16, p. 1308.

²⁸⁶ "Blacks and Republicans Pushing Home Rule," Charleston News and Courier, 11 January 1976, 15C.

²⁸⁷ "Stuckey Raps Bourne on Home Rule Vote," Charleston News and Courier, 19 April 1976, 1B.

²⁸⁸ "Home Rule Election Target Date," Charleston News and Courier, 21 January 1976, 1B.

²⁸⁹ "Home Rule Vote Clouded," Charleston News and Courier, 1 June 1976, 1A.

²⁹⁰ "Home Rule – Pick Your Question," Charleston News and Courier, 12 December 1976, 31B.

²⁹¹ "Decision Due Soon," Charleston Evening Post, 10 September 1977, 1A.

²⁹² "Justice Department Rejects County's Home Rule," Charleston News and Courier, 15 June 1977, 1A; "Local Home rule Plan is Rejected," Charleston Evening Post, 15 June 1977, 1, 2A.

²⁹³ "Justice Still Objects to County Home Rule," Charleston News and Courier, 23 December 1977, 1A.

²⁹⁴ See *Woods v. Hamilton*, CA. No. 78-873, 473 F. Supp. 641 (D.S.C. 1979); *U.S. v. County Council of Charleston County, South Carolina*, C.A. No. 78-905; *Hamilton v. Tillman* (April 18, 1977; *Infinger v. Edwards; Dodds v. Stuckey*, 234 S.E. 2d 214 (S.C. 1977); County Council Minutes, 20 April, 18 May, 6 July 1976 in South Carolina Room, Charleston Public Library. The tangled web of the home rule debate in Charleston County can be followed through the newspaper articles in the Home Rule File, (Government County), in the Vertical files in the South Carolina Room, Charleston Library. See especially, "Home Rule Referendum is Debated," 31 July, 1,3A, "Decision on County Council's Future Must Be Faced," 28 September 15E, "Choice of Local Government Bill Unlikely to Pass," 20 November 1,8B all 1975, "Blacks and Republicans Pushing Home Rule," 11 January 15-C, "Home Rule Election Target Date," 21 January 1B, "Bourne Backs Home Rule Petition Drive, 18 April 1,2A; "Stuckey Raps Bourne on Home Rule Vote," 19 April, 1B, "Home Rule Could Be Traumatic Experience Here," 2 May 27E, "Home Rule: A Chinese Puzzle," 6 May 1,7B, "Home Rule Vote Clouded," 1 June 1A, "Home Rule – Pick Your Question," 12 December 31B all 1976, "Justice Department Rejects County's Home Rule," Charleston News and Courier, 15 June 1A, "Council Seeks Reconsideration," 22 June 1A, "County Appeals Decision," 14 July 1A, "Home Rule Decision Soon," 10 September 1A; "Hamilton, Woods Debate Forms of Government," 16 September 11A, "Justice Still Objects to County Home Rule," 23 December 1A all 1977, all in Charleston News and Courier. Referendum Still Strong Possibility," 14 April 1A, "Local Home Rule Plan I Rejected," 15 June 1A, and "Decision Due Soon," 10 September 1A all in Charleston Evening Post, 1977.

²⁹⁵ Hamilton Deposition, p. 55; Interviews with Lonnie Hamilton, 3 and 15 August 2001; Interview with Rev. LeRoy Fayell, 3 August 2001; Interview with Herbert Fielding, August 11, 2001.

~~VOTER INTIMIDATION HEARING~~
DECEMBER 19, 2000

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REPORTER'S RECORD
VOLUME 1 OF 1 VOLUMES

THE STATE OF TEXAS) IN THE CITY OF HOUSTON
) HARRIS COUNTY, TEXAS
CONFERENCE OF NAACP)
BRANCHES)
VOTER INTIMIDATION HEARING) FORT BEND COUNTY, TEXAS

VOTER INTIMIDATION HEARING

On the 19TH day of December, 2000, the following
proceedings came on to be held in the above-titled
and numbered cause before the TEXAS STATE NAACP, held
at the Palm Center Business & Technology Center, 5330
Griggs St. Houston, Texas, 77021, Harris County,
Texas.

Proceedings reported by computerized stenotype
machine.

CYNTHIA J. LEE
CERTIFIED COURT REPORTERN
FOR THE STATE OF TEXAS

1 APPEARANCES

- 2
- 3 NAACP REGION VI DIRECTOR, KERYL DOUGLAS
- 4 STATE NAACP PRESIDENT AND ATTORNEY, GARY L. BLEDSOE
- 5 TEXAS NAACP VOTER EMPOWERMENT COORDINATOR, CLAUDE POSTER
- 6 TEXAS STATE NAACP POLITICAL ACTION COMMITTEE CHAIR,
7 HOWARD JEFFERSON
- 8 HOUSTON AREA URBAN LEAGUE, SYLVIA BROOKS
- 9 BLACK UNITED FUND, CLEO GLENN JOHNSON
- 10 VICE PRESIDENT AND GENERAL MANAGER, RADIO ONE
- 11 HOUSTON, ERNIE JACKSON
- 12
- 13 CONGRESSWOMAN, SHEILA JACKSON LEE
- 14 HOUSTON CITY COUNCILMAN, CARROLL ROBINSON
- 15
- 16 BRIAN LANCE, FDR PACK
- 17
- 18 HOST BRANCH
- 19 HOWARD JEFFERSON, PRESIDENT
- 20 YOLANDA SMITH, EXECUTIVE DIRECTOR
- 21 FLORIDA COOPER, STATE VOTER EMPOWERMENT TEAM
- 22
- 23 VIDEOGRAPHER
- 24 MR GLEN REAUX
- 25

VOTER INTIMIDATION HEARING
DECEMBER 19, 2000

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Statement by MR. FOSTER
DECEMBER 19, 2000

1 MR. FOSTER. Good afternoon I want
2 to thank everybody for being here tonight. Let me
3 just say that this is a formal proceeding and even
4 though we're not in a court, we want to have a high
5 level of respectability and decorum.

6 (Brief pause)

7 MR. FOSTER This may create some
8 problems for the panel members. After the intricate
9 part of the proceedings, I will ask you or suggest
10 you speak loudly and clearly. Like I said, again,
11 this is a formal proceeding and we're going to be
12 recording this event tonight. As you can see, we
13 have a videographer here, we also have a court
14 reporter here, because this is a formal proceeding
15 So we want to conduct ourselves in the kind of
16 formality and decorum the occasion kind of dictates.

17 I'm going to ask everyone that when
18 you come up that they please speak clearly and
19 distinctly so the court reporter can hear you. Make
20 sure when you come up you state your name, make sure
21 of that, because after that, you would have to be
22 sworn in As the witnesses give their testimony, for
23 the point of clarification, some of the members may
24 have some questions, ask you to clarify a statement
25 that you just made, so don't be deterred by the

~~Statement by Mr. Easter~~
DECEMBER 19, 2000

1 questioning that they have, it's just to make sure
2 that we have a clear and accurate record And so
3 that's the kind of proceeding.

4 I'm going to ask the witnesses, we're
5 going to need to make sure that we have your
6 permission to take your statements because, you know,
7 once you're sworn in, we still need your permission
8 in order to put the statements into the record So,
9 if anyone has any objection to that, please let us
10 know before you give your testimony. So that's the
11 kind of proceedings, how we're going to go.

12 This is about finding out about
13 ~~whether or not we have voter irregularities in Texas--~~
14 That is not -- this is not a program, you're not
15 going to be entertained We want to hear from the
16 folks that were out there in the field, because this
17 information is going to be used later on to -- even
18 though it's too late to affect the legislation in any
19 way, we're going to summarize the investigation
20 This is one of three hearings we are conducting in
21 the State of Texas. One in Bowie last week -- two
22 weeks ago, we have one scheduled tomorrow in Fort
23 Worth

24 So once we complete these hearings,
25 we're going to compile this information and get the

STATEMENT BY MR. POSTER
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1 appropriate officials so when we start to take a look
2 at the election process in this country, that our
3 officials in Texas are not left behind in the
4 discussions and debates about the changes that we all
5 understand and are aware that we need in this
6 process

7 So, at this time, I'm going to ask the
8 conference president, Gary Bledsoe, to come up for
9 remarks.

10 MR. BLEDSOE. I think Ernie is first

11 MR. JEFFERSON: I apologize. You are
12 right. You hear a lot of the things. Go ahead.

13 MR. JACKSON: Thank you. The only

14 thing I want to say is I'm the vice president and
15 general manager of Magic 102, KBXH, 97.9 The Box in
16 Houston, owned by Radio One. Radio One is a company
17 owned by an African American female, Cathy Hughes,
18 out of Washington DC. It is the largest minority
19 company, the largest ownership of radio stations in
20 the history of broadcasting, started with four radio
21 stations just a year ago and now is over 51 radio
22 stations in 18 markets

23 We are currently working with the
24 NAACP locally and nationally on an HIV testing
25 program that has brought about the fact that we

Statement by MR. JACKSON
DECEMBER 19, 2000

1 tested over 7,000 people for the HIV virus here in
2 Houston in the last four months, and we're committed
3 and Ms. Hughes has asked me to make sure that the
4 local chapter here and national chapter understands
5 that she wants to use the radio stations and other
6 Radio One markets and all 18 of those markets to help
7 conduct this kind of hearing. And she wants to
8 commit Radio One to continue this process in this
9 effort, so thank you.

10 (Brief pause)

11 MR BLEDSOE. Hello. My name is Gary
12 Bledsoe, I'm the president of the Texas State
13 conference. I want to commend all of you for the
14 hard work that you have done in putting this
15 together. I think we're here for something,
16 obviously, that's very important for a number of
17 reasons

18 I think that all of us know how
19 important the Voting Rights Act is. I don't want to
20 belabor, but I think I will let you know why I'm
21 saying what I'm saying later on. We have always had
22 a need to have protection in order that African
23 Americans can vote, but it does appear that this year
24 things have taken on a bit of a different flavor in
25 terms of preventing African Americans from voting

Statement by Mr. Elmsosé
DECEMBER 19, 2000

1 around the nation.

2 And in that regard, when we were in
3 Miami a week ago, President Mfume talked about, of
4 course, we had a national hotline where individuals
5 who had been intimidated, prevented from voting, who
6 had complaints about the voting procedures in their
7 communities could call in to a team of lawyers in the
8 national office who were accompanied by FBI agents,
9 and they received over 500 calls from around the
10 nation, and over half of those calls came from the
11 State of Florida. And by 3:00 a.m. that afternoon,
12 they realized that something very serious was
13 occurring in Florida and President Mfume actually
14 held a press conference to talk about irregularities
15 on November 7th, before all the things ultimately
16 evolved, that did evolve that day.

17 Further, he was aware that with the
18 irregularities they needed to have more assistance,
19 so they deployed an additional 200 people around the
20 State of Florida to do all that they could to try to
21 assist people in being able to vote. Now, you
22 probably heard that we are going to file a lawsuit or
23 have filed litigation in certain counties in Florida,
24 and in that regard, I think that Mfume expressed
25 disappointment that the Justice Department hadn't

1 done what the NAACP ended up having to do to protect
2 the minorities in the State of Florida

3 There are a couple of things, just to
4 give you a flavor of some of the things that were
5 occurring, the moving of the polling places without
6 timely notice to residents so they would know where
7 to vote made it difficult, obviously, to reduce the
8 African American turnout. Closing polls early,
9 purging black voters from the polls early. For
10 example, if someone had a misdemeanor, they were
11 purged because they were presumed if they are African
12 American to have a felony conviction, which would
13 have enabled them, under Florida law, training,
14 language assistance being denied African Americans of
15 Haitian heritage, whereas individuals who spoke other
16 languages who were more likely to vote different ways
17 were able to have all the language assistance that
18 they needed; voter intimidating; setting up of police
19 road blocks outside African American voting
20 precincts; the inability to provide access to the
21 State and local data bases to verify that individuals
22 were, indeed, registered to vote

23 So there was just a number of things
24 that did occur there, and that just really is the tip
25 of the iceberg of what I mentioned, and similar

Statement by MR. BRIDSON
DECEMBER 19, 2000

1 things to happen in Missouri and Boston. And other
2 places have had hearings as well in the State of
3 Texas. We were made aware early on of a number of
4 irregularities, intimidation efforts in Forth Worth
5 through calls to individuals trying to suggest that
6 they needed to be sure that they were registered to
7 vote, trying to raise issues that would suppress the
8 African American vote. Texarcana individuals being
9 located within the 100-foot limit of polling places
10 directing African Americans how to vote.

11 And in Wharton, there is some people
12 here tonight from Wharton, and that's probably one of
13 the most serious situations that did occur on
14 election day. In that regard, let me just give you a
15 little bit of background, read you something very
16 short here and then I will go ahead and allow our
17 Regional Director to come in. But, there was an
18 African American who was seeking the office of
19 sheriff, I know he is here. Okay. And he will speak
20 this evening.

21 But what -- let me just -- there are
22 some things there that -- where a hate crime ended up
23 being enjoined and numerous individuals turned away
24 from polling places, numerous individuals were told
25 they were not registered to vote. And there is a

Statement by MR. BLEDSOE
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1 county where a previous African American candidate
2 was sheriff, had lost his life And I'm not sure how
3 many of you might have noticed, but over the weekend
4 an African American in DeKalb County, Georgia, who
5 did win a sheriff's race there, was scheduled to
6 actually be sworn in today and he was murdered at his
7 home on Saturday, and it was an assassination And
8 no doubt, that does relate to what we're talking
9 about here, the disenfranchisement of African
10 Americans. So I think with all that as a back drop,
11 we understand how important it is for us to be here

12 I would ask all of you who come
13 forward to "try to" speak as clearly as you can, "fo
14 speak slowly, to give specific information, as much
15 as you can, to tell us the who, what, where, when,
16 and how, so that we understand if we need to follow
17 this up. We understand that the Voting Rights Act
18 will be up for an extension in just another six
19 years, and we need to have the proper documentation
20 to insure that it is extended, but also we need to
21 find out if there are other actions that need to be
22 taken even by the State legislature

23 I think you probably know that a
24 couple of years ago there was an Klu Klux Klansman
25 that was elected to serve as county commissioner in

Statement by Mr. BESSOE
DECEMBER 19, 2000

1 Valverde County, and because of some irregular laws
2 that we have relating to absentee, we were able to go
3 to the legislature and got to pull the plug. So, we
4 need to hear from you to find out what the concerns
5 are and problems you had so we can fix them in
6 whatever way, whether it's litigation, regulation, or
7 just trying to preserve a record so that in the year
8 2007, when it's time to try to extend the Voting
9 Rights Act, we won't have a problem with that. But I
10 want you to know, too, that if things do occur that
11 are somewhat irregular, we would ask you to give us a
12 call, to call the State office and to talk to Claude
13 or Sherman, what-have-you, and give us the
14 information, or call the regional office or local
15 branch office so that we can at least document the
16 information, because there might be fallout over what
17 happens this evening.

18 But again, I've got -- I don't want to
19 steal what CG has to say, but it was a white family
20 that supported him that had their home burned down
21 that almost died because of their support of an
22 African American sheriff, so it let's -- or sheriff's
23 candidate. It lets you know how serious matters
24 relating to voting still are in the State of Texas.
25 And sadly, the individuals who were the victims were

Statement by MR. BLEDSE
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1 forced by law enforcement to take a polygraph is my
2 understanding, which is a bit extraordinary, but
3 anyway, I would like to introduce our regional
4 director, Ms. Keryl Douglas

5 MS. DOUGLAS: Good evening, everyone.
6 I want to begin by thanking all of you for your
7 commitment in being here this evening and following
8 through on the commitment we made to America that we
9 would turn out to vote in record numbers, and indeed
10 we did that. It was such a pleasure to see the
11 result of such intense action, and on behalf of the
12 branches around the country, Region 6 was a pivotal
13 part of that and I was just delighted to be at the
14 helm of this regency office and to see this kind of
15 history unfolding. So, you are to be applauded even
16 while we are here to encourage you to trudge forward
17 in this commitment to make certain that the most
18 fundamental right of Americans, that is, the right to
19 vote is protected.

20 We are promised in great documents of
21 this country the rights to the pursuit of happiness
22 and to a quality life, but there are also rights that
23 are just simply fundamental. We had posters during
24 the campaign that says "The Power Is In Your Hands,"
25 and people fully recognize that the power to vote is

1 free, and they went out, according to our charts,
2 lifting their voices and voting

3 And we had a representative of Region
4 6 who was the State Coordinator of Religious Affairs,
5 a young gentleman, Reverend Allen Patterson, and he
6 talked about how we encouraged people to lift their
7 voices and vote, and unfortunately, while people were
8 lifting their voices, people were shifting their
9 votes I thought that was a tremendous statement,
10 but unfortunate at the same time.

11 We're here today to hear from
12 individuals who experienced voter intimidation and
13 voting irregularities, and I do think that that
14 terminology is just minimal in terms of describing
15 what people experienced in this country. We did not
16 know that in this year 2000, on the cusp of the new
17 millennium that people would be intimidated in the
18 way that they were. The incidents were not only
19 concentrated in Florida, but they were around the
20 country, and I am really happy to say that Region 6
21 was one of the first of the seven regions of the
22 NAACP to insist to the national office that we hold
23 hearings around this region. And then shortly after
24 that, Mr. Mfame sent out the charge that hearings
25 such as this should be held throughout the country,

Statement by MS. DOUGLAS
DECEMBER 19, 2000

1 and we're happy to report that Region 6 was on the
2 forefront of that

3 If we don't hear of these instances,
4 if we don't address them, then history would repeat
5 itself. Now, we know that. The NAACP's efforts are
6 nonpartisan. It's not about what party gets into
7 office or what candidate gets into office, it's about
8 making certain that people are educated and empowered
9 to exercise not only their right, but their
10 obligation to vote.

11 I think all American people know that
12 it is inevitable that only one candidate can proceed
13 to the White House, and that after that candidate
14 emerges through, after a fair and democratic process,
15 that person is the president for all Americans. That
16 is all that we ask, that the people who went out and
17 exercised their vote would have a right to have those
18 votes counted. We know that that did not happen, and
19 that must be addressed.

20 Sure, there is one who has emerged
21 from the race by the decision of the Supreme Court,
22 which we should also address. That is the highest
23 court of this land, and that high -- with that
24 highest court, we should be able to have the
25 expectation that the term Honorable is not only a

Statement by MS. DOUGLAS
DECEMBER 19, 2000

1 portion of their title, but an aspect of their
2 character. I think Americans are saddened I think
3 other countries who are watching America are shocked
4 and disappointed when the highest court in the land
5 could disappoint its people so and practice such
6 partisan decision-making. That has got to be
7 addressed.

8 We have got to understand that those
9 in Florida were not the only ones disenfranchised
10 For when we have a president to emerge that was not
11 elected, but rather selected, not elected by the
12 majority vote, we have all been disenfranchised We
13 have all been cheated, and it would be a travesty if
14 we'd not all stood up and addressed it

15 You know, there is an age-old adage
16 that says: If you don't stand up for something, you
17 will fall for anything. Well, the NAACP has
18 determined that we will not fall for this Yes,
19 there will be litigation, some of which I hope will
20 result from the testimony that we receive today,
21 that's why we're delighted to have this young
22 professional woman up here who is a professional
23 stenographer

24 We have lawyers who will be able to
25 take affidavits, sworn affidavits, because we want to

Statement by Ms. Douglas
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1 be able to move forward with litigation We want to
2 be able to move forward with legislation and we will
3 remain undaunted in this quest to make certain that
4 what happened in this presidential election will
5 never happen again.

6 And you have the commitment from the
7 NAACP, and I feel that I speak for Mr MFume and
8 Mr. Bonner, our national leaders, when I say we will
9 see this through to the very end, whatever that end
10 may be Thank you.

11 MR JEFFERSON: Thank you very much,
12 Keryl I think now we will start because we want to
13 get out as soon as we can and get the information.
14 If we have any other persons who want to testify for
15 this committee, would you stand and come down. Any
16 others out there, would you stand, come over here and
17 sit over here Here is another seat right here
18 Okay And the other ones can come and sit on this
19 side over here So, we will start out with the first
20 person. And as you are telling what happened to you,
21 like the President, our state President asked you to,
22 give specifics, time, and date, and what happened and
23 how it happened. And the panel over here may want to
24 ask you additional questions so that you can really
25 pull it out so after we can get it, we can send it to

STATEMENT BY MR. JEFFERSON
DECEMBER 19, 2000

1 the national there

2 So, just feel relaxed. This is kind
3 of an informal situation here, and we -- we ask the
4 first person to come and give your name and that kind
5 of thing because we are being recorded here. Let me
6 see.

7 I would like to say we are proud to
8 have our distinguished, our Honorable Congress
9 person, Ms. Sheila Jackson-Lee Sheila, would you
10 just stand? Okay. You're talking about a fighter,
11 that's a fighter. Sheila is a fighter, and I want to
12 say this, the NAACP gets in a lot of fights, because
13 we're out there for a purpose. And unlike some of
14 our other people who tuck their tail and run, Sheila
15 comes outright and stands on the battlefield and
16 fights with us, and Sheila, we appreciate that.

17 Thank you. Okay

18 THE REPORTER: Please raise your right
19 hand.

20 (SWORN IN TO TESTIFY)

21 NATA KERBER,

22 having been first duly sworn, testified as follows

23 MS. KERBER: Thank you My name is
24 Nata Kerber, and I'm here today because I work with
25 different community organizations and support the

NATA KERBER
SWORN TESTIMONY

1 efforts to get people out to vote. Often what that
2 entails is planning ahead to try to tell people about
3 voting locations and times and coordinating telephone
4 calls into the community to encourage people to vote,
5 but also to respond to voter irregularities and
6 complaints. I work under the supervision of
7 Mr. Allen Parker with other groups of individuals and
8 organizations to get the word out about the vote in
9 the community.

10 During the last election, we noticed a
11 number of barriers that would impede people in the
12 community getting out to vote easily and he informed
13 One of the first irregularities that we noted was
14 that there was very little notice given by the County
15 Clerk with regard to the official voting times and
16 locations. As you know, here in Texas, we have early
17 voting, but frequently, and this time was no
18 exception, it's days before the actual election that
19 people know the polling locations, and often the
20 polling locations for election day are not posted
21 until either a couple of days before or even in the
22 Houston Chronicle on election day.

23 What that's resulted in is confusion
24 about where people go and vote, hardships,
25 particularly on people on public transportation that

NATALIE KERBER
SWORN TESTIMONY

1 have gone to the polls and then they call us and
2 say -- or we call them and they are in a panic
3 saying, hey, I worked today, I'm trying to get to the
4 polls, my poll has been changed. Some of the polls
5 were not marked as changed. If they hadn't called
6 in, they just wouldn't have been able to vote, and it
7 creates an atmosphere of confusion.

8 We frequently, ahead of time, try to
9 confirm with the County Clerk's office the actual
10 locations and times. What we have noticed is that
11 over a couple of elections, the times are changed at
12 the last moment, and frequently, the voting locations
13 are changed with no notice, often in the minority
14 community. We received complaints of poll workers
15 requiring two forms of ID or other false requirements
16 which caused us to have to send attorneys out to
17 those polling locations to demand that these
18 individuals be given a challenge form if they said
19 they weren't on the rolls or be allowed to vote with
20 the voter registration card or their Texas ID or
21 driver's license.

22 We had some complaints from voters
23 that said that they had filled out a voter
24 registration card at D.P.S., yet their names were not
25 on the rolls. We also had complaints of people who

NATA KERBER
SWORN TESTIMONY

1 had voted in the past and their names were wrongfully
2 purged from the rolls of voters. One individual was
3 a county worker, an ex-county worker that said he
4 hadn't voted in a couple of years, but when he went
5 to vote, he was told that he had requested an
6 absentee ballot and had voted already, when, in fact,
7 the individual had not voted

8 Another person was someone who voted
9 regularly and actually helps people get out to vote
10 that was told at the downtown location that their
11 name was not on the list They were initially turned
12 away but when they found out that that person was
13 knowledgeable about voting procedures, they tried to
14 just shush them and tell them, okay, well, you can go
15 ahead and vote, but hurry up and get out of here,
16 so-and-so. That was the situation that was
17 presented. Last.

18 , but not least, we had reports of
19 people who were turned away to vote even though those
20 individuals were in line at 7:00 Some of them were
21 told, well, it's too late, we have just got to shut
22 down, even though the people were in line. And these
23 are voters' complaints that come to us in a
24 centralized controlled center, if you will They
25 were wadespread throughout particularly the minority

NATA KERBER
SWORN TESTIMONY

1 voting areas, and as such, I felt they needed to be
2 reported and hopefully corrected for the next
3 election.

4 And that's the end of my testimony.

5 MR. JEFFERSON. I was about to ask, do
6 we have questions?

7 MS. BROOKS: Ms Kerber, could, you
8 just identify any neighborhoods where you know that
9 these problems were more predominant, I mean, rather
10 specific about those neighborhoods?

11 MS KERBER. Yes, we have gotten
12 complaints in the area around Acres Home, complaints
13 in the areas in zip codes 77028, 77026, 77020, in the
14 northeast areas of town We had a few complaints in
15 the Hiram Clarke area.

16 MR. BLEDSOE: Let me ask you a couple
17 of things if I might. First of all, did you give us
18 authorization to use this?

19 MS KERBER: Yes, sir. This is -- I'm
20 certainly more than willing to let this information
21 be used so that the problems can be corrected.

22 MR. BLEDSOE: And let me ask a couple
23 of things in reference to what you observed. How
24 extensive was the problem that you observed leading
25 up to election day? Was it just one or two incidents

NATA KERBER
SWORN TESTIMONY

1 or how extensive would you describe it?

2 MS KERBER: Well, I can say that the
3 issue of moving the polls has gone on for the last
4 couple of years and seems like it has escalated over
5 the last couple of years as well. In terms of the
6 extent, by about midday, we were having to send
7 attorneys out all the way up through the time that
8 the polls ended.

9 MS. DOUGLAS: I would ask you for
10 specifics on the issue about the absentee ballot, the
11 gentleman being told he requested an absentee ballot
12 and he already voted, this was taking place around
13 the country and particularly in Florida.

14 The NAACP efforts turned out
15 particularly African American voters in record
16 numbers, voters who either never exercised their
17 right to vote or who had not done so in several
18 years.

19 I guess the assumption was made that
20 these people would not show to vote, so absentee
21 ballots were requested in their names. And I think
22 that this is more than simply a coincidence. The
23 absentee ballots were indeed requested in the names
24 of these people, and the ballots were cast. Now, our
25 greatly esteemed State President says depending on

NATA KERBER
SWORN TESTIMONY

1 where the absentee ballots went, that could be mail
2 fraud, which is a federal offense, which is why we
3 want to pursue this. Some people need to be
4 interrogated and jailed for some of the things that
5 happened.

6 I would like to know whether we can
7 get specific names of the lawyers who went out to the
8 polling places to answer questions and any
9 individuals that you may know of, including this
10 gentleman, who went to the polls to vote and was told
11 that the absentee ballot had been requested and cast
12 in his name. We need those individuals for our
13 records

14 MS KERBER: Well, I don't have the
15 gentleman's name, because you have to understand
16 we're kind of in a crisis mode as these calls are
17 coming in, although I think in the future we need to
18 keep a list of these irregularities. I can access
19 the names of the attorneys for you. I do not have
20 them today, but I would be happy --

21 MS. DOUGLAS: Okay.

22 MS KERBER: I would be happy to
23 forward them.

24 MS. DOUGLAS. And I do know that Radio
25 One will be helpful and perhaps they can solicit some

MS. KERBER
SWORN TESTIMONY

1 of the individuals to come forward. Thank you.

2 MR. BLEDSOE: And I think it's
3 probably possible to isolate the different people
4 that it might be. Probably call the -- recall the
5 time of day or what happened, what have you, probably
6 take a look at the sign-in sheets for the polls and
7 determine what group of people that it might be and
8 go from there, so I think there is a way of
9 pinpointing it and making some telephone calls

10 Did you leave your identifying
11 information on the record? I don't know if we asked
12 you to do that. But in case we need to come back and
13 make contact with you, appropriate telephone numbers
14 and addresses Make sure you give that to Ms. Smith
15 or what have you so that we will have that

16 MS. KERBER: Yes, sir, I will.

17 MR. JACKSON: Yes, how did people know
18 to call you either on the day of election or
19 afterwards to make a complaint? How did they know to
20 do that?

21 MS. KERBER: Well, there was a number
22 of community organizations that we were notifying
23 Sometimes the radio stations have been helpful We
24 were also doing voter phone outreach, so sometimes we
25 make contact just to remind a person that they can

~~NATA KERBER~~
SWORN TESTIMONY

1 vote but then sometimes they'd call in I say that
2 in the community, there is a resource known as Shape
3 Community Center that far and wide people know that
4 Shape is there to help, so often when people get into
5 trouble trying to vote or trying to find out where to
6 vote, they know that Shape Community Center is an
7 area that they can trust. Some of the calls go
8 directly to Shape because they have helped out in the
9 past.

10 MR JACKSON: Is it possible, because
11 as we generate more interest in this, two more
12 hearings that are going to be conducted over the next
13 week, is it possible if you continue to get calls
14 that you can develop some mechanism to get names,
15 telephone numbers from these folks so that as people
16 continue to be aware that they have an opportunity to
17 talk about this and let us know what happened, can
18 you make sure that we can get names and specific
19 instances from people?

20 MS KERBER: Yes, sir, I will.

21 MR. JACKSON: Thank you.

22 MR FOSTER: I want to thank you for
23 your testimony We have your name for the record,
24 and we have an investigator on staff at the state
25 office, so if you need to follow-up, you will

NATA KEBER
SWORN TESTIMONY

1 So I want to deviate from the scene
2 because we have some folks from Wharton and we
3 scheduled the hearing for two hours, so we want to
4 make sure that we allow those folks to come on up and
5 testify.

6 MS. LUKE: Thank you.

7 THE REPORTER: Raise your right hand,
8 please

9 (SWORN IN TO TESTIFY)

10 REUSEY LUKE,
11 having been first duly sworn, testified as follows

12 MS. LUKE: My name is Reusey Luke, I'm
13 an educator here in Houston, Texas. The voting
14 irregularity that I experienced was as I was going to
15 cast my vote, the person in front of me, a Caucasian,
16 went up to the desk and said, "Oh, I hear my name is
17 on the ballot twice." I went, "Oh, really"? You
18 know, to myself. I didn't say anything. And the
19 lady said, "Oh, yes, your name is there twice". So
20 she said, "Well, just sign right here " He gave her
21 the ID, he signed or whatever, and she said, "Well
22 you can just go over there and vote" And then I
23 came up, and I said, "Well, why is his name on there
24 twice?" And that kind of left me a little upset,
25 because I feel like once he said that, she should

REUSEY LUKE DECEMBER 19, 2000
SWORN TESTIMONY

1 have immediately voided his name. She voided his
2 name when I asked the question, and I just don't
3 think she probably would have voided it if I hadn't
4 said anything. So that was the only irregularity and
5 I wanted to really say something about that.

6 I want to say something that's not
7 related to voter irregularity because it has me as an
8 educator just really concerned about this. I work
9 with students who take tests and they use scantrons.
10 And when they take their tests, say they want to make
11 another selection and they erase the answer that they
12 already had chosen, and then when I run it through
13 the scanner, the scanner still picks up the eraser.

14 Now, as an educator, I have to look at
15 that and say, "Well, yeah, you made this selection,
16 I'm going to give you credit for what you did, even
17 though the scanner picked up the eraser." And so, I
18 really want to say that because if you don't work
19 with computers a lot and scanners and things that
20 read these scanners, you don't know what you're
21 dealing with. I'm very totally upset, totally
22 concerned about this idea of what the Supreme Court
23 did. You know, that's a new -- that's -- what am I
24 supposed to tell my students now, "I will never look
25 at your scantrons, it's an error"? So I'm very

~~RUSBY LUKE DECEMBER 19, 2000~~
SWORN TESTIMONY

1 concerned about that, and that's all I have to say

2 MR. JEFFERSON: Hold up there. Any
3 questions from the panel?

4 MR. FOSTER: I have a question for
5 you Did you report that incident to any election
6 official and if so, did you get a name?

7 MS. LUKE: No, I did not. I was so
8 upset that I did take time to sit down and write the
9 Supreme Court, Judge O'Connor, because I'm just very
10 upset about this, but no, I didn't report it to
11 anyone

12 MR. JEFFERSON: Okay Would you give
13 Ms. Smith your name and phone number and all of that
14 so that if the panel wants to get back with you, they
15 will have that information? So would you stop by
16 here? Any other questions by the panel members?

17 MR. BLEDSOE: Just a couple. Thank
18 you, Mr. Jefferson. When you say "voided," explain
19 to us exactly what you mean by the process. What
20 happened when she voided the name?

21 MS. LUKE: I assume, because I didn't
22 just look, you know, where I had seen if he had his
23 name twice, by the other -- second name, second time,
24 she must have written "void" through his name the
25 second time That's what I assume.

REUSEY, LUKE - DECEMBER 19, 2000
SWORN TESTIMONY

1 MR. BLEDSOE: About what time of day
2 was that?

3 MS. LUKE: I got out of work, I guess,
4 about 4 30 5:00, 5 30ish. And that was in Precinct
5 131.

6 MR. BLEDSOE: 131?

7 MS. LUKE: Hiram Clarke area. Someone
8 else said something about Hiram Clarke area.

9 MR. BLEDSOE: And would you recall
10 what the precinct worker looked like, election
11 official?

12 MS. LUKE: No, I'm sorry, other than
13 she was Caucasian. I wouldn't know what she looked
14 like

15 MR. BLEDSOE: Okay. And do you
16 authorize us to use this information if we need to go
17 forward to try to bring some --

18 MS. LUKE: Oh, yes, definitely

19 MR. BLEDSOE: Thank you.

20 MR. JEFFERSON: Thank you,
21 Mr. President. Any other questions? If not, come
22 over here and we will have the next person Next
23 person

24 THE REPORTER: Raise your right hand,
25 please.

~~REUSEY LUKE - DECEMBER 19, 2000~~
SWORN TESTIMONY

1 (SWORN IN TO TESTIFY)

2 C.G. WALWYN,

3 having been first duly sworn, testified as follows

4 MR. WALWYN. My name is C.G Walwyn

5 Good evening, my name is C.G Walwyn, and I ran for
6 sheriff in Wharton County, Texas I live in Wharton
7 County, but I work for the Harris County Sheriff's
8 Department.

9 I'm going to talk to you about what
10 happened during the campaign, about threats that were
11 made, a fire that was started, denials by the Chief
12 of Police and the D.A. about a suspect that was in
13 town that was not a considered suspect, and about a
14 polygraph given to -- about a polygraph given to the
15 victims

16 Most people aren't aware, but Wharton
17 County, they used to have a group called the White
18 Man's Union Association. They were formed in 1889
19 and the purpose for forming this group was to deny
20 blacks political participation. This is information
21 that I got from the University of Texas' web page.
22 It's called the Texas Online Handbook.

23 I was the first African American in
24 102 years to make it to November in Wharton County.
25 My campaign was not about race, it was about winning

---C.G. WALWYN - DECEMBER-19, 2000
SWORN TESTIMONY

1 an election, and we had support from everybody.
2 Every race was on my campaign. As a matter of fact,
3 I used to get calls at home from white people that
4 wanted to support the campaign and work undercover on
5 the campaign, and we accepted everybody

6 On the 16th of October, a young lady,
7 Ms. Linda Nichols, we were at a church, and she told
8 me that she was getting phone calls from someone
9 saying to get off that campaign or we're going to
10 burn a cross in your yard, string up your dogs and
11 gut them. This was the Sunday, about 5:00. The next
12 morning about 4:00, I was here in Houston, 4:00 in
13 the morning. She called me, she said, "CG, they just
14 burned my house." Someone had called her that night
15 and asked her how does she like sleeping with a --
16 and she hung up the phone. She never made a
17 complaint to the police. We thought it was just a
18 prank. We just let it go at that.

19 The next day, when this happened, we
20 called the local media. Channel 13 and Channel 11
21 showed up, Jeff McShane and Deborah Wrigley showed
22 up, and they looked at the fire. The back door of
23 this lady's house was completely burned. She had a
24 hole in the door for the dogs to come in and out, and
25 evidently, someone set something on fire and tossed

C.G. SWALWYN -- DECEMBER 19, 2000
SWORN TESTIMONY

1 it in there, and it stopped on a throw rug and burned
2 the whole door. She was awoken by her dog. The dog
3 kept pulling her ear so she got up and said, "Let me
4 go take him out." So when she got out of the bedroom
5 door to go to the back, it was a blaze all the way up
6 to here. She ran back inside the bedroom, went out
7 the front door, and on the porch was my picture
8 burning along with a bottle, an empty mason jar
9 bottle believed to be gasoline. We have -- after
10 Jeff and Deborah did this story, they went to the
11 D.A., and they spoke with him and he said that he
12 does not think that the fire and the phone calls were
13 related.

14 The local Police Chief said that he
15 does not have any motive. It just so happens that in
16 the backyard, some -- some of the stairs was missing.
17 There were two pieces of wood that were removed from
18 her step and burned, and if we use our imagination,
19 we can understand what was burned. This was never
20 mentioned in the newspaper. And when I called the
21 FBI in Houston, I was told that they could not come
22 in unless the local police called them.

23 Deborah Wrigley, on her news story,
24 said that the D.A. told her that this was a white
25 woman whose house was burned, so it was not a hate

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TX NAACP

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C. G. WALWYN -- DECEMBER 19, 2000
SWORN TESTIMONY

1 crime I called the Texas Attorney General's Office
2 and I asked for help, and they told me that they
3 could not help us unless the local police called
4 them So I wrote them a letter, and I told them,
5 "I'm a police officer and I will protect my family,
6 and whatever happens after that happens " And nobody
7 responded. I called a friend of mine in the Virgin
8 Islands and she contacted the congresswoman for the
9 Virgin Islands and then my congressman in Wharton
10 County called me And the Civil Rights division of
11 the Justice Department, they called me afterwards

12 Unfortunately, it's been almost two
13 months and I haven't heard from them again. This
14 election was historical We had a radio interview,
15 and during the interview on the radio -- in the city
16 hall, we were told that this was the first time they
17 had so many people come to see a debate. That was a
18 debate between me and the sheriff. Then, the
19 newspaper said that this was the first time that so
20 many people had registered to vote This was -- this
21 was historical for them. They don't know whether it
22 was the sheriff's race or the presidential race, but
23 the president was not at city hall that day All
24 right?

25 I tried to keep my cool with this --

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~~C. G. WALWYN -- DECEMBER 19, 2000~~
SWORN TESTIMONY

1 with this fire, and I continued my campaign and kept
2 going and kept going and kept going. And then we
3 started thinking, who is in town that's not from
4 here? And then it hit us, that Sunday in church
5 there was a young Caucasian male sitting behind me
6 and Ms. Nichols. I called the deputy sheriff in
7 Houston, who was in church that day, and he said,
8 "No, he wasn't with us, we thought he was with
9 y'all." Well, nobody knew who he was. So one day
10 I'm riding downtown and my wife says, "There is the
11 guy." I circled around, followed him. He comes back
12 down, and right across from my office, I'm over here,
13 he is right here, this is where he is staying, right
14 across from my office

15 So, on the subterfuge, I go over and
16 say, "Hey, I'm running for sheriff, I'd like to give
17 you one of my brochures," trying to see what was
18 inside. He told me, "I'm not interested." I said,
19 "Oh, sorry, man, sorry to mess with you."

20 I walked back to my office. About 30
21 minutes later, he came over to my office and he said,
22 "I am so mad, the police picked me up." He didn't
23 know I had already called and got that information.
24 "The police picked me up about this fire. I don't
25 know the woman, I know nothing about this woman. I

C.G. WALWYN-- DECEMBER 19, 2000
SWORN TESTIMONY

1 was just driving through Texas and my car broke down
2 in Rosenberg, and I went to the mental health people
3 and they put me up in a halfway house," which is
4 about two blocks from where my office is. He said,
5 "I'm so mad. I just got off the phone in my office
6 with my attorney." He is a homeless guy, he has an
7 office and an attorney? All right? So, he is
8 talking, my wife has her hands on her gun, and he is
9 talking and we're listening to what he had to say.
10 And when he left, I said, "How can a homeless man
11 have an office and a phone?" So I went up to the
12 courthouse, on his door, he had a sign that said
13 "Fugitive Bail Recovery." That's bounty hunting. I
14 went up to the -- to the courthouse, and I checked
15 the name, and sure enough, he did register the name

16 I also checked to see who owned the
17 property that he was staying in because I wanted to
18 know who would rent property to a homeless person.
19 And the property, according to the court records, was
20 owned by the republican chairman Now, this man, the
21 police said he was not a suspect, he just came into
22 town the same week that the calls began, he was in
23 church the same -- the day before the fire started,
24 and he left town the Saturday after the election.

25 He told me he was from Louisiana by

~~C. G. WALWYN - DECEMBER 15, 2000~~
SWORN TESTIMONY

1 way of Mississippi, but when I checked him out, his
2 license said he was from Brownsville. I went to the
3 State of Texas, people that register private
4 investigators and I asked them how could this guy be
5 operating? They told me he was not registered to run
6 a business under them, he was not licensed to be a
7 private investigator.

8 When I got back to my office, the name
9 was painted over on the door I don't know what
10 happened, I can only assume. Well, this is before
11 the election now. We had a lot of upbeat You could
12 feel it in the air, I was going to win this election.
13 After the fire, after the cross burning, the support
14 dropped I called the Secretary of State's office,
15 e-mailed him as a matter of fact, and I said. "Look,
16 we have a feeling things are not going to go right in
17 this county, y'all need to send somebody down here to
18 check it out " And they wrote me back and told me,
19 "If you suspect anything, go to the local D A."

20 This is the same guy that said all he
21 had was a piece of stick and some red paper. Well,
22 when we were on the radio interview, I mentioned that
23 there were bottles on the porch The newspaper
24 printed a story, but the Internet version of the
25 paper showed my sign with my name on it and the

~~U.G. WALWYN - DECEMBER 19, 2000~~
SWORN TESTIMONY

1 bottle on the porch, but there was no public comment
2 in the newspaper about that. Ironically, that web
3 site disappeared after I mentioned it. All right?
4 So, nothing is being done.

5 The Texas Ranger that was assigned to
6 that case went on vacation after he got the case.
7 I'm not making anything up, you can check the
8 records. Matter of fact, we did not even know that
9 he had went on vacation. And to show how much
10 support we had from the community, it was a Caucasian
11 voter, a supporter, who called us and told us that
12 the ranger had went on vacation.

13 To this date, I have not spoken with
14 the police. I don't know if the ranger is back. I
15 do know for a fact that the victim of the fire, a
16 Caucasian family, had to take a polygraph. I was
17 told by my mother-in-law that the police called me
18 twice and one was last week, after I made this story,
19 put the story on the internet, and one was the day
20 when the polygraph operator was in town. So I can
21 only assume that they were calling me to take a
22 polygraph, I don't know for a fact.

23 Since then, we have been watching our
24 back. This young man right here, he was my body
25 guard that night. The police officer needed a body

C.G. WALWYN DECEMBER 13, 2000
SWORN TESTIMONY

1 guard I had to put someone with my family because I
2 honestly felt that something was going to happen
3 Now, we were told that it was a -- it was a black man
4 that was shot in 1898 when he ran for sheriff, now
5 they are saying that it was a white guy, but he went
6 up against The White Man's Union Association He was
7 the -- The White Man's Union Association is the one
8 that was there for 50 years, allegedly for 50 years.
9 He went up against them and ran for sheriff against
10 the person that they chose and they shot him at the
11 courthouse in 1898 And here I come 102 years later,
12 and I don't know if this man was waiting to do the
13 same thing, but I did not go to the courthouse that
14 night.

15 The -- the machine broke down when
16 they were counting the votes They said that the
17 machine was jamming. They said that some of the
18 ballots were wet from humidity. They said that they
19 had to blow dry them before they could put them back
20 in the machine They said that they sent to Houston
21 for a new machine, but when the machine got there,
22 they continued using the malfunctioning machine
23 When it was all over, I was 4,000 votes short. I
24 can't say that they cheated because I don't know, but
25 it smells They did not dampen my person Someone

C.G. WALWYN DECEMBER 19, 2000
SWORN TESTIMONY

1 said that they sent people elsewhere to vote, that
2 they told them that they couldn't vote because they
3 weren't on the record. This was not just in Florida
4 or in Houston. I had to call the courthouse twice
5 about the same thing.

6 Finally, they said, "Okay, CG, we will
7 let them vote if they fill out the challenge form,"
8 but they turned away a lot of people. And we have
9 names of some of the people in Wharton so you can
10 talk to them.

11 That's, basically, all I have to say
12 right now. It was funny on the day after the
13 election -- by the way, everything I have said here
14 is printed in the newspaper down there, I'm not
15 making anything up.

16 MR FOSTER: Mr. --

17 MR. WALWYN: It was funny that the day
18 after the election, in the Historical section of the
19 paper -- in the Historical section of the paper, it
20 says, Today Has Been 50 years -- Today Has Been,
21 that's November 8th, it said "Today Has Been 50 Years
22 Since The White Man's Union Met To Decide If They
23 Should Continue Or Disband," and it said that they
24 disbanded. So 50 years ago, this is 50 years later,
25 there is still a remnant of that in that society.

C. G. WALWYN - DECEMBER 13, 2000
SWORN TESTIMONY

1 All of Wharton County isn't like that, because we had
2 support from everybody. But there is still a few
3 people out there who made sure that we didn't -- that
4 we did not win this election

5 MR. JEFFERSON: Thank you very much.
6 We're going to try to move right on here.

7 MR. FOSTER: We have a question.

8 MR. JEFFERSON: Okay. But when you're
9 getting ready to come down, make sure you give the
10 information over here so if we have questions from
11 the panel.

12 MR. FOSTER: Just one question Could
13 you repeat the part about the voting machine for the
14 benefit of the videographer? He didn't get it.

15 MR. WALWYN: Around 7.00 that night,
16 the newspaper said that the voting machine was
17 jamming, they said that one of the ballots had
18 moisture from humidity, that they had to take a blow
19 dryer and hand dry them, blow dry them. And the
20 machine was malfunctioning, so they had to send to
21 Houston to get another machine According to the
22 newspaper, the lady who wrote the story's name is
23 Connie Lasemby In her article, it said that the
24 machine stayed in the parking lot and they continued
25 to use the malfunctioning machine.

MR. WALWYN DECEMBER 19, 2000
SWORN TESTIMONY

1 THE VIDEOGRAPHER. How many votes did
2 you lose by?

3 MR. WALWYN: 4,000. This was over.

4 MR. JEFFERSON: What was the total
5 votes cast?

6 MR. WALWYN. They said about 11,000
7 were cast. The other two local democrats, each of
8 them 8,000 plus; two republicans against them got
9 4,600 plus votes. And when it come to me and the
10 sheriff, he got 8,000 like the democrats, and I got
11 4,600 like the republicans.

12 MR. JEFFERSON. Say that again.

13 MR. WALWYN. Okay. For the local
14 level, not talking general local level, two local
15 democrats, they got 8,600 plus votes a piece, the two
16 republicans got 4,600 plus votes a piece. And when
17 it came to me and the sheriff, he got 8,600 like the
18 democrats and I got 4,600 like the republicans.

19 MR. JEFFERSON: Okay. How do you know
20 they came from the democrats and how do you know they
21 came from the republicans?

22 MR. WALWYN. That was -- that was
23 published in the paper. Everything I'm saying is
24 documented by local newspapers.

25 MR. JEFFERSON. Okay. Any other

~~C. G. WALWYN -- DECEMBER 19, 2000~~
SWORN TESTIMONY

1 questions from the panel?

2 MR. BLEDSOE: I have a couple, if I
3 might, CG, a couple, of things. We have
4 authorization to use your testimony this evening --

5 MR. WALWYN: Yes, sir.

6 MR. BLEDSOE: -- to bring about some
7 changes? Okay How extensive were the numbers of
8 voters who were turned back? You mentioned that some
9 were, do you have any idea?

10 MR. WALWYN: We had about 20 came by
11 the office, the rest I don't know. We had, if I'm
12 not mistaken, we had four or five of those forms
13 filled out showing that they were indeed turned back.
14 I did call the office twice and spoke with the clerk,
15 county clerk, and she said some of the people were
16 purged because they moved or their paper, the paper
17 that they filled out was never turned in, even though
18 they had a little slip. And some of them went up to
19 the courthouse and registered to vote, but when they
20 got there to vote, they had lost the paperwork.

21 MR. BLEDSOE Let me ask you, the --
22 the sense in the community now, what is the common
23 feeling among African Americans?

24 MR. WALWYN: Common feelings is that
25 they cheated and want a recount, but they said it

1 would cost us 700 to start, and it may go up more
2 than that by the time they are finished, so we told
3 them it was okay.

4 MR. BLEDSOE: Is there any sense of
5 fear or how many individuals will be -- would come
6 forward and talk with us, give us statements and let
7 us know what occurred in your community?

8 MR. WALWYN We would have to put out
9 the marker and see who calls us, see who comes in,
10 but it's a lot of -- you have to live in that county
11 to understand what's going on. I mean, even some of
12 the white people were scared. We have had people to
13 tell us we will support you, but don't use our names

14 MR. BLEDSOE: I have been there
15 before. I have been victimized by racial incidents
16 myself, so I'm very familiar with it. But tell us,
17 if you would, about the -- has the ranger ever
18 contacted you at all?

19 MR. WALWYN: I have never been
20 contacted by the ranger. The police officer -- local
21 police officer did call twice. I have never called
22 him back. Once was when they were taken -- taking
23 polygraphs and last week, I believe he called. I had
24 put a story on the internet. If you call to
25 Walwyn.com, it's on there. And he -- my

~~C. W. WALWYN~~ ~~DECEMBER 12, 2000~~
SWORN TESTIMONY

1 mother-in-law said he called. What was funny about
2 this is the day after the fire, I was at a local
3 restaurant eating and the ranger and the investigator
4 walked by me and didn't say anything, so that was it.

5 MR. BLEDSOE. And you were running
6 against an incumbent sheriff?

7 MR. WALWYN: Yes, local.

8 MR. BLEDSOE: And there was a racial
9 difference in the race; is that correct?

10 MR. WALWYN: Well, we ran the campaign
11 not on race

12 MR. BLEDSOE: I know how you ran the
13 campaign, but just that there was -- it's important
14 for the record

15 MR. WALWYN: Yes. On the internet, a
16 lot of people made that known. There is a chat room,
17 local chat room, and they made the differences known,
18 but publicly there was never any.

19 MR. BLEDSOE. Okay.

20 MS. DOUGLAS: You said on the internet
21 some people made differences known, could you give me
22 a -- clarify that?

23 MR. WALWYN. Well, some of them said
24 they wouldn't vote for me, and they had the various
25 reasons why

1 MS. DOUGLAS. And race was --

2 THE WITNESS: Race was one in some
3 issues and some issues it wasn't race

4 MR. JACKSON. CG, two quick questions
5 You said you're a police officer?

6 MR WALWYN: Yes, I'm a Harris County
7 Deputy Sheriff

8 MR JACKSON: Okay. And second
9 question, was there -- you alluded to the fact that
10 as a part of the fire or previous to the fire, that
11 there may have been some steps or some wood. Was
12 there any evidence of a cross being burned either at
13 the front or back of the house associated with the
14 fire?

15 MR WALWYN. We don't know because
16 they did not say that. But two of the woods that
17 make the steps was taken out, and then they were
18 removed.

19 MS BROOKS. I'd like to ask you a
20 couple of questions. One about the makeup of your
21 campaign group. You said that you had a large
22 support from a diversity of people, and you talked
23 about the lady whose house was burned. I just want
24 you to give us a flavor of what your campaign group,
25 volunteers looked like.

1 MR WALWYN: We had black, white, and
2 Hispanic

3 MS BROOKS: Okay. And then the
4 second question is about the FBI. You contacted them
5 and when they said you had to -- you had to have the
6 involvement of the local police, did you ever -- did
7 you-all ever or the woman go back to the FBI and have
8 you tried to reach out to them again, and if so, what
9 happened?

10 MR. WALWYN: No, I didn't. The young
11 man that answered the phone that morning, he said,
12 "Has this ever happened before?" I said, "Well, not
13 that I know of, except for the incident in 1898."...
14 And he said, "I'm not a historian. If the local
15 police don't call, we can't do nothing." Those were
16 his words.

17 MR. JEFFERSON: Okay. Are there any
18 other -- Congressman Lee? Pass that down to her.

19 MR. BLEDSOE: A round of applause for
20 our Congresswoman here.

21 MS. JACKSON-LEE: Thank you. Thank
22 you very much, and I think it's very important that
23 these meetings, open forums continue so that anyone
24 all over the State and anyone over the community can
25 address these issues of voting intimidation. And I

Statement by MS. SHELL JACKSON LEE
DECEMBER 19, 2000

1 applaud you for running a campaign as you have said
2 on the issues, but it seems that you had a lot of
3 voter intimidation going on to intimidate people even
4 before they got to the polls. What I'm trying to
5 understand is there was an actual incident of a fire
6 burning, could be a criminal act, an act of
7 intimidation and an act that was violating the Voter
8 Rights Act of 1965

9 My question is: Did the police
10 enforcement of that community, including the sheriff,
11 I assume it's the County of Wharton, come out and do
12 a full investigation of the incident of the burned
13 house of that particular resident? Did you see or
14 did it come to your attention that a full
15 investigation, just as if someone called and said
16 they believed the fire was an arson or certainly was
17 suspicious, there is an investigation that occurs
18 either by the fire department or the police Did
19 that happen in your county?

20 MR. WALWYN: Yes, an officer was
21 assigned; a detective was assigned They called in
22 the Texas Rangers, but the ranger went on vacation
23 shortly after getting the case. The victim of the
24 fire had to take a polygraph she was given a
25 polygraph. They had a D.P.S. officer come down to

Statement by MS. SHELIA JACKSON-LEE
DECEMBER 19, 2000

1 Wharton and give her a polygraph, her and her
2 husband Her husband, by the way, is a World War II
3 veteran and he is also a retired county commissioner
4 for that area. They were made to take a polygraph.

5 MS. JACKSON-LEE: In that instance, it
6 seems that the victim became victimized. As far as
7 I'm concerned, that's not an investigation If a law
8 enforcement personnel who was assigned to the matter
9 went on vacation, then I am to assume that no
10 evidence was gathered, there was no photographs or no
11 extensive investigation, at least to your knowledge
12 at this juncture. Maybe they will try and come back
13 to the scene, but certainly giving a polygraph to the
14 victim does not appear to be an investigation. That
15 very act appears to be an act that would have kept
16 voters away from the polls.

17 My second question is. I was somewhat
18 shocked and maybe I did not hear you, it seems as if
19 you raised the issue or the victim raised the issue
20 as to having the oversight as it relates to hate
21 crimes or at least raising the issue of hate crimes,
22 and you said you got a response back that was what?

23 MR. WALWYN: If you look at the
24 Deborah Wrigley -- Deborah Wrigley report on it, she
25 said that Ms. Nichols is white, so it is not a hate

Statement by MS. BETTA JACKSON-LEE
DECEMBER 19, 2000

1 crime. Also -

2 MS. JACKSON-LEE: This was done by the
3 media or --

4 MR. WALWYN: Yeah, Channel 13 came
5 out. They and Channel 11 are the only ones that came
6 out.

7 MS. JACKSON-LEE: All right

8 MR. WALWYN: You need to understand,
9 too, ma'am, nobody was interested in what happened
10 I have called every major news source and I have
11 spoken to all of them in person, on the phone, and
12 none of them were interested The only person that
13 was interested was that friend of yours, that black
14 lady on BET, she was the only one that listened and
15 put us on the radio. Nobody else

16 MS. JACKSON-LEE: And you are under
17 oath as we speak now, and so I just want to correct
18 any misunderstanding about hate crimes Hate crimes
19 goes to any segment of the population that feels that
20 an apparent or hideous act is penetrated against them
21 on the basis of their difference At least that is
22 the proposed legislation, and also I know that hate
23 crimes does not have a race element Even the medium
24 sized bill that we have here in the state, I don't
25 think there is an element of race involved It's a

1 question of it's not -- cannot be enforced as much as
2 we would like, but I wanted to clarify that, because
3 we would like to get the names of that particular
4 individual and to follow up on the Civil Rights
5 Division of the Department of Justice

6 MR. WALWYN: Can I say one more thing?

7 MS. JACKSON-LEE: Thank you.

8 MR. WALWYN: I just want to say one
9 thing in regards to what you said about the
10 intimidation, major intimidation. In the same chat
11 room, during early voting, one guy, he said he voted
12 for me, all right? And his inscription was: "I
13 voted for Mr. Walwyn My doors are all metal." So
14 there

15 MR. BLEDSOE: Now, before you leave,
16 let me mention a couple of other things since the
17 Congresswoman is here. I think we should probably
18 hear some of these things. We became aware of what
19 had happened

20 I received an e-mail, we responded to
21 the e-mail, we talked to the supporters of
22 Mr Walwyn, and after we had received the e-mail, we
23 found out that you were unsuccessful in getting the
24 Secretary of State to go down. And we made contact
25 with the Secretary of State and got them to agree to

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1 then go down, at least for a period of time on
2 election day. We filed a complaint with the Justice
3 Department, Civil Rights Division on his behalf, and
4 we did do, I guess, the conference call which was
5 sent down on election day, but have not heard back
6 since that time in regards to what has happened

7 We did send an investigator down who
8 took statements, he is in the back. Do you want to
9 stand up? And he took a number of statements and
10 talked to a number of folks who had been intimidated,
11 who couldn't vote, et cetera, so he has got a lot of
12 information relating to Wharton, and we will get them
13 to bring that information forward so that the
14 Congresswoman will have it. But what we were trying
15 to find out as Ms. Douglas was asking about, was
16 there any efforts for an election challenge that was
17 taking place, that took place in your county?

18 MR. WALWYN: Challenge as to?

19 MR. BLEDSOE: Election outcome, if you
20 had some concern about fraud or anything of that
21 nature?

22 MR. WALWYN: We had -- we had concerns
23 before the election started, because we could feel it
24 in the air. After the cross burned -- after the
25 house burned, you could feel everything was going the

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1 other way

2 And the night of the counting, when
3 they said that -- when they said the machine broke
4 down, we realized it was over. Once the machine
5 broke down, we knew it was over. I cannot
6 substantiate this, but we were told that someone
7 overheard some other people in East Bernard, which is
8 a part of the county, saying how they had messed up
9 the votes on that side.

10 We were also told that one, the
11 ballots fell off the truck in some water, so we do
12 not know if that's why there was humidity. We don't
13 know.

14 MS. JACKSON-LEE: Yeah.

15 MR. FOSTER: If I could just make a
16 comment, Gary, as he stated, he dispatched
17 Mr. Sherman and myself down to Wharton, and we talked
18 to the local press about that particular incident,
19 because one of the things we felt -- they ran a big
20 article in the newspaper right before the election
21 that his campaign manager's house had been burned and
22 we were concerned about the impact that this would
23 have on voter turnout, reading an article like that,
24 that type of perceived intimidation. So there are
25 some serious concerns in Wharton County and I wanted

1 to point that out before we go on, though
2 Technology doesn't allow us to just go on
3 continuously, so the videographer -- are you okay?
4 THE REPORTER: Yes
5 MR. FOSTER Are you okay?
6 THE VIDEOGRAPHER. I need to change
7 batteries, so let's take a --
8 MS SMITH: Two minutes?
9 MR. JACKSON. Something came out that
10 was important and I missed it Was this lady your
11 campaign manager? Because you didn't say that
12 MR. WALWYN. She was my advertising
13 manager.
14 MR. JACKSON. So she was part of your
15 campaign?
16 MR. WALWYN: Yes.
17 MR. JEFFERSON: Yeah. You are ready
18 to change now? How long will it take to change?
19 THE VIDEOGRAPHER: Five minutes
20 maximum I'd say two or three.
21 MR. JEFFERSON. Why don't you change
22 that now. We will take two or three minutes because
23 we are supposed to end this at 8:00 This room will
24 have to be vacated. Please do not go any place
25 Let's change this real quick and then we will have

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1 the next one.

2 (Brief recess taken)

3 MS JACKSON-LEE: Thank you very much
4 and I will be brief. The witnesses, NAACP local
5 office, regional and national, let me applaud the
6 national. The information that was gathered at the
7 hearing in Florida has been the basis of members of
8 Congress, particularly, the Congressional Black
9 Caucus now chaired by a Texan, Congressman Eddie
10 Johnson, I now serve as vice-chairperson of the
11 Congressional Black Caucus. We are looking to
12 receive information around the nation. This is not a
13 fishing expedition, this is an effort to secure
14 information from individuals irrespective of color
15 who believe that on election day, they may have been
16 inhibited or prohibited from voting. The elderly,
17 the disabled, African Americans, Hispanics, others
18 with language problems.

19 In Florida, in particular, those
20 highlights were very strong. There was the issue of
21 racial profiling, there was the issue of blockades
22 being placed in front of individuals trying to vote,
23 there was the issue of having registered many Florida
24 A&M students. I forgot to mention the youths who
25 believed they had been registered and when they got

1 to the polls, they could not find their names. There
2 were false representations that people were felons
3 and could not vote. There were elderly individuals
4 in Florida that could not vote. There were Jewish
5 voters who felt that they were misrepresented too by
6 the structure of the ballot

7 The Congressional Black Caucus is
8 acting as one of the major components. I think you
9 heard NAACP national, League of Women Voters, I
10 believe Ada Edwards is working with them. It's all
11 about empowerment of the voter, insisting that every
12 vote be counted and every voice be heard. We plan on
13 developing a task to draw the data for a national
14 focal point and to have official hearings, hopefully,
15 that will draw this data in for review by official
16 bodies in the federal government.

17 But we are also looking for
18 legislation to insure that in the federal elections,
19 there may be, for example, standardized ballots.
20 There may be standardized opening and closing times
21 so that no media can predict or call an election
22 Only people that should call elections are the voters
23 and no one else, so we are trying to insure that, and
24 the only way we can find a basis of that,
25 Mr. Bledsoe, we thank you, is the data being

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1 collected all around the country.

2 There are hearings -- one hearing was
3 just held in Richmond, Virginia last evening. I
4 expect my colleagues in the Congressional Black
5 Caucus will have further hearings I will have one
6 again on the 21st at Saint Peter Claver on the north
7 side, and I know that Ms. Edwards and Radio One will
8 announce the one on December 27th. I am trying to
9 get to all of them, the one coming up on Thursday the
10 21st

11 The main thing is there are people in
12 this room, but there are others, they're not here.
13 If you know of them, have them call the central
14 number there, NAACP, or the congressional office, let
15 them be heard, because we are gathering data from
16 everyone. Legislation is being filed, but it will
17 not have the impetus and momentum if we don't include
18 everyone who felt that they were blocked from being
19 heard on election day. Everyone's voice is
20 important, everyone's point is important so that we
21 can construct the kind of system that puts the
22 election in the hands of people and not in the hands
23 of the United States Courts or the United States
24 Supreme Court Thank you.

25 MR JEFFERSON Okay.

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1 THE REPORTER: Raise your right hand,
2 please.

3 (SWORN IN TO TESTIFY)

4 OTIS GRANVILLE,
5 having been first duly sworn, testified as follows.

6 MR. GRANVILLE: My name is Otis
7 Granville, I'm a resident of Houston/Fort Bend
8 County. I'm also an election worker in the
9 Houston/Fort Bend County area. On election day about
10 a year ago, they split our precinct up into two
11 precincts because of the population growth out there
12 in Houston/Fort Bend County, and I worked the new
13 precinct poll that they created.

14 And in splitting the precinct, there
15 was a lot of voters came out on voting day to vote
16 and their voters registration card clearly stated
17 that they were supposed to vote in the older
18 precinct, and that precinct was 2023 That election
19 Judge over at 2023 was sending a lot of people over
20 to our precinct.

21 Once they get to our precinct, we
22 looked at the voter registration card, checked out
23 books to make sure that they voted within our
24 precinct. We would have to then send them back over
25 to the old precinct. She would then send them

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1 somewhere else in Fort Bend County to vote.

2 And there was -- and when they split
3 the precincts, they left a lot of voters off the
4 books, myself included, was a voter that was left off
5 the books, and I was clearly supposed to be able to
6 vote. I voted in the past there, so I was supposed
7 to be able to vote.

8 But, fortunately, I voted early where
9 they had access to laptop computers during the early
10 voters registration, I mean voters -- early voting,
11 they had access to laptop computers so they would be
12 able to look up my name and tell me that I'm a
13 registered voter and that I was able to vote.

14 Well, during election day, we were
15 being inundated with a lot of voters coming through
16 there. We didn't have this kind of time to really
17 take out to look up everybody, so what we did, we
18 looked at the addresses and looked to see what
19 precinct they voted in. We would then send them back
20 over to her to tell them that, look, you vote in this
21 particular precinct. She would then send them right
22 back to us, or she would send them somewhere else in
23 Fort Bend County to vote.

24 A lot of people came through there on
25 voting day, I mean, just really upset and really

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1 upset with us. And my -- my Precinct Judge, which is
2 here tonight, she was just being inundated with
3 filling out a lot of paperwork to fill out challenge
4 ballots

5 Because we got to a point where we
6 didn't want to turn away registered voters to vote
7 and people that we know that was registered voters to
8 vote. And so I -- on my lunch break, I paid a visit
9 over to the older precinct to the Precinct Judge and
10 asked her if she was using the voter registration
11 street guide, which dictates to her where the voter
12 should vote

13 She was just making general
14 announcements telling them that look, if you are on
15 this particular side of Court Road, then you need to
16 vote this place; and if you're on this particular
17 side of Court Road you need to vote here.

18 But that wasn't the case that
19 particular day, because like I said, it was a foul-up
20 when they split the precincts. And even after making
21 this known to her, I called the Secretary of
22 Elections for Fort Bend County, which is Mr. Steve
23 Rayburn, and told him that there was a lot of voters
24 being disenfranchised, being sent from here to there
25 and we need to clear up the problem.

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1 So his suggestion to her was if anyone
2 showed up there to vote, let them fill out a
3 challenge ballot and vote.

4 At 5:30, we get a rush of people
5 coming over from her precinct to vote. At 6:30, we
6 got a rush of people coming over from her precinct to
7 vote. At 6:45, we get a rush of people coming over
8 from her precinct to vote and it was ridiculous

9 Even at 7:00, we got a rush of people
10 coming over from her precinct to vote, but at this
11 time, I had to stand in the back of the line at 7:00
12 to make sure that anyone that was already in line at
13 7:00 was able to vote. And I really hated to turn
14 them away, but this was a -- this was tactics that
15 was going on out there

16 And, you know, to me, things like this
17 had been happening before and this just came to the
18 light on this particular day. I have worked as an
19 election worker for the last year in the primaries,
20 as well as the general election, and it's not a lot
21 of pay in it. As a matter of fact, you take a pay
22 cut, but you feel good about being a young person,
23 being out there to encourage other young people to be
24 able to come out there and vote. And to have your
25 vote being disenfranchised like this is just

~~OTIS GRANVILLE - DECEMBER 19, 2000~~
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1 ridiculous

2 MR. JEFFERSON: Okay. Okay. Again,
3 don't forget to stop by here and give your name. Are
4 there any other information or questions you'd like
5 to ask? Mr. Bledsoe?

6 MR. BLEDSOE: Will you give us
7 authorization to use your information to bring about
8 changes, do what we need to do to address the
9 problems?

10 MR. GRANVILLE: Yes, I do.

11 MR. BLEDSOE: And in terms of the
12 numbers of voters, would you estimate for us the
13 numbers of voters you're talking about who might have
14 been disenfranchised?

15 MS. THOMAS: Over 100. I can answer
16 that.

17 MR GRANVILLE: Over 100 voters She
18 is the actual Precinct Judge for Precinct 2123, the
19 new precinct formed for that particular area because
20 of the growth in that area.

21 MS THOMAS: And for the ones that
22 stood in line, they were so frustrated by the time
23 they got up to the panel.

24 MR. BLEDSOE: Do you want to come up
25 and talk?

1 MR. GRANVILLE But also, during the
2 time I visited the old precinct to let her know that

3 MR. JEFFERSON: Ma'am, come up to the
4 mic

5 MS. THOMAS: There was a lot of people
6 who had just moved and their names were still on the
7 books there, she would not allow them to vote even
8 though their names was still on the books, and that
9 their names, because when they went to their new
10 addresses to that precinct to try to vote, they
11 wouldn't let them vote because they had moved within
12 the last 30 days. So they told her to go back to the
13 old precinct to vote and they would not allow this
14 lady to vote, even though her name was on the books
15 to vote in that particular precinct.

16 MR. JEFFERSON: Okay. You can't --

17 MR JACKSON: I think it's important,
18 would you please tell us who this lady is? I think
19 her name needs to be in the record.

20 MR. GRANVILLE: Okay. This is
21 Ms Donna Thomas

22 MR. JACKSON: The Election Judge
23 you're talking about?

24 MS. THOMAS: Brenda Long is the
25 precinct Judge for precinct 2023.

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1 MR. JACKSON: Thank you
2 MS. THOMAS: I am the Precinct Judge
3 for 2123.

4 MR. FOSTER Excuse me, could you go
5 ahead and swear her, please?

6 THE REPORTER: Raise your right hand,
7 please.

8 (SWORN IN TO TESTIFY)

9 DONNA THOMAS,
10 having been first duly sworn, testified as follows:

11 MS. THOMAS: My name is Donna Thomas,
12 and I'm the Precinct Judge for 2123 On behalf of
13 Mr. Otis Granville, I am speaking for the community
14 out there because we have seen this happen several
15 times We have just been in this community for four
16 years -- no, actually, I have been there four years,
17 but the community has been there about six and a half
18 years now We are behind the old subdivision, the
19 Ridgemount in the east Fort Bend County area

20 Now, what's happening over there is
21 that the precincts used to vote together in the same
22 precinct site, same polling site Well, they split
23 it up, once the neighborhood became developed in
24 Green Valley Estate, which is where we reside Green
25 Valley Estate holds about 511 homes and, of course,

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1 you know, they are occupied with two adults, some
2 kids that are able to vote. And, we got out and
3 tried to get the people registered to vote, but not
4 like earlier. So people that stated information is
5 not getting out in the community to get notified when
6 early voting is taking place, also when voting sites
7 are available for voting.

8 The information may be posted in some
9 newspapers. Like you said earlier, it needs to be
10 posted earlier than that, needs to be posted in local
11 stores, local businesses around the area. Of course,
12 I did some of that myself by approaching some of the
13 Foodarama stores in our neighborhood, but some of
14 these areas of that local business people would not
15 allow you to put things in their facilities. And I
16 think we need to get more people out to make it known
17 that the people that we give our business to should
18 help us to get our people out to vote, otherwise, we
19 need not have them in our communities if they're not
20 going to help us out, and that's what I believe in.

21 But stating back to the voting issues
22 on that day, I would say we had 100 people that were
23 deterred from voting on that day due to the fact of
24 what was going on with the back and forth situation
25 from precinct to precinct. And I do believe, I don't

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1 care what anybody says, we have undercover people in
2 these polling places working that's sitting on the
3 working commission panel for these election polls
4 that actually turn people away deliberately. And I
5 do believe we need to find people that are
6 trustworthy to work the polls and I don't think
7 people -- and when they come into the polls to work,
8 they take an oath to do the right thing, and we have
9 people actually out there doing the wrong thing,
10 preventing people from voting. And that's all I have
11 to say.

12 MR. JEFFERSON. Thank you.

13 MR. FOSTER: We have a question.

14 MR. DOUGLAS: Point of clarity. So
15 2023 and 2123 were one precinct of 2023?

16 MS. THOMAS: They are actually one
17 site area to vote, but they actually had it set up
18 where, you know, they had one table set up for 2123,
19 one table set up for 2023 in that same area, a school
20 that they voted in, but it was two precincts within
21 one site

22 MS. DOUGLAS: And in splitting the
23 precincts, has there been an estimate or
24 approximation when they split the two precincts, an
25 approximation of the number of names lost in the

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1 process?

2 MS. THOMAS. No, I don't know if it's
3 been calculated yet, that's something you have to get
4 from the county officials on those numbers, I
5 couldn't give you that.

6 MS. DOUGLAS: Okay And you were
7 saying with the 100 people that were disenfranchised,
8 these are people who actually ended up being turned
9 away from the polls, so is there no clear estimate of
10 how many were lost in the shuffle?

11 MS. THOMAS. No clear estimate on how
12 many we lost in the shuffle. I can tell you we had
13 over 900 people come to our building just alone to
14 vote. Now the people that got turned away that did
15 not get able to vote, we told them where they needed
16 to go to vote. Now, if they went over there --
17 again, a lot of them said they weren't going to go
18 back to vote, and at that time, I realized we
19 couldn't turn away the people from voting, we have
20 got to do challenge voting. We have to have a system
21 handled. We did everything that day.

22 MS. DOUGLAS: So the disenfranchised
23 could far exceed 100?

24 MS. THOMAS: Yes.

25 MS. DOUGLAS: Now, with the challenged

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1 ballots, do we know how many were eventually
2 challenged?

3 MS THOMAS: We wouldn't know that
4 either That's up to the county to actually accept
5 those votes We don't have determination to make
6 that decision. So, the county makes that decision on
7 the voters.

8 MS. DOUGLAS: Thank you.

9 MR BLEDSOE: Where -- as an Election
10 Judge, what is your understanding about when you can
11 provide someone with a challenged ballot or when
12 you're obligated to tell them about the
13 responsibility of their being able to vote through a
14 challenge ballot?

15 MS. THOMAS: We have an outline of
16 what they should follow and they even give you a
17 different little forms to follow. There's a short
18 term form that you use on the day of election and
19 those are guidelines that you follow that describes
20 what a voter is supposed to have in order to vote,
21 and so many different things now that there is no
22 reason why a person should not be able to vote.

23 They can have anything they've got to
24 identify them as a registered person in that precinct
25 to allow them to vote. So nobody should be turned

1 away with a driver's license; no one should be turned
2 away with any other form of identification, even with
3 a picture ID that's going to say that who they are
4 and that they live in that area and in that county
5 They should be able to vote.

6 MR. BLEDSOE. So the individuals had
7 that identification?

8 MS. THOMAS: The individuals had that
9 identification, they had driver's license

10 MR. BLEDSOE: Are you saying the boss
11 directed her to accept the challenged ballots or to
12 do challenge ballots with these individuals that she
13 had concerns about?

14 MS. THOMAS. Actually, our boss from
15 Port Bend County directed everyone within those two
16 precincts to accept anybody within any precinct to be
17 able to vote. And this lady did not accept that rule
18 from the headman himself, Steve Rayburn She did not
19 do as she was told.

20 MR. BLEDSOE: And was she told again
21 later in the day when she wasn't doing it, was she
22 told again to do it?

23 MS. THOMAS: She was addressed by this
24 gentleman right here about what Steve Rayburn had
25 said, and up to that point, she was still turning

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SWORN TESTIMONY

1 people away.

2 MR. BLEDSOE. And why was she doing it
3 if the law is that clear and if you were given
4 instructions and you had a sheet in front of you?

5 MS. THOMAS. I can't answer that for
6 you, sir, that's something you would probably have to
7 ask her.

8 MR. JEFFERSON. What is the ethnicity
9 of this person?

10 MS. THOMAS: She is a Caucasian

11 MR. JEFFERSON Okay.

12 MS. THOMAS: Brenda Long.

13 MR. BLEDSOE: Any Caucasians
14 disenfranchised?

15 MR. GRANVILLE: Not that I'm aware of

16 MR. BLEDSOE: The hundreds of people
17 were all African Americans?

18 MR. GRANVILLE: And Hispanics

19 MR. BLEDSOE: Do they have anglos that
20 live in that precinct?

21 MS THOMAS. We do have anglos, but
22 both precincts together is predominantly African
23 American and Hispanic. I would venture out as a wide
24 guess to say that we might have one percent
25 Caucasian, if one percent.

~~DONNA THOMAS~~ ~~DECEMBER 13, 2006~~
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1 MR. FOSTER: Out of curiosity, what
2 type of voting mechanism is used in that precinct?

3 MS. THOMAS We use the bubble sheets
4 where you bubble with a number two pencil.

5 MR. JEFFERSON. We're going to have to
6 move on. I have you, sir We have to move on Who
7 is the next person that would like to come up? Let
8 me see the hands again of those wanting to testify
9 one more time? Okay Do you want to come down now?
10 Okay

11 MS. EDWARDS: Fine I will come down
12 now.

13 MR JEFFERSON: Come on, Ada

14 THE REPORTER. Raise your right hand,
15 please.

16 (SWORN IN TO TESTIFY)

17 ADA EDWARDS,
18 having been first duly sworn, testified as follows.

19 MS. EDWARDS: My name a Ada Edwards,
20 and my statement is basically secondhand. I'm the
21 community affairs director for Radio One, Magic 102,
22 KBXH, I do a public affairs program for KBXH. We had
23 done an extensive voter registration campaign on the
24 two stations, and in particularly, we had registered
25 a lot of younger voters from the KBXH listening

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1 audience. And on election day, we got numerous
2 calls, I did not document them. I probably should
3 have, but I wanted to have this out there.

4 We had a lot of young people who I
5 think were turned away simply because of their dress.
6 They were asked, do you have any outstanding traffic
7 tickets, and if they said, "Yeah", they said, "You
8 can't vote. Do you have any outstanding warrants?"
9 And, you know, "You can't vote."

10 Jones High School, Reagan High School,
11 Lamar High School, as I understand, I think it was
12 Lamar, didn't even open up until 11:00. There was
13 nobody there, the polls itself We had a lot of
14 people who were asked for ID because of the --
15 because we did a lot of voter registration.
16 Bettencourt, sorry, the tax assessor's office, for
17 whatever reason, I understand they privatized
18 whatever they were doing down there, and a lot of the
19 people were not on the rolls.

20 Our understanding was that if you had
21 an ID, that you could be allowed to vote. The people
22 were being turned away because they did not have a
23 photo ID And my understanding from the county
24 clerk's office is that you do not need a photo ID,
25 that any type of ID that substantiates who you are,

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1 be it a utility bill or check stub or anything of
2 that type. So younger people were being turned away
3 because they did not have a quote/unquote "a photo
4 ID."

5 We got on the air several times on The
6 Box stating to challenge, you know, call for the
7 challenge. We had people calling in, I tried to
8 challenge, they acted -- "they said they didn't know
9 what I was talking about," quote/unquote

10 So, my concern and the station's
11 concern is that after getting all of these younger
12 voters out there and registered to vote, a lot of
13 them were really just kind of disenfranchised and
14 going to try to make it work

15 But I just wanted to have this hearing
16 be advised that I -- it just seems to me that it was
17 just -- maybe it was because of who we are, but it
18 was a lot of younger new first time people who had
19 registered to vote and were just being turned away on
20 just B.S. I mean, there was nothing, nothing legal
21 about them being turned away.

22 MR. FOSTER. Do you --

23 MR. JEFFERSON: Okay

24 MR. FOSTER. Do you think, basically,
25 I want your observations, but do you think that

1 minorities were held to a greater identification
2 standard than --

3 MS. EDWARDS: I can't speak to that
4 because I wasn't at the sites, but the ones who
5 called me were primarily African Americans or sounded
6 African American and Hispanic, and a lot of males,
7 lot of young black males.

8 MR. JEFFERSON: Okay Thank you, and
9 we've got to move on. I think all you know Ada and
10 you can -- wait We want to ask that famous question
11 that the president asked is if you give us permission
12 to use this testimony?

13 MS. EDWARDS: Sure

14 MR. JEFFERSON: Okay. We want to do
15 the same thing on that Okay. I'm going to take
16 that one lady, but I'm going to take the personal
17 privilege of doing something for one American.
18 Carroll Robinson is here. Everybody knew about this
19 thing here, all the city counsel and elected
20 officials, and he came out So Carroll, take one
21 minute to say one word. We owe him that. Our city
22 councilman, Mr. Carroll Robinson.

23 MR. ROBINSON: Thank you Clear
24 observation, I think out of all of this And the
25 reason I'm here is it's good what the folks are going

Statement by MR. CARROLL ROBINSON
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1 to do in Washington to change the law, but elections
2 operate on the local level and one of the things I
3 pointed out is all the Precinct Judges, whenever
4 there is an election that involves the city, are
5 actually hired and paid for by the City of Houston
6 And one of the things I'm interested in and I'm
7 listening to is who people are. Because normally, we
8 get a sheet with hundreds of names, and we don't
9 normally hear from anybody in the community who would
10 want to participate in that process, and I think
11 that's going to be vitally important

12 Voter education also occurs at the
13 local level, and I think we are going to have a big
14 responsibility, and that's why I'm here tonight
15 Because when we move on, the next group of people who
16 come to council are going to have that same
17 responsibility, and I think Ada made a very valuable
18 point, and that's the same thing we have heard from
19 folks We get excited a lot about the mayor, we get
20 excited about the -- the Congresswoman, but we forget
21 about the tax assessor collector, we forget about the
22 Beverly Kauffman's position, the clerk, that these
23 people actually run and insure that we get empowered.

24 I mean, I have been in politics since
25 I was a Precinct Judge and it never crossed my mind

~~STATEMENT BY MR. CARROLL ROBINSON~~
DECEMBER 19, 2000

1 about hanging chads, dangling chads or ballots
2 getting thrown out And you just take it for granted
3 when you go that it's being counted, and now I'm very
4 sensitive and I will have a lot of different
5 questions when it's time for us to vote on who to
6 hire and pay for city elections. And you got to
7 remember next year we have a city election, and we
8 have to make sure some of these things come out.

9 Howard, I hope, has a list of people
10 in that precinct who are interested in being
11 appointed, hired to be precinct workers, and we get
12 the education process started in February, March, and
13 April, and get them ready to go. Thank you

14 MR JACKSON: Carroll, excuse me, how
15 are Precinct Judges and workers selected?

16 MR. ROBINSON. Normally, you have two
17 different things A Precinct Judge is a technical
18 term for somebody elected by the party, or if there
19 is a vacancy, they are appointed in the primary of
20 even numbered years. You put your name on the ballot
21 and run as a Precinct Judge As the election worker,
22 you can be a Precinct Judge, but you don't
23 necessarily have to be And normally, when it's a
24 city election or county election, the county
25 commissioners and city council are who put the names

~~Statement by MR. CAROL ROBINSON~~
 DECEMBER 19, 2000

1 on the list for who is going to work the poll on
 2 election day. So, some polling you have all Precinct
 3 Judges, and the alternate -- or you have no Precinct
 4 Judges and they are just hired people that work
 5 there, so it's a combination. Normally, Precinct
 6 Judges get first option

7 MR. JEFFERSON. Thank you. All
 8 politics are local.

9 THE REPORTER: Raise your right hand,
 10 please.

11 (SWORN IN TO TESTIFY)

12 ELIZABETH LENTZ,
 13 having been first duly sworn, testified as follows.

14 MS. LENTZ: Hi My name is Elizabeth
 15 Lentz. I volunteered for the Harris County
 16 Democratic party and I was working in the office
 17 election day answering the phones, and I can just
 18 back up pretty much everything that's been said
 19 tonight. I can keep it short and sweet.

20 MR. JEFFERSON: No, no, give us some
 21 specifics Excuse me, give us some specifics

22 MS. LENTZ: Okay. A lot of calls
 23 about people being sent back for multiple ID's, even
 24 if they had the voter registration cards, it didn't
 25 matter, you had to have a picture ID They weren't

ELIZABETH LENTZ - DECEMBER 17, 2000
SWORN TESTIMONY

1 taking the challenge ballots It was bad. They were
2 not helping anybody who had questions about how to
3 put the ballots in the ballot box or in the little
4 thing or how to do any of that. That's about it

5 MR. FOSTER: From your knowledge, were
6 most of the calls coming from predominantly minority
7 precincts?

8 MS. LENTZ: Yes. I can't say about
9 the precincts, but I can say predominantly
10 minorities.

11 MS. BROOKS: Did you document -- did
12 you-all document the communities?

13 MS. LENTZ: We didn't know it was
14 going to be as bad as it was, or we would have been
15 taking names, addresses, and phone numbers. We have
16 no information whatsoever.

17 MR. JEFFERSON: State who you are
18 with

19 MS. LENTZ: Harris County Democratic
20 Party.

21 MR. JEFFERSON: Okay. Thank you
22 Thank you very much And we appreciate you coming
23 out Come on up

24 THE REPORTER: Raise your right hand,
25 please.

ELIZABETH LENTZ - DECEMBER 19, 2000
SWORN TESTIMONY

1 (SWORN IN TO TESTIFY)

2 AUDREY GASSAMA,

3 having been first duly sworn, testified as follows:

4 MS. GASSAMA: I'm Audrey Gassama, and
5 I work with the NAACP Region 6 office, and I had the
6 pleasure of being on the bus for four weeks to help
7 lift every voice and vote, so I was very excited to
8 come back and vote. And we vote as a family, so I
9 had my family come out and I live in a predominantly
10 African American neighborhood which is 26, the zip
11 code. The Precinct Judge there has been there, I
12 think, since I was a baby, and she is still there

13 And so therefore, she -- she does not
14 read things well. Well, my sister came to vote,
15 because I made sure that everything was in order so
16 my family could vote. She brought her ID and her
17 voter registration card. She was turned back and
18 they wouldn't let her vote on either one. Some of
19 the numbers were left off of the voter's registration
20 cards so they claimed that they didn't know what
21 precinct she could go vote in.

22 There were a number of people that
23 were voting there that were sent back that had voted
24 there years before, because I see them every time we
25 vote, and they -- some of them did not know to

AUDREY GASSAMA DECEMBER 19, 2000
SWORN TESTIMONY

1 challenge. So I called back to our office, I did
2 speak to Ada and she told me to tell them to
3 challenge the vote. But a lot of them were
4 frustrated and they didn't want to go through that
5 procedure as far as challenging the vote. So, I
6 called back, I took the voter's registration down
7 there myself and went and gave it to the Precinct
8 Judge myself. And she looked on it and she was like,
9 "I can't read that number, I don't know." You know,
10 and I was like, "What are you talking about? I know
11 her name is on the list." So if I hadn't just kept
12 on badgering her and go over to look at the list
13 myself, she wouldn't have never been able to vote.
14 So she came back at lunch time to vote.

15 So, I'm saying this is nothing new
16 This is something that's happening in all our
17 communities. And as far as them, like one time we
18 all went to vote at the usual place and we didn't
19 know until we got there that it was at the church, so
20 this is something that we need to change the process
21 on how these people are chosen to be in these
22 positions. And until we do that, you know, that's
23 the way all of our votes are going to count.

24 MR. JEFFERSON: Okay

25 MS. GASSAMA: Thank you.

~~AUDREY GASSAMA~~ ~~DECEMBER 19, 2003~~
 SWORN TESTIMONY

1 MR. JEFFERSON: Thank you Thank you
 2 very much

3 MS. DOUGLAS: Just one question,
 4 Howard. I wanted to clarify, you're saying the name
 5 of your sister was on the list the whole time?

6 MS. GASSAMA: Yes, it was.

7 MR. JEFFERSON: Okay Thank you. And
 8 it is now 8:00, but I will take the privilege to ask
 9 this question. Were there any other persons who
 10 wanted to testify on any irregularities? Ms Flo?

11 MS. COOPER: I'd just like to talk
 12 about early voting.

13 MR. JEFFERSON: Okay.

14 THE REPORTER: Raise your right hand,
 15 please.

16 (SWORN IN TO TESTIFY)

17 FLORIDA COOPER,
 18 having been first duly sworn, testified as follows:

19 MS. COOPER: I'm Florida Cooper, I'd
 20 like to testify and address the issue of early
 21 voting I'd like to address the issue of early
 22 voting. I volunteered at the early voting station
 23 here at 5300 Griggs, Palm Center. There were two
 24 Sundays that were designated, October 21 and
 25 October 22, October 28 and 29, that Saturday and

FLORIDA COOPER DECEMBER 19, 2000
SWORN TESTIMONY

1 Sunday for early voting.

2 On the first Sunday in October, most
3 of the churches in the southeast area brought their
4 church members to vote after church. Lines were
5 extremely long and there were only three computers
6 available with only two of them working. Our
7 compassionate conservative tax assessor collector did
8 not wish to provide additional machines once they
9 were notified of the lines wrapping around the
10 building.

11 In speaking to the Precinct Judge and
12 Assistant Precinct Judge here at the location, she
13 said, "Flo, it's going to take you calling all of the
14 NAACP leadership to have them do something about
15 this."

16 As you know, we feel intimidated as
17 Precinct Judges working in our own precincts because
18 we are not provided the proper number of machines and
19 the -- and proper number of computers in order to do
20 our jobs. We are short staffed here and we don't
21 even have the proper number of people to be able to
22 intake all the people that are trying to vote, so
23 perhaps for the next election you can get the problem
24 resolved.

25 MR. JEFFERSON: Okay. Okay.

FLORIDA COOPER - DECEMBER 19, 2000
SWORN TESTIMONY

1 MS. DOUGLAS. One question to Flo. Do
2 you feel that the Precinct Judges would be willing to
3 give sworn testimony to some of their experiences and
4 feelings of intimidation?

5 MS. COOPER I believe so

6 MR. JEFFERSON: Okay Flo, while
7 you're up testifying, you had some comments to make,
8 why don't you do that now.

9 MS COOPER. I need the list from
10 there. There are three things: Make sure you renew
11 your NAACP memberships in the back And I wanted to
12 thank the people that helped arrange and helped put
13 this event together And stay tuned because Win has
14 several activities planned This Thursday,
15 December 23rd, we have --

16 MS SMITH. 21st.

17 MS COOPER. Sorry, 21st, so
18 immediately following this, the NAACP will have that
19 Win event recognizing Kwanza and going through all of
20 the steps, so we need everybody to come back out on
21 this Thursday

22 Ms Sayles doesn't know this, but
23 we're planning to surprise her She is a true
24 advocate for the children. So it's her birthday on
25 the 27th and most of us will be out of town. But she

~~REGINA COOPER~~ DECEMBER 19, 2000
SWORN TESTIMONY

1 doesn't know it, so I want you-all to come back and
2 let this lady know she is dynamic in our community
3 with those children. She raised so much money for
4 them to make sure that the children received proper
5 adoption, proper things that are needed, so we want
6 to make sure that she knows we love her. Okay?

7 MR. JEFFERSON: Okay. Claude, you
8 have a couple of things, so go right ahead.

9 MR FOSTER. I wanted to say, you
10 know, this is one of three hearings we're going to be
11 conducting in the State of Texas The first one was
12 in Bowie County, we have this one tonight, we have
13 one tomorrow night We have one tomorrow at 1.00 in
14 Tarrant County, Fort Worth, Texas We can't put
15 these hearings on without the cooperation of the
16 local branches and I want to thank Howard and Flo
17 Cooper who did the ground work and also Sherman
18 Stiffic, because without people like that, we could
19 not get the message out and have folks like you here
20 to do the important work that we have to get done, so
21 I wanted to publicly acknowledge that and get it on
22 record

23 MR JEFFERSON: Thank you. Reverend,
24 would you come with the benediction for us?
25

1 BRIAN LANCE,
2 having been first duly sworn, testified as follows.
3 MR LANCE: Excuse me Sorry, this is
4 a real eye opener
5 MR. JEFFERSON. State your name and
6 your nature and who you're with
7 MR LANCE: I'm Brian Lance with the
8 FDR Pack, and I called the NAACP office here and was
9 invited by Yolanda Smith, so I appreciate it. I just
10 wanted to mention it, many of you received it, but
11 Mr. Lyndon Raoush has proposed a motion to Congress
12 that Congress form a special commission to
13 investigate the allegations of fraud in Florida and
14 elsewhere too, basically, Florida. This outrageous
15 Supreme Court decision, unconstitutional decision,
16 not from the standpoint of changing the election, as
17 you said, getting to the bottom of this whole
18 situation and cleaning it up. So I'm encouraging
19 people to sign, you know, a statement that we have
20 circulated supporting this initiative. I think it's
21 compatible with what this hearing here is all about.
22 I appreciate a moment of your time
23 MR. FOSTER: Thank you. On behalf of
24 the entire NAACP Houston Branch, we want to thank
25 you-all for coming out. Thank you for the

Statement by MR. POSTER
DECEMBER 19, 2000

1 individuals that were available to give the sworn
2 testimony. We do have refreshments in the back that
3 Flo has brought out and prepared, so again, we want
4 to thank you. And please call us again if you have
5 any other individuals that you know of that have
6 experienced any type of intimidation or harassment
7 The branch is still open, phone number is
8 (713)526-3389 if you-all know of any other
9 individuals and we would be able to get them in
10 contact with the right individuals.

11 I know that Radio One is having an
12 event on the 27th, and Sheila is having an event on
13 Thursday, so we will be able to give you that
14 information -- Ada is here, she has some information
15 for her event. The number of the Houston branch is
16 (713)526-3389. Again, (713)526-3389.

17 If you know any other individuals that
18 would like to give some information to forward the
19 information to us and we will be forwarding it to our
20 regional director, Ms. Keryl Douglas, and our State
21 President, Gary Bledsoe. But again, we want to thank
22 you for coming out and I will turn it over to our
23 President, Howard Jefferson.

24 MR. JEFFERSON: Let me say this is a
25 statewide deal and Gary Bledsoe, we're just hosting

STATEMENT BY MR. FOSTER
DECEMBER 19, 2000

1 this as one of the branches of the NAACP. Gary
2 Bledsoe is responsible for doing this throughout the
3 state, so this is kind of his thing So Gary, do you
4 want to close out with one or two words or anything?

5 MR. ELEDSON: A couple. I think I
6 want to thank the local branch I think you did a
7 fantastic job and I want to say to the state, you did
8 a great job of offering, as always, and I want to
9 give you guys a round of applause. And I think we
10 have got some really significant information we want
11 to follow up on, but we want to let everyone know,
12 please call the branch office.

13 Yolanda is always looking for more
14 work and Howard is always giving it to her. And we
15 want you to call and give her the information so we
16 can follow up on it and mail it down as best we can,
17 e-mail it down as best we can. And we want to say
18 that if -- if -- if you have some difficulty, I know
19 that one of the reporters just asked me about some
20 people that have spoken to him actually this evening
21 that were afraid to give their names because they're
22 afraid of retaliation. And I can just say that we're
23 pledged with the -- I know that Howard will do all
24 they can to protect you with whatever legal means
25 they have, the State will do the same, and Keryl will

Statements by Mr. BLEDSOE
DECEMBER 19, 2000

1 do the same at the regional level

2 And I'm sure the national office will
3 do all the way up the hierarchy of the NAACP will try
4 to make sure. I don't think you have anything to be
5 worried about with most of the things that were said
6 If you do come forward, it's being honest and
7 truthful is all that you need to ask But, you know,
8 if there is some issues that arises and you need some
9 assistance then, obviously, we will provide that

10 Now, there's one exception, probably
11 Wharton, probably more to be concerned with down
12 there, because I'm very familiar with that community.
13 But I just want to say, I want to thank everybody for
14 being here

15 And again, I want to applaud the local
16 branch for putting this on and I want to thank the
17 regional office for kind of inspiring and giving us
18 the idea and suggestion that we do this, but thank
19 you very much

20 (End of Hearing)

21
22
23
24
25

VOTER INTIMIDATION HEARING
DECEMBER 19, 2000

1 STATE OF TEXAS
2 COUNTY OF HARRIS

3
4 I, CYNTHIA J. LEE, Official Court Reporter in
5 and for the State of Texas, do hereby certify that
6 the above and foregoing contains a true and correct
7 transcription of all proceedings to be included in
8 this volume of the Reporter's Record in the
9 above-styled and numbered cause, all of which
10 occurred at the Palm Center Business & Technology
11 Center and were reported by me.

12 I further certify that the total cost for the
13 preparation of this Reporter's Record is \$460 00 and
14 will be paid by the NAACP.



15
16
17 CYNTHIA J LEE, CSR
Texas CSR 3732
Official Court Reporter
18 Harris County, Texas
19 1220r Carrswold Drive
Houston, Texas 77071
20 Telephone: (713) 777-4032
Expiration: 12/31/2001

PRELIMINARY REPORT

Office of the Secretary of State

Race Summary Report

1992 General Election

11/3/92

RACE NAME	PARTY	CANVASS VOTES	PERCENT
U. S. Representative District 29			
Gene Green	DEM	64,064	64.92%
Clark Kent Ervin	REP	34,609	35.07%

Race Total		98,673	

Judge, Court of Criminal Appeals Place 2			
Morris L. Overstreet(I)	DEM	2,781,729	51.04%
Sue Lagarde	REP	2,667,300	48.95%

Race Total		5,449,029	

**TRAVIS COUNTY, TEXAS
CUMULATIVE
GENERAL ELECTION
MEDIA FORMAT
NOVEMBER 5, 1996**

Precincts Reporting	213 Of	213	100.00 %
Precincts Completed	213 Of	213	100.00 %
Total Registered Voters: 459414			
Election Day	Total Vote	Early Voting	

	Total Ballots Cast	99008	
148866	247874		
	Percentage Of V.R.	21.55%	
32.40%	53.95%		

PRELIMINARY REPORT

PRELIMINARY REPORT**SHERIFF**

	Alvin Shaw -R			45127	47.96%
68400	48.68%	113527	48.39%		
	Margo L. Frasier -D			48963	52.03%
72108	51.31%	121071	51.60%		

Office of the Secretary of State**Race Summary Report****2002 General Election**

11/5/02

RACE NAME	PARTY	CANVASS VOTES	PERCENT
U. S. Senator			
John Cornyn	REP	2,496,243	55.29%
Ron Kirk	DEM	1,955,758	43.32%
Scott Lanier Jameson	LIB	35,538	0.78%
Roy H. Williams	GRN	25,051	0.55%
James W. "Jim" Wright	W-I	1,422	0.03%

Office of the Secretary of State**Race Summary Report****2002 Republican Primary Election**

3/12/02

RACE NAME	PARTY	CANVASS VOTES	PERCENT
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PRELIMINARY REPORT

PRELIMINARY REPORT

Justice, Supreme Court, Place 4 (Unexpired)

XAVIER RODRIGUEZ(I)	REP	266,648	46.50%
STEVEN WAYNE SMITH	REP	306,730	53.49%

Race Total 573,378

**The Secretary of State of Texas
Ron Kirk
County by County Canvass Report
1994 General Election
November 8, 1994**

Maryellen Whitlock Hicks (Dem) ran against **LeeAnn Cambell Dauphinot** (Rep) for the position of: **Justice, 2nd Court of Appeals District, Place 6 (M)**

Race Total:	Hicks:	197,275
	Dauphinot:	281,491
Total Votes:		476,766
Total Voters:		854,911
Turn Out:		50.14%

**Office of the Secretary of State
1994 Democratic Primary Election
March 8, 1994**

Grady Yarborough raced against **Martha Whitehead** for the position of: **State Treasurer.**

All Counties:	Dem-	606,650	votes for	Whitehead
	Dem-	310,620	votes for	Yarborough
	Total Votes:	917,270		
	Total Voters:	9,041,906		
	Turn Out:	10.14%		

PRELIMINARY REPORT

**NAACP Voter Irregularity Hearing
Wednesday, December 12, 2001
Shape Community Family Center
Houston, Harris County, Texas**

Testimony: Mr. Howard Jefferson, President of the Houston Branch NAACP testified that on the Thursday before the Saturday election of November 6, 2000 he was made aware that 100 polling places were changed. On Election Day there were 171 polling places that had been changed without notifying the voters. He also said that people were put in jail because they were trying to vote. Others had their license and were still not allowed to vote.

Testimony: Felicia Dykes testified that at the time of the election she was 43 years old, and she had been voting at the same location since the age of 18. During this election she was told that she needed to go to another location to vote. She went to vote at the Precinct Judge twice. The first time she was turned away and on the second occasion she was told that her vote wouldn't count after she filled out the necessary paperwork for a challenged affidavit and submitted her ballot.

Testimony: Terrence Scott testified that he was arrested because he insisted that he be able to vote. He went to cast a vote at the local church where his mom votes but he was told that he was registered to vote on another side of town and refused the right to vote. The police officer charged him with trespassing.

Testimony: Linda D. Mitchell testified that she was given the run-around as to where she needed to vote. She went to several different locations and the instructions as to where she needed to vote were scratched away without any clear alternative information. She left frustrated and returned with her husband demanding why she could not vote. At that time, she and her husband were given a challenge ballot.

Testimony: Debra Riley testified that that indeed there was a conflict with people trying to vote at precinct 506, where Ms. Mitchell had a controversy.

Testimony: Denise Jordan testified that she voted and called to see if her elderly mother had voted yet. She was made aware that her mother attempted to vote but was told that she needed to go to another location and when she did, she was told that that location was closed. At that time, Ms. Jordan contacted her local Representative, Sheila Jackson-Lee and some representatives were sent to the problem area, Precinct 506. She had a picture of the sign that said that no one in the 506 precinct could vote in the mayor's election. The sign did not say where those individuals were to go to vote. The judge at the poll called the police and a policewoman was present when the witness and her mother returned.

Testimony: Melody Rames testified that she witnessed people being turned away from the polls and voters being disenfranchised. She went to the polls that day to take a friend to vote. While she was waiting she was rushed by a white who came from the other side

of the room and assaulted her. She was later informed that he was the Precinct 6 Judge. He pushed her forcibly on her arm backed her up to the door. He yelled at her and she didn't know why, he waved a piece of paper in her face and told her that she could not loiter within 100 feet of the polling place. An hour later she gave a police report.

Testimony: Bernadine Thorn testified that when she went to vote she presented her driver's license and she was told that she could not vote in the mayor's election because she was out of city limits. She has been at the same address for 12 years and voted at the same location for the duration of that time.

NAACP Voter Intimidation Hearing – December 9, 2000, Texarkana, Texas

This document contains two sworn testimonies of individuals where their voting rights were violated.

Testimony: Mr. Haze Hudson ran for an elected position in 1998 in Miller County in Texarkana, TX. He was African-American and his opponent was Anglo-American. After counting almost half of the votes, Mr. Hudson was in the lead by about six boxes. This news greatly upset his opponent's wife and she called the chairman of the county commission, Mr. Larry Dowd and the director who conducts the election in Miller County, Mr. David Moore. At that point in time a recess was called. Shortly after, Mr. Orr, director of the election, opened the back of the machine and sprayed the surface with a substance to help the machine tally the votes easier. The machine automatically shut down. This occurs when the machine does not read any marks. Votes were then overlaid with a number 2 pencil after they had been originally marked with a black felt pen. In the end, Mr. Hudson lost by over 300 votes.

Mr. Dowd and Mr. Moore had ensured Mr. Hudson that enough ballots were purchased for the election, but this was not the case. During the election they ran out of ballots and resulted to xeroxing ballots for citizens in the rural Fouke County. There were about 75 or 80 of these Xeroxed ballots. This violated the election law of Arkansas number 7-1-104 line 15. Forty-seven ballots in the city of Fouke happened to disappear.

Testimony: Robert Jones of Texarkana, Texas testified that he and a couple of other NAACP branches registered over 500 people in Texas and over 800 people in Arkansas to vote. The turn out was over 80% at the polls in some areas. After all this effort, people were turned away from the poll

Testimony: Ms. Delores Caudle testified that she saw a military man who had just been released from service be denied the right to vote. The election clerk said that his name was not on the register. The second incident that she witnessed was when a fellow who was allowed to vote in the previous election for the Bowie County Sheriff even though he was not on the register, but was denied the right to vote on November 7, 2000. The first time was considered a challenged vote, which is illegal, but because he failed to follow up with the clerk, he was not granted the right to vote the second time.

Testimony: Mr. Hudson continued to testify and stated that he had a poll watcher at every poll except for maybe one who took notes. It was noted that a couple who lived at the same household for years were required to vote at two different poll locations. A similar incident occurred with a mother and son. At an elementary school, a life long voter was told that he was not registered and he was told that he needed to go to another box, where he was again turned down.

**Expert Report of Orville Vernon Burton, Ph.D. for *Session v. Perry*, regarding
Congressional Redistricting in Texas.
November 14, 2003 (Revised November 22, 2003).**

I. Scope of Project

In the late afternoon of November 10, 2003, I was contacted by attorney Dennis Hayes, General Counsel of the National Association for the Advancement of Colored People (NAACP) and asked to provide consulting services with regard to the U.S. Congressional redistricting of Texas. Specifically, I was asked to consider whether the new plan 1374C proposed for the State of Texas dilutes minority group voting strength. I was also asked to research the historical circumstances surrounding the change in the current plan 1151C to the proposed plan 1374C. Among the issues I was asked to investigate were: a) the purposes behind the new plan; b) the larger historical context in which this specific change took place, including the history of official state discrimination, c) the socioeconomic status of whites, African Americans, and Latinos in Texas and the continuing effects of historical discrimination. Later that evening I was also contacted by NAACP attorneys Robert Notzon and Gary Bledsoe of Austin. These two attorneys requested that I first investigate the Senate report factors (also known as the Zimmer factors). The following day, attorney Jose Garza of the League of United Latin American Citizens (LULAC) called and asked if I could consult for LULAC. After discussions with the attorneys for the NAACP, it was decided that I could serve as an expert for both organizations representing minority plaintiffs. At the request of attorneys, I have conducted research on the history of racial discrimination in regard to voting, education, and public accommodations in Texas, examining the degree to which politics in Texas has continued to be affected by racial considerations, and the impact of the new Congressional plan, commonly referred to as plan 1374C, on minority voting strength. I am being compensated for my work at the rate of \$150 per hour.

In my expert opinion, the Senate or Zimmer "factors" have been clearly established. These factors satisfy by a totality of the circumstances, in other words, by all the available contextual evidence, that minority voters do not have an equal opportunity to participate in the electoral process and elect candidates of their choice in Texas. Scholars have especially documented Senate factor #1, "extent of any history of official discrimination," and Senate factor #5, "the extent to which members of the minority group... bear the effects of discrimination." In addition, the new Congressional redistricting plan 1374C does dilute minority group voting strength, most notably in Congressional Districts 10, 15, 23, and 24 (under Plan 1151C). Minority communities are separated, or "cracked," in these Districts. In all of these areas, voting is racially polarized, and the proposed Congressional district boundaries divide minority communities that, if they had been kept intact, would have had an opportunity to elect candidates of choice.

I base my opinion on research that I conducted in historical and current sources, interviews, and a very brief analysis of voting patterns in the State of Texas, as well as my examination of the current Congressional district configurations. Given the short timeline of when this report was due, my attorneys sought out assistance from another plaintiff group's expert witness, Dr. Allan Lichtman, who sent me three tables, one with population by ethnic/racial groups, one with turnout estimates for the general elections of 1996, 1998, 2000,

Burton Report, page 2

and 2002, and socio-economic data from the 2000 census (included in this report). Dr. Lichtman and I had no discussion or communication about these tables and these tables were sent to me before Dr. Lichtman wrote his expert report. Dr. Allan Lichtman is doing a thorough study of racial bloc voting, and after I examine Dr. Lichtman's report, I will present my expert opinion on racial bloc voting. I was also asked to study the reports of other expert witnesses and possibly prepare a response to them.

II. Professional Background and Experience

I am Professor of History and Sociology at the University of Illinois at Urbana-Champaign, where my research and writing focus on American History and particularly on race relations. For the past twenty-nine years I have taught courses in U.S. History, Southern History, race relations, discrimination, ethnicity, family, and community. I use statistical analysis in my own research and writing, and I also teach courses in quantitative techniques at the University of Illinois. I am a member of the graduate statistics faculty and a Senior Research Scientist at the National Center for Supercomputing Applications where I am Associate Director for Humanities and Social Sciences.

I am a recognized and respected scholar with numerous publications in scholarly books and peer-reviewed journals. I have published a number of book reviews and have refereed book manuscripts, articles, proposals, and books concerning statistics, the voting rights act, race relations, and redistricting for academic and commercial publishers such as Cambridge University Press and the University of North Carolina Press, journals such as Social Science History and the Journal of Interdisciplinary History, and funding agencies such as the University of Illinois Research Board and the National Science Foundation. I have presented scholarly papers both in the United States and abroad on historical and statistical subjects, and I have received various awards. I am the author or editor of seven books, including A Gentleman and an Officer: A Military and Social History of James B. Griffin's Civil War (co-authored with Judith N. McArthur, Oxford University Press, 1996). Chapter 9 of this book deals with Texas in the aftermath of the Civil War. I have also co-edited with my wife Georganne B. Burton, "The Free Flag of Cuba": The Lost Novel of Lucy Holcombe Pickens [orig. pub. 1855]. (Baton Rouge: Louisiana State University Press, 2002). In this book we study a novel by Lucy Holcombe, an author from Marshall, Texas and celebrated as the "Rose of Texas." Her antebellum novel was a pro-slavery response to Harriett Beecher Stowe's Uncle Tom's Cabin.

I am also author of In My Father's House Are Many Mansions: Family and Community in Edgefield, South Carolina (University of North Carolina Press, 1985, fifth printing 1998; subject of sessions at the Southern Historical Association and the Social Science History Association's annual meetings; nominated for Pulitzer). Quantitative analysis grounds this study of a southern community. Last year the University of Illinois Press published my edited book, Computing in the Social Sciences and Humanities (a Choice Outstanding Academic Book, 2003), and my co-edited CD-ROM (with two of my former Ph.D. students, Terence Finnegan and David Herr), Wayfarer: Charting Advances in Social Science and Humanities Computing. The CD-ROM is an expanded version of the traditional book and contains more essays and research and teaching applications.

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I have been recognized by my peers as a leader in my field, both as scholar and teacher. I served as the president of the Agricultural History Society, which publishes the premier journal in rural history, I am on the executive committee of the Social Science History Association, last year I chaired the prize committee for the Southern Historical Association's H. L. Mitchell Award for the best book in Labor History and have been appointed the program chair for the 2005 annual meeting. I served as a member of the Organization of American Historian's ABC-CLIO "America: History and Life" Award Committee, 1997-99, to select the best article published in United States history during that two-year period. I have received fellowships and grants from the National Science Foundation, the U.S. Department of Education, Rockefeller Foundation, the National Endowment for the Humanities, the American Council of Learned Societies, the Woodrow Wilson International Center for Scholars, the National Humanities Center, the Carnegie Foundation, and the Pew Foundation. I was selected nationwide as the 1999 U.S. Research and Doctoral University Professor of the Year (presented by the Carnegie Foundation for the Advancement of Teaching and by the Council for Advancement and Support of Education). I was a Pew National Fellow Carnegie Scholar for 2000-2001. At the University of Illinois I was named a University Scholar in 1988 and was designated an inaugural University Distinguished Teacher/Scholar in 1999. Last year I received the University of Illinois Graduate College Outstanding Mentor award. Two years ago I served as the General Mark Clark Distinguished Professor at The Citadel. I am the recipient of the 2004 Eugene Asher Distinguished Teaching Award of the American Historical Association.

Race relations, politics, and society have been my specialty since I received my Ph.D. at Princeton in 1976. Most of my work has dealt with the role of race in American life. In my books and articles, I have described the impact of race upon the South with a particular emphasis upon the connections between the political process and racial attitudes, traditions, and economic and political institutions. I have researched and written on the Voting Rights Act of 1965 and presented this research to academic conferences in England, France, and the United States. As part of a large National Science Foundation study of the effects of the 1965 Voting Rights Act in the American South, I headed the research team for South Carolina and was the principal author (with Terence Finnegan, Peyton McCrary, and James W. Loewen) of the chapter on South Carolina, Chapter Seven in the book resulting from the study, Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990 (Edited by Chandler Davidson and Bernard Grofman. Princeton University Press, 1994; Winner of the 1995 Richard F. Fenno Prize, Legislative Studies Section, American Political Science Association). Another of my articles, "Legislative and Congressional Redistricting in South Carolina," was published in Race and Redistricting in the 1990s (Edited by Bernard Grofman. New York: Agathon Press, 1998). A detailed record of my professional qualifications is set forth in the attached Curriculum Vitae.

As a graduate student at Princeton University, I studied statistics both in the History Department and with Dr. Edward Tufte in the Woodrow Wilson School of Public and International Affairs and with Dr. Claudia Goldin in the Economics Department. At the University of Illinois, I did a formal "Study in a Second Discipline" with a concentration on demography and advanced statistics. I have researched and written about the use of quantitative techniques. For example, see "Quantitative Methods for Historians: A Review Essay," Historical Methods 25:4 (Fall 1992): 181-88. I have also researched and written specifically about statistical techniques for measuring racial bloc voting. See (with James W. Loewen,

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Robert R. Brischetto, and Terence Finnegan) "It Ain't Broke, So Don't Fix It: The Legal and Factual Importance of Recent Attacks on Methods Used in Vote Dilution Litigation," lead article in The University of San Francisco Law Review 27:4 (Summer 1993): 737-780. On 10 July 1993 I gave a presentation on "The Use of Historical and Statistical Data in a Voting Rights Case" at the NAACP's Ninth Annual Lawyers' CLE Seminar, where I also prepared a package of handouts, including a detailed description of how to do ecological regression analysis. These handouts were included in the course book, Conference Proceedings, for the CLE/NAACP Annual Meeting, July 1993, Indianapolis, Indiana. In November 1999 at a Voting Rights Conference in Washington D.C. at American University Washington College of Law, I published a slightly revised version of this paper, "Understanding Regression Techniques for Determining Racial Bloc Voting," in the Conference Workbook prepared by the Lawyers' Committee for Civil Rights Under Law Voting Rights Project.

I am a judicially recognized expert in the fields of districting, reapportionment, and racial voting patterns and behavior in elections in the United States. I have had extensive experience in analyzing social and economic status, discrimination, and intent in voting rights cases, and group voting behavior. I have been retained to serve as an expert witness and consultant in numerous voting rights cases by the Voting Section of the Division of Civil Rights of the United States Department of Justice, Voting Rights Project of the Southern Regional Office of the American Civil Liberties Union (ACLU), the National Association for the Advancement of Colored People (NAACP), the Mexican American Legal Defense and Educational Fund (MALDEF), the California Rural Legal Association (CRLA), the Lawyers' Committee for Civil Rights Under Law, the Legal Services Corporation, and other individuals and groups. I first served as an expert witness and consultant in about 1982 with *McCain v. Lybrand*¹ (I was contacted by attorneys Laughlin McDonald and Armand Derfner immediately after *Mobile v. Bolden*,² to consult on the *McCain* case). I have not kept a list of all the voting rights cases in which I have been involved, but, to the best of my recollection, following are the states in which I was involved in redistricting. For the 1980 redistricting, I was retained for South Carolina by attorney Armand Derfner and by Dennis Hayes of the NAACP. In 1990, I was retained by Laughlin McDonald of the ACLU and by Dennis Hayes and Willie Abrams of the NAACP for South Carolina. At a later stage of challenge to the redistricting in South Carolina, I was retained by the United States Department of Justice, Division of Civil Rights, Voting Section. In Illinois, attorneys Craig Burkhardt and Michael Carvin hired me to work for the Republicans in the House of Representatives for the 1990 redistricting, and in Massachusetts Alan Rom of the Lawyers' Committee for Civil Rights Under Law asked me to work with Dr. Allan J. Lichtman on redistricting. In the 1990 round of redistricting, I also worked for attorney Joaquin Avila and MALDEF in California. For the 2000 redistricting, I worked for the NAACP on the City of Evanston in Illinois and for the Democrats in the New York State Senate case. My testimony has been accepted by federal courts on both statistical analysis of racially polarized voting and socioeconomic analysis of the population, as well as on the history of discrimination and the discriminatory intent of laws. I conducted the extensive ecological regression (ER) analysis as proof that voting patterns were polarized along racial lines in *Jackson v. Edgefield County, South Carolina School District*, 650 F.Supp. 1176, 1194-97 (D.S.C. 1986), which I have been told was the first case where Ecological Regression was presented by the plaintiffs and accepted by the

¹ 465 U.S. 236 (1984).

² 446 U.S. 55 (1980).

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federal court after the Supreme Court endorsed Ecological Regression as the proper statistical technique for measuring racial bloc voting in the *Gingles* case, *Thornburg v. Gingles*. 106 S. Ct. 2752 (1986); *Gingles v. Edmisten*, 590 F. Supp. 345 (E.D.N.C. 1984).³

To the best of my knowledge and memory, in the last five years I have testified or given depositions in the following cases: *Vander Linden v. South Carolina*, Civ. No. 2-91-3635-1, *Elliott Harvey, III v. National Association of Letter Carriers*, C.A. No. 98 CV 2312 (POR), *Moultrie v. Charleston County Council*, C.A. No. 9-01 562 11, *Montano v. Suffolk County Legislature* CV 03 1506(ADS) (ARL), and *New Rochelle Voter Rights Defense v. City of New Rochelle*.

In the course of my investigation, I have examined a wide range of sources. These have included an examination of pertinent published works by historians, political scientists, and sociologists relevant to my inquiry; reviews of newspaper clippings, census reports, trial transcripts, other government documents and reports that document socioeconomic and political conditions in Texas, election returns for selected primary and general elections in Texas and the statistical analysis done by the state of Texas of the recent probative elections for U.S. Congress that included a minority candidate. I have also conducted interviews and communicated with historians and political scientists knowledgeable of and in Texas. For the most part, I gathered these materials independently or with the assistance of my research assistants, Matthew Cheney, a graduate student at the University of Illinois, and Kristopher Paschal, a graduate student at Southern Methodist University in Texas, and with a consultant Dr. Scott Althaus, an Associate Professor in the departments of Political Science and Speech Communications at the University of Illinois at Urbana-Champaign. In some cases I requested specific documents that were supplied by the attorneys for the plaintiffs and the Texas NAACP and LULAC.

In preparing my report and my testimony in this case, the sources and types of documentation that I have used are those an expert normally consults in investigating questions of this nature. The methodology that I have employed in preparing my report is the same methodology I and other scholars in my field employ when examining issues of the sort investigated here. Finally, the analysis presented here is consistent with related scholarly research. In my analysis for this case, I have used assumptions, methods, and analytical principles consistent with those employed in my past scholarly writing. On the basis of the evidence discussed in the following pages, any expert in my field could legitimately reach a conclusion concerning the purposes and effects of the Congressional Redistricting in Texas.

III. Senate Factors that should be considered as part of the totality of circumstances.

This section of the report will systematically address the 7 plus 2 "Senate Factors," as noted above, as part of the totality of circumstances for Texas. Historians, political scientists, and sociologists have documented the history of official discrimination in voting and the socioeconomic status contributing to lower rates of political participation. The fact that the state of Texas has a long history of racial discrimination affecting voting is beyond dispute. Although

³ I do not know the universe of the cases to say for certain that *Jackson* was the first. *Gingles* was decided on June 30, 1986, *Jackson* was decided on Sept. 29, 1986, so *Jackson* would certainly have been among the first of the cases to follow the *Gingles* analysis. Of course, Ecological Regression had been used in cases before *Gingles*; I had used bivariate ER in cases before the *Gingles* decision.

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Texas was not covered initially by the 1965 Voting Rights Act, "it has been a major battleground on which the struggle over minority voting rights has occurred." This history is summarized in Robert Brischetto, David R. Richards, Chandler Davidson, and Bernard Grofman, "Texas," in Chandler Davidson and Bernard Grofman (eds.), *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990*.⁴

This history has long been recognized in factual findings made by federal courts. The trial court in *Graves v. Barnes* relied in part on this history as a basis for finding the redistricting plan for the state house of representatives unconstitutional. "The State has adopted and maintained an official policy of racial discrimination against the Negro," observed the court, and that policy extended to "the Negro's right to vote and to participate in the electoral process."⁵ The court also found that "the Mexican-American population of Texas . . . has historically suffered from, and continues to suffer from, the results and effects of invidious discrimination and treatment in the fields of education, employment, economics, health, politics, and others."⁶ This finding was, in turn, part of the evidence relied on by the United States Supreme Court in upholding the decision of the trial court in *Graves*.⁷

Senate Factor 1: "the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process"

This factor looks at how the history of racial discrimination has affected voting in Texas. Native Texan and sociologist Dr. Chandler Davidson has researched and written extensively on African Americans and political rights in Texas. His expert witness report in *Vera v. Richards* is a good overview of Texas politics and race relations.⁸ Texas has had a long history of racial discrimination. Beginning with Anglo settlement, slaves were brought from other areas of the South with their masters who had acquired inexpensive land in Mexican Texas. During this time slaves were official contract labor (usually for life) in order to comply with Mexican law which outlawed outright slavery. With the fear that the Mexican government would put an end to slavery, the Anglos living in Mexico felt threatened and fomented revolution in 1836. There are many interpretations as to the causes of this insurgence, among which racist leanings towards Mexicans are often attributed as a factor. Others strongly argue that these leanings did not arrive

4 Robert Brischetto, David R. Richards, Chandler Davidson, and Bernard Grofman, "Texas," in Chandler Davidson and Bernard Grofman (eds.), *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990*. (Princeton, N.J.: Princeton University Press, 1994), 233-70, 432-39, quotation on p. 233.

5 *Graves v. Barnes*, 343 F. Supp. 704, 725 (W.D. Tex. 1972)(citations omitted).

6 343 F. Supp. at 728.

7 *White v. Regester*, 412 U.S. 755 (1973). See also *Seamon v. Upham*, 536 F. Supp. 931 (E.D. Texas 1982), aff'd, *Strake v. Seamon*, 469 U.S. 801 (1984)[Congr.].

8. Texas does not have registration figures by race or language minority, as I understand Chandler Davidson, "The Voting Rights of African Americans in Texas, 1865-1994." Expert Witness Report (The copy Dr. Davidson provided me is 114 pages double spaced that includes 15 pages of notes, including citations to court cases). *Vera v. Richards*, 861 F. Supp. 1304 (S.D. Tex. 1994); *Bush v. Vera*, 116 S. Ct. 1941 (1966). Much of this testimony is included in the essay, Brischetto, et al., "Texas." See also J. Morgan Kousser, *Colorblind Injustice: Minority Voting Rights and the Undoing of the Second Reconstruction* (Chapel Hill: University of North Carolina Press, 1999), 277-316.

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until after revolution had broken out. Those who came to aid the Texans after the fighting broke out, it is claimed, formulated a hatred for the Mexicans they were at war against.⁹

After Texas Independence had been gained, slavery grew as an important part of the economic system of the Republic of Texas and later the State of Texas; however, it no longer needed to be disguised as contract labor. Slavery was important to cotton, and cotton was important to the economy of Texas. Slavery grew at a rapid pace and by 1860 was as important in Texas as it was proportionately in Virginia.¹⁰

Free African Americans did exist in antebellum Texas, and occupied the bottom class on the social ladder. This group numbered no more than 400 in both 1850 and 1860. They had no rights and were seen by whites as threats to the institution of slavery. Free African Americans had to seek permission from the legislature to remain in Texas and were subject to the same harsh laws as slaves.¹¹

Texas joined the Confederacy in 1861 and engaged in the Civil War to protect the institution of slavery. Slavery came to an end in Texas on June 19, 1865, when federal troops arrived at Galveston and announced the Emancipation Proclamation, although many kept slaves well into the fall of 1865.¹² Without federal supervision, white Texans adopted in 1866 a new constitution that prohibited "intermarriage, voting, officeholding, and jury service by freedmen." Texas came under military rule and eventually under what has been called "Radical" Reconstruction, although it was only "radical" if one considers fairness and interracial democracy "radical." Only with Congressional Reconstruction did African Americans get the vote; left to their own devices white Texans opposed strongly granting any rights of citizenship to former slaves. During the period of Reconstruction, African Americans gained the right to vote, the ability to serve in police forces and on juries, and some held various appointed and elected offices. Those elected to office and the state legislature were almost always elected only from African American majority districts. Texas's experiment with interracial democracy was relatively brief. In 1872 conservative white Democrats recaptured control of the legislature and in 1873 the governorship. A former governor characterized this so called "Redemption" as "the restoration of white supremacy and Democratic rule." Another constitutional convention was held in 1875 and a bill mandated segregated schools. In 1876 Texas ratified a constitution that returned the state to conservative Democratic Party home rule and deprived African Americans of equal rights. Although some had wanted to use that constitution to disfranchise African Americans, it did not. Many whites in counties with a high proportion of blacks unsuccessfully sought to have a poll tax implemented as a provision of the constitution. At that time an Austin newspaper declared "districts were 'Gerrymandered,' the purpose being, in these elections, and properly enough, to disfranchise the blacks by indirection." Texas still operates under the anti-

9 On Anglo settlement in Mexican-Texas see: Gregg Cantrell, *Stephen F. Austin: Empresario of Texas* (New Haven: Yale University Press, 1999); On the Texas Revolution see: Cantrell, *Stephen F. Austin*; Paul D. Lack, *The Texas Revolutionary Experience: A Political and Social History* (College Station: Texas A&M University Press, 1992).

10 Randolph B. Campbell, *An Empire for Slavery: The Peculiar Institution in Texas 1821-1865* (Baton Rouge: Louisiana State University Press, 1989).

11 Campbell, *Empire for Slavery*.

12 Brischetto, et al., "Texas," in Chandler Davidson and Bernard Grofman. *Quiet Revolution in the South: The Impact of the Voting Rights Act 1965 - 1990*, 237.

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Reconstruction constitution adopted in 1876. Texas also had its share of segregation laws. For example, an 1891 law required segregation on railroad cars in the state.¹³

From Reconstruction through the end of the nineteenth century, African Americans in Texas participated in the political process, usually as members of the Republican Party, while conservative Democrats continued to control the state government. In the 1890s economic oppression brought African Americans and poor whites together to support Populist Party candidates, and in several Texas congressional districts progressive whites and African Americans supported the People's Party candidates. This third party had a great deal of success at the local level, but could not elect a congressman or statewide official. Many scholars have asserted that in the cases of close elections the Democrats used fraud, ballot stuffing, payments, coercion and intimidation (often aimed at African Americans) to steal the offices at stake. Nevertheless, during this time whites and African Americans attended both political and social events together in support of Populist Politics. Brischetto, et al. quote historians who document from the 1870s the formation of white associations "the purpose of which was to prevent the elections of blacks to office." When this failed, Anglos on the local level acted just as whites in other former Confederate states resorting to the methods listed above and even, if all else failed, resorting to murder. The "terror in the Texas blackbelt" was similar to "that in the Deep South states during the time period." In addition, Dr. David Montejano's important book, *Anglos and Mexicans In The Making of Texas, 1836-1986* documents that the White Man's Primary Association was effectively used to prevent Mexican Americans from participating in the nomination process in Dimmit County, Texas. The 12 June 1914 *Carrizo Springs Javelin*, the local Dimmit County newspaper reported that the White Man's Primary Association "absolutely eliminates the Mexican vote as a factor in nominating county candidates, though we graciously grant the Mexican the privilege of voting for them afterwards." One of the founders of the League of United Latin American Citizens in 1929, M. C. Gonzalez included among adverse conditions in Texas for Latinos in the decade of the 1920s, "the establishment of 'white man's' primaries to prevent blacks and Mexican Americans from exercising their right to vote." The history of race relations in Texas is one that discouraged African Americans and Latinos from participating in the political process not only subtly but with economic reprisals and the real threat of one's life.¹⁴

As a result of the political challenges to their own conservative rule in the 1890s, the Democratic Party sought reform in Texas politics, which meant in essence to "clean up" their

13 Randolph B. Campbell, *Grass Roots Reconstruction in Texas, 1865-1880* (Baton Rouge: Louisiana State University Press, 1997); Barry A. Crouch, *The Freedman's Bureau and Black Texans* (Austin: University of Texas Press, 1992); Brischetto, et al., "Texas," pp. 233-34, quotations p. 234; Chandler Davidson, "Expert Testimony," *Vera*, p. 4.

14 Lawrence Goodwyn, *Democratic Promise: The Populist Moment in America*. (New York: Oxford University Press, 1976); Gregg Cantrell, et. al., "Texas Populists and the Failure of Biracial Politics," *Journal of Southern History*, Vol. 55, No. 4. (Nov., 1989) pp 659-692; Gregg Cantrell, *Kenneth and John B. Rayner and the Limits of Southern Dissent* (Urbana: University of Illinois Press, 1993); Gregg Cantrell and Kristopher B. Paschal, "Texas Populism at High-Tide: The Case of the Sixth Congressional District, 1894," under consideration *Southwest Historical Quarterly*; Kristopher B. Paschal, "Melvin Wade, The Dallas People's Party, and Bi-Racial Political Fellowship," under consideration *Southwest Historical Quarterly*; Alwyn Barr, *From Reconstruction to Reform: Texas Politics, 1876-1906* (Austin: University of Texas Press, 1971); Alicia Rodriguez, "Urban Populism: Challenges to Democratic Party Control in Dallas, Texas," Ph.D. diss., University of California-Santa Barbara, 1998; Brischetto, et al., "Texas," pp. 234-35.

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opposition.¹⁵ Around the turn of the century, White Men's unions formed in many Texas counties with their purpose to ensure that only conservative white Democrats were elected to office. Beginning in the 1890s and lasting for many decades, lynching became a standard form of racial intimidation in Texas. Between 1890 and the 1920s, Texans lynched 309 men, more than any other state. Of these, 249 were African American (as compared to 60 white men and these rest were poor whites and Latinos). However, in 1920s the mob violence would give way to organized violence against African Americans.¹⁶ During the 1920s the Ku Klux Klan, no stranger to politics, gained prominence in Texas. In 1922, Earle B. Mayfield, an admitted Klan member, was elected to the United States Senate. The Klan also had success electing officials at the local level, and the Klan controlled the Democratic Party's nominating convention.¹⁷ In 1930 a lynch mob burned down the Grayson County courthouse in Sherman to kill an African American accused of raping a white woman -- and then burned down the entire African American business block in Sherman for good measure. As recent as 1998, in Jasper, Texas, the murder of African American James Byrd was so shocking it drew worldwide attention.¹⁸

During the early twentieth century the number of Latinos in Texas began to rise dramatically as the Porfiriato and Mexican Revolution took place in Mexico and a wave of migrants made their way across the border. According to Benjamin H. Johnson, "At least ten thousand people moved to Cameron County from 1910 to 1920, increasing its population to 37,000. More than twice as many came to Hidalgo County, making almost two-thirds of its 1920 population of 38,000 recent immigrants." Prior to this time, Texans considered Mexican-Americans as white. However, as this wave competed with Anglos for jobs, accepting them as white quickly disappeared. "Jim Crow" laws also found their way to the Latino society in Texas. Now socially cast apart from whites, restaurants and stores in the Rio Grande valley began to display signs reading, "NO MEXICANS."¹⁹ Segregated Latino schools and neighborhoods began to develop. In reaction to Latino segregation, the Plan de San Diego was conceived in Duval County. This plan suggested violent rebellion by Latinos who would create a separate nation from the Border States in the Southwest.²⁰ In 1920, the sole Latino member of the state legislature, J.T. Canales, who had called attention to abuses of Latinos by the celebrated Texas Rangers, left politics. It would not be until 1956 before a Latino would return to Austin, when Henry B. Gonzales of San Antonio was elected. Brischetto, et al., "Texas," have a brief section on "Mexican Americans" and the discrimination they received from Anglo Texans.²¹

Beginning in 1902 a series of acts sought to disfranchise several groups including African Americans, Latinos, and poor whites. The major disfranchising device in Texas was the use of a poll tax as a prerequisite for voting. The institution of the poll tax aimed directly at poor African

15 Brischetto, et al., "Texas," in Davidson and Grofman, 235, 237; David Montejano in *Anglos and Mexicans In The Making of Texas, 1836-1986* (Austin: University of Texas Press, 1987), pp.143-45.

16 Randolph B. Campbell, *Gone to Texas: A History of the Lone Star State* (New York: Oxford University Press, 2003).

17 Randolph B. Campbell, *Gone to Texas*.

18 Dina Temple-Raston, *A Death in Texas* (Henry Holt & Co., 2002).

19 Johnson, *A Revolution in Texas*.

20 Benjamin H. Johnson, *A Revolution in Texas: How a Forgotten Rebellion and its Bloody Suppression Turned Mexicans Into Americans* (New Haven: Yale, 2003); Neil Foley, *The White Scourge: Mexicans, Blacks and Poor Whites in Texas Cotton Culture* (Berkeley: University of California Press, 1997).

21 Brischetto, et al., "Texas," in Davidson and Grofman, pp. 235-37.

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Americans but also crippled the influence of many Latinos and poor whites. Historians have maintained that the poll tax was targeted at punishing Populists who had formed coalitions with African American voters in urban areas such as Dallas. In addition to disfranchising those who had been in dissent to conservative Anglo Democratic Party rule in Texas, urban workers who may very well have identified themselves as Democrats also felt the weight of the poll tax. Because both African Americans and Latinos were disproportionately poor, the cost of paying the poll tax helped keep minority registration and turnout low for much of the first half of the twentieth century. Dr. Chandler Davidson in his 1994 Expert Report quotes Ozzie Simmons that the poll tax, "although a small sum (\$1.75), costs the [South Texas Mexican] laborer most of a day's wage."²² The poll tax had such an effect on voter turnout that Congress and the states passed the Twenty-Fourth Amendment to the United States Constitution (ratified 1964), which outlawed the practice for federal elections. The Voting Rights Act of 1965 authorized the United States Attorney General to challenge use of the poll tax in state elections, and a federal court promptly struck the poll tax down as unconstitutional, in part because it had been adopted in 1902 for the purpose of disfranchising African American voters.²³

Without a poll tax to hinder minority voters, the Texas legislature imposed a restrictive voter registration system requiring annual registration of all voters months before elections were to be held. This system, which a federal court found to have a substantial disfranchising effect, was struck down in *Beare v. Smith*.²⁴ The following year the state enacted a new purge law that would have required reregistration of the entire state electorate. These kinds of purges tend to eliminate minority voters off the rolls. The extension of the preclearance requirement of the Voting Rights Act to Texas in 1975, however, prompted the Department of Justice to object to implementation of the new purge law, which a federal court then enjoined. By 1975 the attempts to hinder voting in Texas had become so obvious that the United States Congress extended Section 5 of the Voting Rights Act to cover Texas.²⁵ According to Brischetto, et al., "Texas," after extension of Section 5 to Texas, "Texas jurisdictions were soon the target of the largest number of objections in any covered state." (1975-1980) Between 1975 and 1990, the Department of Justice "interposed 131 objections to voting procedures" embracing the full range of "illegal procedures: racial gerrymandering, discriminatory purges of registered voters, imposition of numbered posts and the majority runoff requirement, annexations that diluted minority votes, a faulty bilingual oral assistance program, reduction in the number of elected officials, transfer of duties from one official to another, and unfair changes in election dates." Clearly, the Anglo leadership of Texas has a history of attempting to disfranchise African Americans.²⁶

In addition to the Poll Tax, Texas also instituted a white primary. In order to slate candidates those voting in the party primary had to affirm, "I am a white and I am a Democrat."²⁷

²² Brischetto, et. al., "Texas," 239-40; Davidson, "Expert Report," p. 12.

²³ *United States v. State of Texas*, 252 F. Supp. 234, 245 (W.D. Tex. 1966), aff'd 384 U.S. 155 (1966).

²⁴ 321 F. Supp. 1100 (S.D. Tex. 1971), aff'd sub nom *Beare v. Briscoe*, 498 F.2d 244 (5th Cir. 1974).

²⁵ Brischetto, et al., "Texas," in Davidson and Grofman, 239-240

²⁶ Brischetto, et. al., "Texas," 240, quotes from pp. 246 and 256 on DOJ objections.

²⁷ Barr, *Reconstruction to Reform*; Patrick G. Williams, "Suffrage Restrictions in Post Reconstruction Texas: Urban Politics and the Specter of the Commune," *Journal of Southern History* Vol. 68, No.1 (Feb. 2000).

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Texas began to use the white primary as a means of de facto disfranchisement after adoption of the Terrell Election laws in 1903 and 1905. (See Table 8.9 in Brischetto, et. al.)²⁸ Given that the Democratic Party was the only party that mattered, keeping African Americans out of the primary amounted to disfranchisement. Prof. David Montejano in *Anglos and Mexicans In The Making of Texas, 1836-1986*, writes that the author of the "Terrell Election Law" which established a direct primary and required the payment of a poll tax between October and February, clearly stated that the purpose of law was to prevent opening "the flood gates for illegal voting as one person could buy up the Mexican and Negro votes." Moreover, "Proponents of the Terrell legislation also noted that Mexicans and blacks would either fail to pay so far in advance or lose their receipts when election time came around." In 1918 African Americans successfully challenged a white primary in Waco Texas and gained access to voting privileges there. In response, the Texas State Legislature outlawed the participation of African Americans in Democratic primaries statewide. Dr. Montejano writes that "in 1918, the legislature passed a law eliminating the interpreter at the voting polls and stipulating, moreover, that no naturalized citizens could receive assistance from the election judge unless they had been citizens for twenty-one years." In 1923, the Texas legislature enacted a law declaring that "in no event shall a negro be eligible to participate in a Democratic primary election held in the State of Texas." After a 1927 successful challenge by the African American El Paso physician Dr. Lawrence A. Nixon, the legislature shifted the "burden of disfranchisement from the state to political parties." The State Democratic Executive Committee resolved to "limit primary participation to white Democrats ... and none others." Although this law was successfully challenged in the Supreme Court, the Texas Democratic Party made slight adjustments to the rule until, in *Grovey v. Townsend* (1935), it was unanimously held that if the Democratic Convention decides to exclude African Americans it was constitutionally acceptable to do so. This standard was not overturned until the landmark 1944 Supreme Court decision *Smith v. Allwright* that held the "white primary" to be unconstitutional.²⁹

Texas has continued to hinder minority voting with the use of vote dilution techniques. For example, since the 1960s there have been constant legal challenges to the system of election districting in Texas. It is important to note that these challenges have been closely paralleled by an increase in a surge of political activity among African Americans and Hispanic activists. Kicking off the set of legal challenges to voting districting in Texas was the *Graves v Barnes* (1972) decision that became the important *White v. Regester* (1973) decision outlawing multimember districts as unfair to minorities. This decision was followed up with decades of political positioning and maneuvering in the redistricting process, followed by lawsuits, followed by more positioning and maneuvering, all culminating in the two court decisions in *Bush v. Vera* (1996) and *Vera v. Richards* (1994).³⁰

Senate Factor 2: "the extent to which voting in the elections of the state or political subdivision is racially polarized"

²⁸ Brischetto, et. al., "Texas," p. 269.

²⁹ Brischetto, et. al., "Texas," in Davidson and Grofman, 237-239, quote p. 238; David Montejano in *Anglos and Mexicans In The Making of Texas, 1836-1986* (Austin: University of Texas Press, 1987), pp.143 45; Davidson, Expert Report, *Vera*, p. 7.

³⁰ Kousser, *Colorblind Injustice*, pp. 277-316.

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I have been asked by attorneys to examine at a later point the expert witness reports relevant to the issues I am investigating, and in particular racial bloc voting, and I reserve the right to do so. Attorney Jose Garza of LULAC, however, provided me with the state's analysis of racial bloc voting for the highly probative contests involving a minority candidate for Congress in the last decade. The data in the reports are broken out by year (1992-2002), and within each year separate reports are given for each Congressional District with estimated turnout rates among Anglos, Latinos, and African Americans, as well as estimated levels of support for Anglo- and non-Anglo candidates among each of these groups. Although I have not been provided the data nor the methodology behind the state's own printout, I have seen the printout results. These results show racial bloc voting by Anglos, strong cohesion among African American voters, and among Latino voters. In addition, in the general elections and often during primaries, African American and Latino voters supported the same candidates. There are clear patterns of proportionally lower turnout in general elections among Latino and African American populations relative to whites, and clear patterns that Latinos and African Americans favor the minority candidates, while Anglos favor the Anglo candidates. The patterns in primary voting are mixed: the turnout disparities among groups tend to be smaller than in general elections, and African American and Latino blocs sometimes have turnout levels equal or greater than Anglos. Although I cannot provide a final expert report on racial bloc voting until I examine Dr. Lichtman's analysis, as I noted above (the tables that I was provided before Dr. Lichtman produced his report are consistent with lower turnout by minorities, however), of election results and the State's regression analysis indicate a high probability that African Americans and Latinos are politically cohesive within each group and with each other and that Anglos generally vote as a bloc to defeat minority preferred candidates absent a minority opportunity district.³¹ This would not be surprising since several Court cases in Texas have documented racial bloc voting. Moreover, the careful social science study by Brischetto, et al. "Texas," found that their findings on minorities' election to city councils "are consistent with the assumption that racially polarized voting was strong in most Texas cities during this period" (1974-89). In addition they found that minorities seldom won in Anglo majority districts and moreover, "minority-plurality districts elected a significant number of minority candidates, as did Anglo-plurality districts in which blacks and Hispanics combined made up a slight majority. This is consistent with the interpretation that the minority groups help each other's candidates in these circumstances."³² In addition, Dr. Chandler Davidson devoted the longest section of his Expert Report in *Vera* (1994) to racial bloc voting and what he also terms "racial polarization." He entitled Section 5 of his report "Continuing Racial Polarization in Texas" (pp. 59-88) and included subsections on in what Dr. Davidson terms "The Claim that White Bloc Voting is Not Motivated by Racism" (pp. 71-86). This noted scholar of Texas politics carefully documents the

³¹ This could be a methodological artifact of the estimation procedures being used by the state, since the proportions of African American and Latino voters turning out are so small. In addition, many of the Anglo turnout estimates look quite low relative to the much higher turnout levels for Anglos in the general elections. For instance, in District 18 the 2002 primary turnout was estimated to be zero among Anglos, but the general election turnout was estimated to be 29.6% among Anglos. This could be because there are few whites who vote in the Democratic primary, or it could be a methodological artifact introduced by regression models or of errors in the coding of the primary election dataset. Only further inspection of the data and methods would allow me to determine what is causing this.

Registration and turnout figures for the state of Texas are recorded for 1960 - 1992 at <http://www.fec.gov/voteregis/turn/texas.htm> and for 1996 at <http://www.fec.gov/pages/96to.htm>.

³² Brischetto, et al., "Texas," pp. 253, 254; Davidson, Expert Report, *Vera*, p. 39 on court cases documenting racial bloc voting.

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importance of racism in voting and discusses the development of the modern political party system in Texas. He re-emphasizes the significance of race in his penultimate subsection, "Racism as an Explanation for White Bloc Voting" (pp. 86-88). Dr. Davidson documents that a major reason for the failure of African Americans to win elections in majority Anglo districts was "racially polarized voting" (p.58). Finally, Dr. Davidson concludes his report: "It is my considered professional opinion that racial polarization in the sociological sense is still very much with us in Texas today and that it will be with us for decades to come" (p. 89).

In the course of my own research the following elections were brought to my attention, and if time permits, I plan to do some analysis of voting. In particular, I have asked attorneys to provide me with the following election data and information about these elections.

1. Morris Overstreet v. Sue Lagarde 1992 general election for the Judge Court of Criminal Appeals
2. Harris County 1992 elections (including contest between Clark Kent Ervin v. Gene Green for Congress)
3. Grady Yarborough's race for State Treasurer in 1994 Republican Primary
4. Judge Maryellen Hicks, Tarrant County, race for a seat on the Tarrant County Court of Appeals (1994)
5. Republican African American Alvin Shaw's contest against Democratic Sheriff Margo Fraser for Travis County Sheriff (1996)
6. The 2002 United States Senate campaign of Ron Kirk
7. The 2002 Republican Primary where Xavier Rodriguez ran against Stephen Smith

Senate Factor 3: "the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group"

The move away from district and ward elections for local jurisdictions in Texas to dilute the minority vote is well documented (See Brishetto, et al., "Texas," in *The Quiet Revolution* (editors Bernie Grofman and Chandler Davidson). For example, in 1953 the city of Austin went to a majority run-off in the at-large election system and opposed single shot voting. In 1971, *White v. Register* struck down multimember legislative districts. In both Chandler Davidson's *Bi-Racial Politics*, where he looks specifically at Houston, and his more recent *Race and Class*, the author documents how the numbered place requirement discriminated against minorities.³³

Senate Factor 4: "if there is a candidate slating process, whether the members of the minority group have been denied access to that process"

African Americans in particular were excluded from the Democratic Party, which was the only game in town until the elimination of the white primary. For a long time it was difficult for African Americans to be selected by the Party as candidates. Brischetto, et al., "Texas," briefly discuss "slating" in Texas and the diluting effect on minority voters by combining slating with

³³ Chandler Davidson, *Race and Class in Texas Politics* (Princeton: Princeton University Press, 1990) and *Bi-Racial Politics: Conflict and Coalition in the Metropolitan South* (Baton Rouge; Louisiana State University Press, 1972).

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at-large elections.³⁴ Now African Americans and Latinos have influence in the Democratic Party, but less so in the Republican Party. Recently the Republican Party has slated both African American and Latino candidates, but the slated candidates generally have not been able to win. For example, in the 1994 statewide Republican Primary for State Treasurer, African American Grady Yarborough received a plurality but lost in a run off when his opponent publicized Yarborough's picture as part of racial politics.

Senate Factor 5: the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process"

Socioeconomic factors have a direct influence on voting. In their highly regarded study, *Who Votes*, political scientists Raymond Wolfinger and Steven Rosenstone document the strong and direct correlation between political participation and socioeconomic and educational status. Their central conclusion is that "citizens of higher social and economic status participate more in politics." In the South, they conclude, this disparity in turnout between the rich and the poor and between the educated and uneducated is even more pronounced. Southerners with eight years of schooling or less, they note, vote 16 percentage points less than their northern counterparts. All these factors have a disparate racial impact since African Americans and Latinos remain grouped in the ranks of lower social, educational and economic status.³⁵

Two more recent studies build upon the classic work by Wolfinger and Rosenstone. In 1993, Steven J. Rosenstone and John Mark Hansen argued in *Mobilization, Participation, and Democracy in America* that a major factor influencing turnout is contact by party organizations. People who are mobilized by political activists are more likely to get involved than other people, even after taking account of differences in socioeconomic status (SES), which is the traditional predictor of voting turnout. Because political activists are an unrepresentative cross-section of the American public, those mobilized are also unrepresentative: class and racial inequalities are therefore reinforced by unequal patterns of political mobilization. This book looks beyond voting to include a wide range of political activities, from letter writing to making financial contributions. In 1995, Sidney Verba, Kay Lehman Schlozman, and Henry E. Brady in *Voice and Equality: Civic Voluntarism in American Politics* conclude that the traditional SES model of voter participation is in need of refinement. Like Rosenstone and Hansen, Verba, et al. are looking at a broad range of participatory acts including voting and they over-sampled both Latino and African American populations to get accurate measures of participatory activity. They argue that it is not merely SES, but the factors associated with higher levels of SES, that drive turnout differences. Factors include contacts by political activists, the social distribution of resources needed for participation, etc. They document participatory disparities by race, gender, class, etc.; and chapter 12 summarizes their model of political participation. An important point

³⁴ Brischetto, et al., "Texas," p. 243.

³⁵ The standard work of the effects of socio-economic status is still Raymond E. Wolfinger and Steven J. Rosenstone, *Who Votes?* (New Haven: Yale University Press, 1980). Given the disparity in educational and economic levels between African Americans, Latinos and Anglos this is likely to have a significant negative impact upon minority political participation. The authors believe that much of this is due to the past history of race discrimination, what they call a "regional memory" of the time when it was dangerous for African Americans to vote. Older, uneducated African Americans who are poor are particularly unlikely to cast their ballots, pp.13, 93. A more current survey of research on political participation is Richard G. Niemi and Herbert F. Weisberg, eds., *Controversies in Voting Behavior* (Washington, D. C., 2001, 4th ed.), pp 22-37.

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made by these authors is that activists representing racial minorities and the poor are systematically different than the people they represent, which means that (for instance) African American activists speak with a different voice and have different experiences than "typical" black citizens they are purporting to represent. The book argues that this causes participatory distortions. It is consistent with their argument that the only remedy for participatory inequality is to increase participation levels.³⁶

People of upper socioeconomic status (high income and education, and holding prestigious occupations) tend to vote more frequently, are more interested in political affairs, and are better informed. It is not simply the difference in per capita income, which, because of a number of factors including the past history of economic discrimination, is lower for African American and Latino households. It is also that whites have more surplus and discretionary assets that make it possible for individuals to comfortably write checks for political campaigns.³⁷ Economic disparities inevitably increase in complex and substantive ways the difficulty African Americans and Latinos have in obtaining access to the political process.

In the State of Texas, the disparities between white, African American, and Latino socioeconomic positions are considerable. On the whole, white Texans show significantly higher levels of important socioeconomic indicators (such as education and economic prosperity) than their African American and Latino counterparts. These socioeconomic disadvantages experienced by African Americans and Latinos constitute a clear hindrance to the effective participation of those groups in the political process.

Employment

The economic status of a citizen is a significant and critical characteristic in determining voting behavior. Across the board, employed citizens are much more likely to vote than their unemployed counterparts. Additionally, the income level of the employed citizen further modifies voting behavior. Citizens living at or below the poverty line will vote in relatively small numbers while citizens enjoying higher income levels will vote at significantly higher rates.

In Texas, there is a clear divide between the different racial/ethnic groups on all levels of the economic spectrum. When looking at the poorest Texan families, in 1999 only 7.7% of white heads of households reported an income below the poverty line while 23.3% of African American and 25.3% of Latino heads of households reported this level of poverty.³⁸ The same trend holds true for overall per capita income, with whites reporting a per capita income of \$26,197; that is more than twice the per capita income of Latinos (\$10,770) and almost twice as

36 Steven J. Rosenstone and John Mark Hansen, *Mobilization, Participation, and Democracy in America* (New York: Macmillan, 1993), see especially Chapters 6 and 7 which focus on institutional factors that influence turnout (chp. 6) as well as the rise and decline of African American voter turnout (part of chp. 7); Sidney Verba, Kay Lehman Schlozman, and Henry E. Brady, *Voice and Equality: Civic Voluntarism in American Politics* (Cambridge: Harvard University Press, 1995), see esp. 6, 7, 8 and 12.

37 Not surprisingly most minority candidates are repeatedly outspent in campaigns by their white competitors. *New York Times*, February 17, 1998, A-18; Melvin L. Oliver and Thomas M. Shapiro, "Race and Wealth," 17 (1989) *Review of Black Political Economy*, 5-25.

38 "Poverty Status in 1999 by Age", United States Census 2000, P159B, P159I, P159H.

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much as African Americans (\$14,253).³⁹ Most significant is the level of employment of different ethnic groups. While 4.1% of whites are currently unemployed in the state of Texas, 11.4% of African Americans and 8.2% of Latinos are unemployed. This results in an unemployment rate for Latinos that is nearly twice as much as the rate for whites, and this results in an unemployment rate for African Americans that is nearly three times as much as Anglos.⁴⁰

Education

Education has also been identified as significantly important in providing motivation for political participation. The educational status of a citizen is a critical characteristic in determining voting behavior. Aside from its obvious connection to a voter's occupation and income (see above), educational level may contribute to a voter's interest in the political process. In Texas, the level of education of whites far exceeds the level of education of both African Americans and Latino residents.

Texas like other Southern states, of course, has a history of segregated schools. The state built a separate law school rather than admit a single African American student to the University of Texas's school of law. The case, *Sweatt v. Painter*, became an important precedent for *Brown v. Board*.⁴¹ Deep racial inequities in support for public education have persisted to the present. By the late 1980s, for example, "the Alamo Heights independent school district had more than fourteen times the property value per student of the Edgewood independent school district, also in Bexar county."⁴² School financing discrimination and segregation in San Antonio prompted a political movement that has lasted since the 1930s, and helped to give rise to LULAC and ultimately MALDEF. (See especially the case *Rodríguez et al. v. San Antonio*, <http://www.tsha.utexas.edu/handbook/online/articles/view/RR/jrrht.html>). Dr. Chandler Davidson's 1994 Expert Report in Vera discusses the Texas School System in pp. 67-69.

Educational inequality in Texas begins in elementary schools. For example, Texas third graders' standardized test results clearly demonstrate racial/ethnic inequality in performance. In 2002 Latino third graders performed 13% lower than white third graders. African American third graders' scores were 20% lower than white third graders'.⁴³ This disparity in test scores is maintained with little change until grade 10.⁴⁴ When students graduate to middle and high school, the annual drop out rate is significantly higher among African American and Latino students than among Anglo students. Between grades 7 and 12, the annual drop out rate for Latinos was 1.3% and for African Americans was 1.4%. These numbers are alarmingly high compared to the 0.5% drop out rate among whites in the same year.⁴⁵ Additionally, in 2001 Latino students comprised 40.6% of the Texas secondary education system, yet they accounted for only 32.3% of the graduating class. While the Texas school system has made advances in

39 "Per Capita Income in 1999", United States Census 2000, P157B, P157H, P157I; Also see 1994 the State NAACP statewide survey of African-Americans in Texas. I.

40 "Employment Status of the Population 16 Years of Age and Older", United States Census 2000, Summary File 3, Table 22.

41

42 Jesús F. de la Teja, Paula Marks, and Ron Tyler, *Texas: Crossroads of North America* (Houghton Mifflin, 2004), p. 445.

43 Texas Education Agency, Division of Performance Reporting, 2001-2002 Performance Report.

44 Texas Education Agency, Division of Performance Reporting, 2001-2002 Performance Report.

45 2001 Texas AEIS report, Texas Education Agency.

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providing Spanish language testing and teaching, these provisions appear to have little effect on academic performance.

Another indicator of educational opportunity among students is college admissions testing. The average SAT score of Anglo students in 2001 was 1046 whereas Latino students' average score was 895, and African American students averaged 846, or 200 points below the average white student's score.⁴⁶ SATs do not measure intelligence as much as they do cultural and economic status; yet, the fact that African American and Latino students consistently score lower on the SAT means that they face a more difficult college admissions process. This inequality in test scores greatly affects university admissions. In 2001, 44,623 white students applied to Texas public universities, whereas only 12,741 African American students and 18,213 Latino students applied. Moreover, the acceptance rate for white students was over 100% higher than the application rate for Latino students. When African American and Latino students reach college, less than 9% of them reach the top 10% of their class, whereas 25% of white students reach the top 10%.⁴⁷

In addition to public education, many other educational factors among the adult community affect political awareness and efficacy such as educational achievement, literacy, and media awareness. Only 44.6% of Latinos in Texas have high school diplomas, and only 7.3% have college degrees. Furthermore, a major literacy gap occurs along ethnic/racial lines. White adults scored 50 points higher on prose proficiency on the NALS survey than did African American adults (287 vs. 237). In turn, African American adults scored 21 points higher than Latino respondents (237 vs. 216).⁴⁸ Media reception is also lower among Latinos. Whereas less than 2% of Anglo households do not have a telephone, more than twice that percentage of African American households and three times that proportion of Latinos were without a telephone. Compared to the white population, 15% fewer Spanish speakers read newspapers, and 12.5% fewer Spanish speakers have Internet access.⁴⁹ Access to information is also lower among African American adults, as 24% fewer African Americans have access to the Internet than whites. Low media reception correlates with lack of political knowledge; thus, Spanish speakers and African Americans tend to be less politically informed than Anglos.

Homeownership and Residency

Aside from educational and economic indicators, another group of indicators is particularly important to influencing voting behavior, and that is homeownership and residency. Citizens who own their own home tend to vote at much higher levels than citizens who live in rental housing. Part of this has to do with income level (people who own their homes tend to have higher incomes than people who do not). In addition, there are further complications with changing voter registrations that people who rent have to deal with on a much more frequent basis. Similarly, citizens who have the financial security to live in the same dwelling for a long period of time are more likely to avoid voter registration problems. A citizen who moves more often is more likely to be unfamiliar with polling locations.

⁴⁶ Texas Education Agency.

⁴⁷ Texas Higher Education Coordinating Board.

⁴⁸ Wisconsin Center for Educational Research.

⁴⁹ Multimedia Audiences--Summary: 2001 Statistical Abstract of the U.S., 2002 Issued By: Bureau of Census December, 2002, p. 699.

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In Texas, the number of heads of household that own their own homes varies significantly based on race/ethnicity. 70.7% of Anglo heads of households own their own homes, while 29.3% rent. This compares strikingly to the only 46.4% of African American heads of households and 56.1% of Latino heads of households who own their own homes and the 53.6% and 43.9% respectively that rent.⁵⁰ A similar trend is seen in sustained residency information where 51.2% of whites live in the same residence that they did five years ago, while only 47.0% of African Americans and 49.1% of Latinos live in the same residence.⁵¹ Renting means more hurdles to voting because renters are more likely to move more often and would need to re-register to vote at their new residences. In *Who Votes*, Wolfinger and Rosenstone noted that in 1972, Texas's 61 days was the single longest residency requirement, twice that of every other state except Tennessee's 50 day.⁵²

Health

Disparities between minority groups and Anglos exist in numerous health areas in Texas. Health disparities in the 6 priority areas recommended by the US Department of Health and Human Services, infant mortality, cancer, cardiovascular disease, diabetes, HIV/AIDS, and immunizations, as well as three areas specifically relevant to Texas, access to care, neural tube defects, and tuberculosis are documented in a 76 page report from the Texas Department of Health report entitled *Health Disparities in Texas: An Epidemiological Review of Priority Health Outcomes* (see copy at http://www.tdh.state.tx.us/minority/pubs/Disp_all.PDF).

Because African Americans and Latinos in Texas are generally poorer than Anglos, and because they are more likely to be unemployed than Anglos, they are less likely to have health insurance and regular visits with primary care doctors. In 2002, 28% of African Americans and 38% of Latinos were uninsured, while Anglos were uninsured at a rate of 16%. Additionally, Latinos make up almost 50% of the uninsured in Texas. (Health Disparities In Texas, Texas Department of Health). These rates have not changed substantially in the last ten years.

Access to health care plays an important role in preventative health care, including early diagnosis as well as access to and effectiveness of treatment plans, which in turn affect overall health. For example, while African American females have a lower incidence of breast cancer than other groups, they have a higher mortality rate (Health Disparities In Texas, Texas Department of Health). Additionally, although complications from diabetes mellitus is one of the leading cause of deaths in all ethnic groups, the percent of deaths is disproportionate for both African Americans and Latinos (2.7% of Anglo deaths, 4.5% of African Americans deaths, and 6.7% of Latino deaths).⁵³ Overall, African Americans had a higher relative risk of most cancer types compared to Anglos as well as an even higher mortality rate. Generally, Latinos had a lower relative risk for cancer compared to Anglos and a lower mortality rate. Cervical Cancer was an exception with Latinos having almost twice the rate of cervical cancer and twice the

⁵⁰ "Tenure", United States Census 2000, H11, H12, H13.

⁵¹ "Residence in 1995 for the Population 5 Years and Over", United States Census 2000, PCT64H, PCT64I, PCT64B.

⁵² Wolfinger and Rosenstone, *Who Votes*, p. 73.

⁵³ www.tdh.state.tx.us.

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mortality rate. (Health Disparities In Texas, Texas Department of Health, Figures 1-4). Another indication of the lingering affects of discrimination can be seen in another disparity in cause of death. Attack (homicide) is one of the top ten causes of death for both these African American and Latino groups (7th leading cause for Latinos and 8th for African Americans), but not for Anglos.⁵⁴

Infant death rates are also a good indicator of overall health status. The Anglo infant mortality rate is 5.2 per 1,000 live births, Latino slightly higher at 5.4, and African American a startling more than twice as high.

INFANT DEATH RATES															
(Per 1,000 live births)															
AGE	TOTAL	M	F	WHITE	M	F	BLACK	M	F	HISPANIC	M	F	OTHER	M	F
TOTAL	6.0	6.7	5.2	5.2	6.0	4.3	12.0	13.5	10.5	5.4	6.0	4.8	3.5	3.2	3.9

(www.tdh.state.tx.us)

Miscellaneous Factors

There are also a number of miscellaneous factors that influence people's voting behavior. Dr. Dwight Steward led an NAACP study of the Texas Criminal Justice system, titled "Racial Disparities in the Texas Criminal Justice System," and found that policies significantly increased voter disfranchisement (among other things) for African-Americans. Another factor is the origin of birth of United States citizens. People who are born in the United States generally feel more connected to the political process and are more likely to vote than naturalized citizens who are not born in the United States. Moreover, language ability is an important factor. People who speak the English language are more likely to be aware of political campaigning (mostly done in English) than are people who do not speak English. Additionally, the ability to secure transportation is an important factor. Getting to the polls is an important part of voting.

Origin of Birth: In Texas, both white and African American citizens experience high rates of native origins of birth. 97.7% of whites and 96.8% of African Americans are native-born residents of the United States. On the other hand, only 81.5% of Latino citizens were born in the U.S.; 18.5% of Latino citizens have moved here from foreign locations.⁵⁵

Language: In Texas, almost all of the white and African American residents are rated as able to speak English either "very well" or "well." Latino residents, on the other hand, see much lower rates of English skills. According to the 2000 Census, 15.7% of residents who have Spanish spoken as the primary language in their homes (a group that is almost entirely Latino) rate their English skills as "not well," and 9.6% report that they cannot speak any English at all.⁵⁶

Transportation. In Texas, the distribution of vehicles differs significantly across racial/ethnic groups. Over 95% of white Texans have at least "one or more vehicles available" to them on a regular basis. The number is much less for African Americans and Latinos, who

⁵⁴ www.tdh.state.tx.us.

⁵⁵ "Place of Birth by Citizenship Status", United States Census 2000, PCT63B, PCT63H, PCT63I.

⁵⁶ "Population 5 Years and Over by Language Spoken at Home and Ability to Speak English", QT-P17.

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have access to vehicles at the rate of 84.0% and 89.2% respectively.⁵⁷ African American and Latino households are also significantly less likely to own a vehicle than non-Latino white households. This lack of transportation for African Americans and Latinos puts increased demands on African American and Latino favored candidates and voter participation campaigns.

Dr. Allan Lichtman provided me a table on socio-economic status comparing Anglos, African Americans, and Latinos. His SES data is consistent with what my research assistants and I found. Dr. Lichtman's table is included below. The Table number and the data might have changed in his report, which I have not yet read.

Table provided by Dr. Allan Lichtman

Table 34			
Socio-Economic Statistics By Race			
2000 Census, Summary File 3			
Measure	Anglos	Blacks	Hispanics
Percent Bachelor's Degree or Higher, Population 25+	30.0%	15.4%	8.9%
Median Household Income	\$47,162	\$29,305	\$29,873
Per Capita Income	\$26,197	\$14,253	\$10,770
Percent Persons Below Poverty	7.8%	23.4%	25.4%
Unemployment Rate, Civilian Labor Force	4.1%	10.5%	8.7%
Percent Households Without Telephones	1.7%	4.5%	6.4%
Percent Households Without Vehicles	4.5%	16.0%	10.8%

⁵⁷ "Vehicles Available", United States Census 2000, HT331.

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Voter turnout depends on many factors. Socioeconomic differences between the races are one cause of differences in participation rates. A history of *de jure* segregation and present day effects of past racial discrimination may also account for some of the differences in participation between whites and minority citizens. Those who reap the fewest benefits from our economy and society are least inclined to participate in an electoral process that serves as an affirmation of the efficacy of the political economy. The marginal return on investment of time and energy for poor persons has proven to be lower than for those better off in society. For those who lack transportation, telephones, or for whom reading is more difficult, voting is all the harder. Thus, lowered voter participation levels are a symptom of the disparities affecting African-Americans and Latinos.

There is also an important historical dimension. Since historically official state discrimination hindered minority voting, especially before the 1965 Voting Rights Act, many minorities were discouraged from voting. Some even had a fear of registering to vote, especially at a courthouse or other places of unfriendly "official" state premises. Moreover, older minorities grew up with segregation and attended segregated schools that were far from equal to those for Anglos. All of these factors work against minority registration and participation in the election process. SES disparities within the context of Texas's history, led Dr. Chandler Davidson to proclaim Texas race relations a "racial caste system." Davidson concluded in 1994 that "Significant gaps in living standards and opportunities still exist between blacks and whites, on average."⁵⁸

The voter apathy that accompanies these economic and educational disparities is not absolute. Fair voting districts are vital in voting procedures. Districts that are drawn to split minority communities, dilute minority group voting power, and ensure the defeat of minority-preferred candidates, can be expected to discourage participation, or have what is called a "chilling" effect. At the same time, where minorities believe they have a realistic chance of electing a candidate of their choice, there is also a "warming" effect; that is, when minority group voters realize they have a chance of winning, they mobilize. Minority group voters are much more likely to participate if they have some reasonable hope of electing the candidate of their choice. Jesse Jackson's campaign obviously aroused such hopes. In my experience, an important factor regarding "winnability" is the difference in political mobilization often prompted by fairly drawn electoral districts themselves. When some of the newly created districts are majority African American or Latino, several outcomes become evident. Minority candidates work harder on their campaigns. An Anglo candidate who is not the candidate of minority choice will work less on a campaign, especially if not an incumbent. Moreover, African Americans and Latinos tend to register, turn out, and vote for minority candidates at higher rates than when these same candidates ran in districts where they had little chance of prevailing. According to voting rights expert Dr. James W. Loewen, "This phenomenon may also help minority candidates win the 'leaning' or 'tossup' congressional districts, if these districts are perceived as fair by members and political leaders of the African American and Latino communities."⁵⁹

⁵⁸ Davidson, Expert Report, *Vera*, pp. 41, 90.

⁵⁹ James W. Loewen, "Preliminary Report on Racial Bloc Voting, Political Mobilization, and Redistricting Plans in New York City," July 8, 1991, p. 34. Loewen has consistently made this argument in his voting rights studies.

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Senate Factor 6: "whether political campaigns have been characterized by overt or subtle racial appeals"

With the heightened consciousness about ethnic/racial issues today, one does not expect to find many overt racial appeals as was the case before enforcement of the 1965 Voting Right Act. Still several elections have been identified for me wherein African Americans and Latinos believed that they were characterized by both subtle and overt racial appeals. Among the elections listed under Senate Factor 2 are several that individuals identified as having subtle racial appeals. In particular several individuals commented on remarks about Ron Kirk and Tony Sanchez made by David Beckwith who was then working on a Republican campaign. Another is the 1994 campaign mentioned under discussion of Senate Factor 4 above. In this Republican primary for state treasurer, his opponent played the race card when he published African American Grady Yarborough's picture.

Senate Factor 7: "the extent to which members of the minority group have been elected to public office in the jurisdiction"

Historically, minorities in Texas have been severely underrepresented in the U.S. Congress. With very few exceptions, minorities were better represented only after the courts required effective majority-minority districts in accordance with the 1965 Voting Rights Act. Even today, minorities, both African American and Latino, are still proportionately underrepresented in the U.S. Congress. According to the 2000 census, Anglos comprised 54.6 % of the total population, Latinos 33.1 %, and African Americans 12.4 %. Latinos comprise 29.7 % of the voting age population, African Americans 11.7 %, and Anglos 58.7 %. There are 32 people elected to Congress from Texas, and only 8 of these congressmen are minorities (6 Latinos and 2 African Americans). These 8 congressmen represent one quarter of congressmen while African Americans and Latinos are 45.5 % of the Texas population. Even if one considers only Citizen Voting Age population, combined at 35.6 %, still minorities are under represented.

ETHNIC/RACIAL PERCENT OF POPULATION

	TOTAL POPULATION	VOTING-AGE POPULATION	CITIZEN POPULATION	CITIZEN VOTING-AGE POPULATION
Anglo	54.6%	58.7%	59.1%	64.4%
African American	12.4%	11.7%	13.2%	12.6%
Latino	33.1%	29.7%	27.8%	23.0%

Source: 2000 Census; and Table 5 provided by Dr. Allan Lichtman. Slightly different percentages are given by the National Committee for an Effective Congress, Redistricting Resource Center (www.ncec.org/redistricting/state.phtml?stateselect=TX)

Texas did not send its first Latino representative to Congress until 1961 with the election of Henry B. Gonzalez, who served until his death in 1998. Until 1979, there was one African

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American and two Latino representatives of the 24 Congressional seats. In the 1980s there were 27 representatives from Texas to Congress, and of those five were minorities (4 Latino, 1 African American). The first African American to serve in Congress was Barbara Jordan, elected some eight years after the enactment of the Voting Rights Act of 1965. In 1990, the number of congressional districts increased from 27 to 30, and there was an increase of from 4 to 5 Latino representatives, and in 1996 that number increased from 5 to 6. In 1993 a second African American was elected to Congress making a total of 8 minorities serving in the congressional delegation. The number of representatives was increased from 30 to 32 after the 2000 Census, but the number of minority representatives to Congress remained the same. Under the new proposed plan 1374C the number of minority representatives serving in Congress may stay the same but the number of candidates of choice for minority voters will be reduced. Indeed, it appears that minorities under plan 1374C might possibly even lose one representative. This in spite of the fact that the largest increase in the Texas population has been among the minority population!

Minority Congressmen/women who Served/Serve in U.S. House of Representatives

A. Latinos

Henry B. Gonzalez, 1961-1998 (D)
Elgio "Kika" de la Garza II, 1965-1997 (D)

Solomon P. Ortiz 1983- Present, 27th Dist (D)
Albert G. Bustamante, 1985-1993 (D)

Frank M. Tejeda, 1993-1997 (D)
Henry Bonilla, 1993-Present 23rd District (R)
Ruben Hinojosa, 1996-Present 15th District (D)
Silvestre Reyes, 1996-Present 16th District (D)
Ciro Rodriguez, 1997-Present 28th District (D)
Charles A. Gonzalez, 1999- Present 20th District (D)

B. African Americans

Barbara Jordan, 1973-1978 (D)
Mickey Leland, 1979-1989 (D)

Craig A. Washington, 1989-1994 (D)

Eddie Bernice Johnson, 1993-Present (D)
Sheila Jackson Lee, 1995-Present (D)

Senate, or Zimmer, Factors include "*Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are... "whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.*"

Normally redistricting does not occur on the scale that is happening now under proposed plan 1374C unless the existing plan (1151C) is legally deficient in some way: that is the existing plan might violate "one person, one vote." In Texas, however, the existing plan has no such legal deficiencies and therefore, adopting a new plan when one is not needed, and on the eve of an election, casts some question on the state's underlying policy for the new redistricting plan 1374C. This is especially suspicious since the stated purpose of the redistricting (developing additional minority districts) is not accomplished, and indeed, possibly might be diminished by the new plan 1374C. The proposal for four Congressional Districts that reduce the opportunity for minorities to elect candidates of their choice demonstrates a lack of responsiveness. For example, the third largest concentrated group of African Americans in the state are in Dallas-Fort Worth and in Tarrant County. The new gerrymandering by the latest proposed map "cracks" that

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group of cohesive African American voters and puts them with suburban whites with a district that runs nearly to Oklahoma. Both the NAACP and the National Hispanic Leadership Agenda Scores are basically Report Cards of the responsiveness on the part of each individual congressman. There is general agreement upon the rankings of the Congressmen by the two different organizations representing their respective minorities. The two white Congressmen who represent the 24th and 10th districts score very well in these scorecards for both African Americans and Latinos. Issues such as health care, housing, and public safety are very important to the minority community.

The final Senate factor, "*whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.*"⁶⁰

This is closely related to Senate Factors 1 and 2. The NAACP has held hearings and gathered testimony about voter intimidation, the challenging of African Americans at the poll, the purging of African American voters from the rolls, etc. Testimony was gathered in Houston, Fort Worth, and Texarkana. In each instance witnesses testified to abuses in their attempts to register and to vote. People were very confused by the moving of so many precincts at the last moment. Several African Americans reported harassment and misinformation from white poll watchers. In at least one instance a TV station reporter covered the lack of responsiveness of Anglos at the polls to African American attempts to vote. Two other examples illustrate both the state's lack of response and state efforts at restricting voting. One, with help from the NAACP, the Texas legislature passed a bill that would post voters rights at each polling place, but then the Governor vetoed it. Two, the legislature passed House Rule 54, which has been enacted into law; this bill makes it easier to prosecute an individual who might help someone elderly vote. In addition, Dr. Dwight Steward has been conducting studies of racial profiling and racial disparities in the Criminal Justice system; he has documented different treatments of minorities (African Americans and Latinos) from Anglos. The report on racial profiling *A Statistical Examination of Racial Profiling* shows that African-Americans were significantly more likely, even after taking into account all driver and traffic related factors, to be searched by police than Anglos. Dr. Chandler Davidson also has a discussion of the "Criminal Justice System" in Texas where he documents racism inspired civil rights violations.⁶¹

Very recently *Sixty Minutes* ran a segment on the scandalous situation in Tulia, in the Texas Panhandle, or "West Texas." On the word of an undercover law enforcement agent who *Sixty Minutes* suggested was racist, the police made massive drug arrests of innocent African Americans (and a few white girl friends). The undercover agent was presented a major award as an officer of the law. The NAACP Legal Defense Fund only recently succeeded in getting all of the defendants out of jail. The "Tulia case" has received a lot of attention.⁶²

60 S.Rep., at 28-29, U.S.Code Cong. & Admin.News 1982, pp. 206-207.

61 See for example, "NAACP Voter Intimidation Hearing -- December 9, 2000, Texarkana, Texas" and "NAACP Voter Irregularity Hearing Wednesday, December 12, 2001, Shape Community Family Center Houston, Harris County, Texas." There are three separate reports of racial profiling completed by Dr. Steward; Davidson, "Expert Report," *Vera*, pp. 65-67.

62 http://www.naacpldf.org/whatsnew/pr/2002_motions.html.

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There is a sobering conclusion about today's Texas race relations in *America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy*. The author compares Texas to other states studied and proffers, "Most of the barriers to minority voting rights outlined in this report concern election administration –faulty technology, lack of poll worker training, shoddy voter registration practices, and a shortage of capacity to absorb a large turnout. In Texas, barriers to minority voting rights were of a different sort. They concerned instances of outright voter intimidation more reminiscent of the Jim Crow era than 21st century America. While these instances were not officially sanctioned, they serve as a chilling reminder that even now individuals will resort to violent, unscrupulous tactics to keep minorities from going to the polls." The book documents incidents in Tarrant County and Wharton County in August and October, 2000 respectively.⁶³ The latter incident is also documented in the Sworn Testimony of C. G. Walywn, who was the African American candidate for sheriff in Wharton County, Texas, at the Voter Intimidation Hearing, Palmer Center Business and Technology Center, Houston, Texas, Dec. 19, 2000, pp.33-56.

Conclusion: Given the time constraints surrounding this report, I may need to revise and update it. Section 2 of the Voting Rights Act requires that plaintiffs prove that minority voters do not have an equal opportunity to participate in the electoral process and elect candidates of their choice. To show this lack of opportunity, they need to investigate "a totality of circumstances," that is an examination of the evidence of discrimination. This report has looked very specifically at the Senate Factors used to define whether or not citizens have this equal opportunity. A survey of the history of racial discrimination in regard to voting, education, and public accommodations in Texas shows that politics in that state was shaped by racial considerations in the years before 1965 and has continued to be substantially affected by these racial considerations during the decades since. The dean of Texas historians, Randolph Campbell, has published a new book, *Gone to Texas*, in which he argues strongly against anyone who declares that Texas is not a southern state. He contends that Texas is indeed part of the South because it has a serious problem with race relations. Like other southern states from the Confederacy, Texas has come a long way in race relations since the 1960s, but like sister southern states it has a ways to go in its treatment of minorities and minority voting rights. My finding, based on the evidence as presented above, shows that the plaintiffs do not have an equal opportunity to participate in the electoral process and elect candidates of their choice.

Original Report November 13, 2003 in Urbana, Illinois

Revised Report November 23, 2003 in Ninety Six, South Carolina

Dr. Orville Vernon Burton

⁶³ Steven Donziger, principal author, *America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy* (Nov. 7, 2001 by Advancement Project, 1730 M Street, N.W., Suite 401, Washington, DC 20036 202-728-9557), pp. 24-26.

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Orville Burton
Exhibit 7

Report on South Carolina Legislative Delegation System for *Vander Linden v. South Carolina*, Civ. No. 2-91-3635-1

Orville Vernon Burton
8 December 1995

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I am Professor of History and Sociology and University Scholar at the University of Illinois at Urbana-Champaign. My research and teaching focuses on American History and particularly on race relations. I teach courses in race relations, discrimination, ethnicity, family, and community. These are also areas of my research and writing interests, and I use statistical analysis in my own research and writing. I am also a member of the graduate statistics faculty and a professor at the National Center for Supercomputing Applications. I teach courses in quantitative techniques at the University of Illinois. South Carolina has served as my "laboratory," and race relations in South Carolina have been my specialty since I began my Ph.D. program at Princeton in 1969. I have also researched and written on the Voting Rights Act of 1965 and presented this research to academic conferences in England and the United States. I have had extensive experience in analyzing social and economic status, discrimination, intent in voting rights cases, and group voting behavior. I have served as an expert witness and consultant in a number of voting rights cases (beginning in about 1982 with McCain v Lybrand) and as a consultant in the redistricting of states. My testimony has been accepted by federal courts on both statistical analysis of racially polarized voting and socioeconomic measurements as well as on the history of discrimination and the discriminatory intent of laws. I have researched and testified in court as to intent and the history of discrimination, the socioeconomic analysis of the population, and racial bloc voting including the historical discrimination and intent of the electoral process. I conducted the extensive ecological regression analysis presented by the plaintiffs and accepted by the court in Jackson v. Edgefield County, South Carolina School District, 650 F.Supp. 1176, 1194-97 (D.S.C. 1986). To the best of my knowledge and memory, within the last four years I have testified in or given depositions in the following cases: Statewide Reapportionment Advisory Committee et al. v. Campbell et al., U.S.D.C., D.S.C., C.A. No. 3:91-3310-1 and Case No.: 91-3012; NAACP, INC., et al. v. Kershaw County, S.C. CA: No. 3-90-1132-15 (School Board and County Council); NAACP, Inc. v. City of Columbia, S.C., Ca 89-1938; Jose Aldasoro and Domingo Enriquez vs. John Kennerson, et al., C.A. No. 91-1410 B (LSP) (S.D.Cal. 1991). In December 1992 attorney Laughlin McDonald contacted me about consulting on the establishment of the county legislative delegation. I am being compensated at \$75 an hour. For a number of years now, I have researched South Carolina and racial discrimination in the era when the county legislative delegation system was established, as well as the

years following to the present day. Currently I am under contract to research and write a biography of Benjamin Ryan "Pitchfork Ben" Tillman for Harlan Davidson publishers. I am also writing a new introduction to Francis Butler Simkins, Pitchfork Ben Tillman: South Carolinian (originally published by Louisiana State University Press, 1944) for the reprint edition of the Southern Classics Series of the Institute for Southern Studies, University of South Carolina Press. Tillman and his administration led the efforts to disfranchise African Americans.

I was part of a large National Science Foundation study of the effects of the 1965 Voting Rights Act in the United States. I headed the research team for South Carolina and was the principal author of chapter seven on South Carolina that is contained in the book resulting from the study, The Quiet Revolution: The Impact of the Voting Rights Act in the South, 1965-1990. (Edited by Chandler Davidson and Bernard Grofman. Princeton: Princeton University Press, 1994. Winner of the 1995 Richard F. Fenno Prize, Legislative Studies Section, American Political Science Association.) I have also written an article, "Legislative and Congressional Redistricting in South Carolina," in Race and Redistricting in the 1990s (edited by Bernard Grofman and expected to be published by Agathon Press in 1996). I have also contributed the entry for "South Carolina" in the new Encyclopedia of African American Culture and History (Edited by Charles V. Hamilton and Jack Salzman; NY: Macmillan, 1996).

After considerable research, both on the general background of the time period and the specific implementation of the county legislative delegation system, I am prepared to testify that Tillman's abolishment of locally elected governments and the aggregation of power in the county delegations was part of the re-establishment of white supremacist government and was motivated partly by Tillman's desire to exclude African Americans from the electorate and to ensure that African Americans were removed from any political power and influence. The history of the 1895 Disfranchising Convention is well known (See especially my article, "'The Black Squint of the Law': Racism in South Carolina," pp. 161-185 in The Meaning of South Carolina History: Essays in Honor of George C. Rogers, Jr., edited by David R. Chesnutt and Clyde N. Wilson. [Columbia: University of South Carolina Press, 1991]). Since it would take a long book, I will not review all the issues of intent, maintenance, the history, or the socioeconomic disparities of whites and African Americans in South Carolina here, but will focus on the background and the specific establishment of the county legislative delegation. However, I am prepared to testify at length if need be on all the issues of intent. Suffice it to say that, in affirming the constitutionality of the 1965 Voting Rights Act in *South Carolina v. Katzenbach*, Chief Justice Earl Warren stated, "Congress felt itself confronted by an insidious and pervasive evil." The chief justice noted the long history of racial discrimination in the voter registration process in South Carolina, directly quoting some of the more outrageous remarks of "Pitchfork" Ben Tillman at the 1895 disfranchising convention as evidence of the discriminatory purpose of the literacy test suspended by the Voting Rights Act. Warren stated that "[t]he constitutional propriety of the Voting Rights Act of 1965 must be judged with reference to the historical experience which it reflects."¹ The Legislative Delegation system must also be judged with reference to the historical experience it reflects.

¹ 383 U.S. 301, 308-309, 310n, 329-330 (1966).

South Carolina, first in nullification and first in secession, was also the first state to challenge the constitutionality of the 1965 Voting Rights Act.² South Carolina had served as the leading advocate for the rights of slaveholders in the debates over the Declaration of Independence and the Constitution. Under the leadership of John C. Calhoun, South Carolina had attempted to "nullify" a federal tariff law in 1832 in order to establish a constitutional precedent for nullifying future antislavery legislation. So afraid of dissent on the issue of slavery, antebellum South Carolina had the most conservative and least democratic system of any state in the Union. The aristocratic structure of government largely withheld power from the electorate. Although every white male could vote, the only offices put before the people were those of state representative and U. S. Congressman, and often only one pre-selected candidate was on the ballot. Legislative cliques determined who would "run" for governor and which "candidates" would be awarded state offices.³

The legislature also played a role in local government, for it appointed the commissioners who governed the parishes and districts. The system that developed over time allowed each legislative delegation to control the selection of commission members in its own district, and the power at stake naturally resulted in vigorous competition for seats in the legislature. It also created networks of patronage among local ruling elites who helped legislators win election, and these successful candidates then dispensed local offices.⁴ South Carolina was the first state to secede from the Union, and a few months later, South Carolinians fired the first shot of the Civil War at Fort Sumter. In 1868, a

² *South Carolina v. Katzenbach*, 383 U.S. 301 (1966). South Carolina filed the original complaint. At the Court's invitation, Alabama, Georgia, Louisiana, Mississippi, and Virginia filed briefs as *amicus curiae* supporting South Carolina's claim that certain provisions of the Voting Rights Act were unconstitutional. Numerous other states filed briefs supporting the constitutionality of the act.

³ See James M. Banner, Jr., "The Problem of South Carolina," in Stanley Elkins and Eric McKittrick, eds., *The Hofstadter Aegis: A Memorial* (New York: Alfred A. Knopf, 1974), pp. 76-80.

⁴ Lacy Ford, *Origins of Southern Radicalism: The South Carolina Upcountry, 1800-1860* (NY: Oxford University Press, 1988), p. 304.

new constitution was submitted to the people for ratification. This constitution, the handiwork of black and white Republicans, introduced a broad level of democracy to the state for the first time. It put local government in the hands of the people and gave counties "responsible tasks and made them accountable to the local electorate."⁵

However, during the seven decades following Reconstruction, the South Carolina legislature devised election laws that effectively disfranchised African Americans. A central part of this disfranchisement was the establishment of the Legislative Delegation to replace local government.

"The central fact in the history of black Carolina," concluded historian I. A. Newby, "has been the racism of white Carolina."⁶ The degree to which African Americans have held public office in South Carolina in the century and a quarter since the Civil War was largely determined by the state's election laws and the manner in which they were implemented. White officials made their intentions clear from the beginning. The South Carolina constitutional convention of 1865, with the approval of U.S. President Andrew Johnson, restricted voting and officeholding to white males. "This is a white man's government," explained Governor Benjamin Perry, "and intended for white men only."⁷ In an attempt to buttress white supremacy, recalcitrant Southern state legislatures enacted "black codes" that severely restricted the rights of freedpersons. The South Carolina black code required agricultural workers to sign away most of their rights as citizens in annual labor contracts with landowners or risk prosecution for vagrancy.⁸ The enactment of black codes throughout the South played a key role in persuading Congress to enfranchise African Americans and temporarily restrict the suffrage of some Confederates.

Granted the franchise, South Carolina's black majority elected Republican candidates to the bulk of the seats in a new constitutional convention, which then granted the right to vote to every adult male, "without distinction of race, color, or former condition."⁹ Subsequently, African Americans controlled a majority of seats in the lower house (and from 1874 to 1876 both the senate and the house), and African Americans won elections as lieutenant governor, secretary of state, and state treasurer. Equally

⁵ Underwood, The Constitution of South Carolina, II: The Journey Toward Local Self-Government, pp. 47-50.

⁶ Newby 1973, 15.

⁷ Burton 1991, 166; McDonald 1986, 558.

⁸ Williamson 1965, 72-79; Foner 1988, 200; Burton 1991, 166-167.

⁹ McDonald 1986, 560.

important, African Americans were elected to a significant number of local offices, such as sheriff, county commissioner, magistrate, school commissioner, and alderman.¹⁰

Reconstruction in South Carolina lasted longer than in any other state, and South Carolina's black Republicans achieved as great a degree of political power as did African Americans anywhere. Some whites bitterly opposed black equality and endorsed systematic political violence to overcome Republican control. Whether through secretive activity by the Ku Klux Klan, or open mob violence, Democrats often resorted to political assassination and murder, although physical beatings, arson, and threats of death were more common. Seven state legislators were murdered between 1868 and 1876.¹¹ Violence was so severe in nine upcountry counties that the federal government intervened in 1871 and declared martial law, making hundreds of arrests; a few dozen indictments led to guilty pleas and prison sentences. In the black-controlled town of Hamburg, Democrats under Confederate General Matthew Calbraith Butler's leadership brought a cannon and several hundred armed horsemen to do battle with African-American militia, killing six (four by firing squad) and pillaging the homes and shops of the town's black population and their white allies.¹² In the wake of the Hamburg massacre, Confederate Generals Martin Witherspoon Gary, "The Bald Eagle of the Confederacy," and Butler orchestrated a violent "redemption" of state government from Republican control. Gary had announced as early as 1874 that political contests in South Carolina were "a question of race and not of politics."¹³ While Civil War hero General Wade Hampton, III, ostensibly advocated moderation, Gary favored all-out guerrilla warfare and organized Democrats into 300 "rifle clubs" throughout the state. Armed bands of horsemen attired

¹⁰ . Foner 1988, 352-354, 357, 538; Holt 1977, esp. 97; Williamson 1965, esp. 363-417; Burton 1989, 27-38.

¹¹ . Edgar 1974, 141, 407, 409, 420-422; Reynolds and Faunt 1964, 62.

¹² . Although President Ulysses S. Grant was reluctant to use federal law enforcement on the scale necessary to counteract a statewide campaign of paramilitary violence, his outrage at this incident prompted Grant to send troops to Aiken, Laurens, Barnwell, and Edgefield counties. Rable 1984, 165-172.

¹³ . Cooper 1968, 89.

in symbolically defiant red shirts intimidated and attacked potential black voters. Gary, who refused to surrender with General Robert E. Lee at Appomattox, never did surrender. He had directed his Confederate troops to execute African-American soldiers who were in Union uniform. This unreconstructed Confederate drafted the "Plan of the Campaign" for the white Democratic Party "Redeemers" in 1876. Gary wrote the rules in his own handwriting, including rule "16. Never threaten a man individually if he deserves to be threatened, the necessities of the times require that he should die. A dead Radical is very harmless -- a threatened Radical or one driven off by threats from the scene of his operations is often very troublesome, sometimes dangerous, always vindictive."¹⁴

Violent clashes between whites and blacks occurred throughout the state. In Edgefield County, home of Gary and Butler, over 700 armed and mounted Democrats (including future governors Sheppards and Tillman) in red shirts literally seized control of the county courthouse and, despite the presence of federal troops, prevented African Americans from voting. "Gary's doctrine of voting early and often changed the republican majority of 2,300 in Edgefield to a democratic majority of 3,900," proudly recalled Gary protege and future governor Benjamin R. Tillman, a participant in the violence, "thus giving Hampton a claim to the office of governor." This "victory" resulted from the casting of 2,252 more votes than eligible voters.¹⁵

Although Wade Hampton owed his election to political violence, in his campaign speeches he pledged to treat African Americans fairly in the new order. For Hampton and the "moderates," African Americans who "knew their place" had a place in the system, and Hampton did appoint some African Americans to local offices. Later, however, as a U. S. senator, Hampton justified fraud, intimidation, and violence to deny South Carolina African Americans the franchise claiming "the very civilization, the

¹⁴. "Plan of the Campaign of 1876," in the Papers of Martin Witherspoon Gary, South Caroliniana Library. See Foner 1988, 342-343, 427-428, 431; Gergel 1977, 7-8; Kaczorowski 1985, 57-61; Hall 1984, 936-941; Simkins and Woody; Williamson; Burton 1976 and Burton 1985, 228, 290.

¹⁵. Burton 1978, 42-44; Foner 1988, 570-575; Gergel 1977, 8.

property, the life of the State itself, were involved."¹⁶ Black-majority counties elected some African-American legislators, but the overwhelmingly white legislature determined to combat these successes. The legislature adopted a law that was intended to eliminate federal scrutiny of state affairs by requiring separate ballot boxes for state and federal elections.¹⁷ In addition, the legislature abolished a large number of precincts in heavily Republican counties, requiring voters to travel long distances in order to vote.¹⁸

After the end of Reconstruction, the Democrats manipulated election laws in order to institutionalize their control of state politics. In 1882 a new registration law required all citizens to re-register or face permanent disfranchisement; registrars had great discretion in applying the law so that they could avoid striking white voters from the rolls. A companion statute, the "Eight Box Law," intended as a de facto literacy test, required voters to place ballots for various offices in separate boxes, which election officials periodically shuffled. These discriminatory tactics effectively cut the African-American electorate in half.¹⁹

Even so, black voters remained numerous enough to be troublesome to white supremacists. Consequently, the legislature adopted a congressional redistricting plan that "packed" African Americans into a malapportioned district where they made up 82 percent of the population, thereby diluting African-American voting strength in the rest of the state. The "black district," as it was called, ran from the city of Columbia to the coast, divided six counties, incorporated most black neighborhoods of Charleston, and, according to the New York Times, resembled a boa constrictor. Although this one district generally elected a black Republican to the U.S. House of Representatives until 1896, the gerrymander assured Democrats safe contests for the remaining seats.²⁰

¹⁶ . Gergel 1977, 11-14, quotation on 13. Hampton referred specifically here to the 1878 election, which repeated the tactics of 1876 and added new chicanery.

¹⁷ . Current law allowed congressional regulation of elections to national office, and Democratic reliance on violence, intimidation, and fraud to carry state and local elections would not bear federal scrutiny.

¹⁸ . Tindall 1952, 31, 39.

¹⁹ . Tindall 1952, 69; Kousser 1974, 49-50, 85-87, 89, 91-92.

²⁰ . Tindall 1952, 54; Kousser 1984, 32 and 1992, 598-602; McDonald 1986, 568. Kousser 1992, 598-602. Kousser shows that the proportion of the five other districts was also black majority and probably the sixth as well. Dilutive and disfranchising methods allowed Democrats to control the outcome of the other districts.

The second stage of disfranchisement, designed to eliminate the African-American vote altogether, took place in the 1890s after former "Red Shirt" Edgefieldian Ben Tillman gained control of the Democratic party. Historian Richard Maxwell Brown has described Tillman as the "best known and most vitriolic Negrophobe in America" and the undisputed leader of black disfranchisement.²¹ Historian Francis Butler Simkins maintained that between Reconstruction and World War I, "Ben Tillman fostered the modern reaction against the Negro. This stance was one of his most significant influences on American life."²² Tillman's movement to purge the black vote in South Carolina was as openly racist and its post-disfranchisement regime as rigidly committed to white supremacy as any in Dixie. In the U.S. Senate Tillman declared defiantly: "We have done our level best. We have scratched our heads to find out how we could eliminate every last one of them. We stuffed ballot boxes. We shot them. We are not ashamed of it."²³

"To white Carolinians from Calhoun to Strom Thurmond 'states rights' and 'local self-government' were rallying cries against tyranny and synonyms for individual liberty and local democracy. To blacks they were code words for white authoritarianism, the very existence of which depended upon denying liberty and local democracy to blacks," explained historian I. A. Newby in Black Carolinians. Specifically on Ben Tillman and the movement he spawned, Newby expounded, "Tillmanism is the nearest thing to a genuine mass movement in the history of white Carolina, and whites in the state paid homage to it for over a generation. To students of black history and racial equality its most striking features are the extent to which it expressed the desire of white Carolinians to dominate blacks and the fact that much of its unity and force derived from its antiblack racial policies."²⁴

The County Legislative Delegation System:

The origins of the legislative delegation system can only be understood if it is placed within the historical context of its establishment. All evidence points to the conclusion that the origins of the legislative delegation system are discriminatory and in part established to disfranchise and dilute the vote of African Americans.²⁵ In the minds of many of South Carolina's white leaders, local control of county government was associated with Reconstruction, when African American leaders were elected and appointed as officials in local government.²⁶ Historians in general, understanding how

²¹ Brown 1975, 85-86. One of Tillman's native Edgefield County political lieutenants was J. Strom Thurmond's father. Simkins 1944, 531-534; Brown 1975, 89; Banks 1970, 26, 29-30, 60-73.

²² Simkins 1944, 407.

²³ Simkins 1937, 167-168.

²⁴ Newby, Black Carolinians, p 12.

²⁵ J. C. Sheppard to the General Assembly in Journal of the S. C. House (1886), p. 50. See James Lowell Underwood, The Constitution of South Carolina, II: The Journey Toward Local Self-Government (Columbia: University of South Carolina Press, 1989), pp. 67, 68, 69, 73, 80-81, 265.

²⁶ James Lowell Underwood, The Constitution of South Carolina, II: The Journey Toward Local Self-Government (Columbia: University of South Carolina Press, 1989), pp. 67, 265. Underwood also cites a court case, *Gaud v. Walker*, 214 S.C. 451, 464, 53 S.E. 2d 316, 321 (1949) that argued that "dissatisfaction with political conditions prevalent during

complex and tangled underlying causes and specific effects become, nevertheless have linked the establishment of the county legislative delegation system with disfranchisement in the aftermath of Reconstruction. Joel Williamson in After Slavery has demonstrated how African Americans throughout South Carolina used the elected and appointed offices in local government to their advantage during Reconstruction. An intense case study, which I conducted, of Edgefield County during Reconstruction shows how African Americans used elected county offices to advance the political, economic, and social advancement of former slaves in that county. People understood the Reconstruction revolution in the specific terms of how it most affected their lives and that was at the neighborhood, town, and county local level. White supremacists, therefore, preferred to concentrate power within the governor's office rather than in county offices; they wanted to give the governor the power to appoint and dismiss local officials, thereby maintaining control of county government. Only by understanding that during Reconstruction white supremacists battled for control of local government are we able to comprehend that the fight at the local level held more significance for the people of South Carolina than the political machinations at the federal and state levels. And we must look to the local level to fathom the triumph of the conservative white Democrats in 1876-1877.²⁷

South Carolina Governor J. C. Sheppard had actively participated in the violent overthrow of the democratically elected Reconstruction governments in the Campaign of 1876. Like Gary's protege, Ben Tillman, Sheppard rode in the terrorist red shirt

Reconstruction spawned a distaste for local government, the level at which abuse of power was considered greatest, and resulted in the omission of detailed local government provisions from the Constitution of 1895."

²⁷ Joel Williamson, After Slavery: The Negro in South Carolina During Reconstruction, 1861-1877 (Chapel Hill: University of North Carolina Press, 1965); Orville Vernon Burton, "Ungrateful Servants? Edgefield's Black Reconstruction: Part I of the Total History of Edgefield County, South Carolina." (Ph.D., Princeton University, 1976). See also my arguments in In My Father's House Are Many Mansions: Family and Community in Edgefield, South Carolina. Chapel Hill: University of North Carolina Press, 1985 (paperback edition 1987; 4th printing 1995). "Race and Reconstruction: Edgefield County, South Carolina," Journal of Social History 12 (Fall 1978): 31-56, "The Rise and Fall of Afro-American Town Life: Town and Country in Reconstruction Edgefield County, South Carolina," in Toward a New South? Studies in Post-Civil War Southern Communities, edited by Orville Vernon Burton and Robert C. McMath, Jr., pp. 152-92 (Westport, Conn: Greenwood Press, 1982), "The Development of Tenantry and the Post-Bellum Afro-American Social Structure in Edgefield County, South Carolina," in Presentations Paysannes, Dimes, Rente fonciere et Mouvement de la Production Agricole a l'epoque Preindustrielle: Actes du Colloque preparatoire (30 juin-let et 2 juillet 1977) au VIIe Congres international d'Histoire economique Section A3 (Edimbourg 13-19 aout 1978, edited by E. LeRoy Ladurie et J. Goy, Vol. 2: 762-78. Paris: Editions De L'Ecole des Hautes Etudes En Sciences Sociales, 1982), "The Effects of the Civil War and Reconstruction on the Coming of Age of Southern Males, Edgefield County, South Carolina" in The Web of Southern Relations: Women, Family and Education. Edited by Walter J. Fraser, Jr., R. Frank Saunders, Jr., and Jon L. Wakelyn, pp. 204-223. Athens: University of Georgia Press, 1985), and "Whence Cometh Rural Black Reconstruction Leadership: Edgefield County, South Carolina", The Proceedings of the South Carolina Historical Association, 1988-1989 (Aiken: The South Carolina Historical Association, 1989), pp 27-38.

campaign in his local county of Edgefield where African Americans had been elected and appointed to nearly every local governing office. Thus, Sheppard would oppose power at this local level. In 1888, Governor J. C. Sheppard addressed the legislature that the home rule power granted counties in the Constitution of 1868 "is not suited to our condition, and is the cause of many of the evils of which the people complain." Sheppard recommended a constitutional amendment to repeal home rule; the amendment was ratified in 1890, setting the stage for Ben Tillman's abolishing locally elected governments and aggregating power in the county delegations. During the early 1890s, the Tillman faction (as opposed to Sheppard, Hampton, Matthew C. Butler, and the "Conservatives") of the Democratic party came to political power in South Carolina. This faction had relied historically and continued to rely rhetorically on its willingness to use force and fraud to defeat the state's black majority at the polls. This physical and rhetorical violence, which had overthrown Reconstruction in 1876, distinguished it from the subtler racism of the previously dominant "Conservative" faction. In their conflict, the two competing groups of white elites disagreed about most state and national issues, but they shared an abhorrence for black political participation and for federal intervention in state politics. Those white Democrats who sought to mobilize African Americans during factional fights were quickly rendered politically marginal. (A. C. Haskell in 1890, Sampson Pope in 1894, and Colonel John J. Dargan in 1895.)

Conservative opponents of Tillman had a strong minority presence in the state legislature throughout the early 1890s and were able to articulate various critiques of the Governor and his policies through newspapers, most notably the Charleston News and Courier and the Columbia State, the latter of which had been founded specifically to oppose Tillman. Among their most consistent critiques of Tillman was the claim that he was a dictator who wanted to centralize all authority in the state's executive. Tillman's opponents retained substantial local control in several coastal counties. Through a combination of compromise with and intimidation of the lowcountry's large African-American voting majority, they were able to elect local and county officials and at least one conservative Democrat to the U. S. Congress. It is in this context that the debates over the reform of county government and the rise of the legislative delegation system in South Carolina politics took place.

The county government law of 1893 established white supremacy under the leadership of the Tillman faction as a legal and political fact and reflected two of the primary goals of Tillmanite reform: to prevent African Americans and dissident whites

from gaining local political footholds, and to punish white Democratic elites who had failed to provide white prosperity during the 1880s. The Tillman movement sought explicitly racist ends, notably the effective disfranchisement of African-American men through the 1895 Constitution and the segregation of public accommodations. Tillman's supporters, many of whom had participated in the violent campaign against black and white Republicans in 1876, made up the vanguard of legislative support for such efforts in the 1890s.

First the Tillmanites had to undo the structure established at the Constitutional Convention in 1868, whereby county board of commissioners were set up for all counties. These boards were made up of three members elected at-large by the county. (See the [Journal of the S.C. Senate](#)). This remained the system until the 1890s. Gov. Sheppard set the stage for change, and in 1893 Governor Tillman began pushing the South Carolina Senate and House to revamp the law. In both 1891 and 1892 Tillman wrote of such a change in his addresses to the General Assembly. Initially Tillman had wanted government close to the white people. After consulting with his older brother, George Tillman, he was ready to recommend a model of township government where each township elected representatives. In his address to the General Assembly at the end of his first year as Governor in December, 1891, Tillman urged that county government be devolved to the township level, where voters would select "three intelligent men" to manage affairs and expenditures. Together, the chairmen of these township boards would constitute a county board. He repeated this call, verbatim, in his message the following year. By 1893 this had been overshadowed by more pressing controversies, notably the railroad tax cases and the Dispensary. Tillman still found time that December to call for "a new system of County government, simplifying and affording a greater measure of local control than now exists."

Realizing, however, that other areas of the state were not as secure from black voting as Edgefield, where terrorist techniques had worked to disfranchise African Americans, Tillman made crucial alterations in his original, more democratic, plan. Ultimately Tillman supported a system whereby each county would have a board of commissioners made up of appointed chairmen from each of the townships and a county supervisor elected at large. This bill was introduced in 1892 but not acted upon. It was reintroduced and passed in November of 1893.

In the legislature the driving force behind county government reform was another Edgefieldian, John Gary Evans, state senator from Aiken County (formed partly out of Edgefield County in 1871), colleague of Tillman's since the Farmers' Movement days of the 1880s, and Tillman's successor in the Governorship in 1894. Evans was the nephew of Confederate General Martin Gary (Tillman's Edgefield mentor), and lived at Gary's

home, Oakley Park, from which Gary had directed the Red Shirt paramilitary terrorist movement to "redeem" the state from the Republican Party and African American citizens. The home was made a "Shrine" and was recently noted in the local Edgefield paper as "the only shrine to the Red Shirt movement in the world."²⁸

John Gary Evans shepherded Tillman's legislation through the General Assembly in 1893 (Acts 1893, 481ff.). The act providing for an elected county supervisor and appointed township commissioners, was moderated only by an "advise and consent" proviso: the Governor's appointments were to be made "upon the recommendation of the Senator and the members of the House of Representatives from the respective counties." The sleight-of-hand did not go undetected: from the beginning, conservatives denounced the move as part of Tillman's dictatorship, a logical extension of his mobilization of state executive authority in tax, dispensary, and other matters. When the South Carolina General Assembly established the county legislative delegation system, Ben Tillman had enough supporters in the legislature that he basically controlled the Senate and the House. He got what he wanted. The county legislative system can not be separated from Tillman or Tillmanism.

This concentration of power in the hands of the governor could only be justified by an appeal to white supremacy. As the campaigns of 1890 and 1894 demonstrated, and as the Constitutional Convention of 1895 confirmed, African-American political participation no longer held the threat of Republican victory and a return to Reconstruction for state government in South Carolina. At the state level (though not at the county and local level) African-American politics became an adjunct to white Democratic factional fights. Had the possibility of an African-American majority resurgence remained at the state level, a reform such as the county government bill could never have passed: the fear of a Republican Governor's appointments would have been

²⁸ The Citizen News, Thursday, 30 November 1995, page 3, col. 1, "Tour of Homes set this Sunday."

too great. But because Tillman could control the state vote, he could use the appointment powers of the governor at the local level where African Americans, able to retain political voting rights, could make a difference in elections.

The county government bill as passed did not aim at quashing a statewide movement of Republicans, but at limiting local political opposition. By making local offices appointive, the bill gave Tillman an advantage over his white Democratic opponents in the lowcountry counties, for it enabled him to insert himself into county politics in a way he would not previously have been able to manage. It also enabled him, and successive white Democratic Governors, to strip local power from independent African-American communities in the state, particularly in the lowcountry. Lowcountry white elites had long relied on delicate fusion and joint-ticket arrangements to maintain a degree of control over assessments, construction, and other important matters in largely black areas such as Beaufort, Charleston, and Georgetown. This legislation rendered such negotiations moot, reducing their local authority to an advisory role. And by preventing African-American leaders from taking advantage of this weakness, the act also reduced their power. It hurt all of Tillman's opponents at once.

The county government reform of 1893, and the legislative-delegation system which it inaugurated, were not aimed solely at disfranchising African-Americans. But this change in the system of local government was an integral part of Tillman's quest to unseat both the old white "Conservative" elite and the remaining pockets of African-American independence, and to prevent them from negotiating or allying with one another. Moreover, like most of Tillman's program, it was understood to be a part of the overall reestablishment of white supremacist government. The Governor could legally crush local political challenges from each group or from the two working together (as in 1890) by appointing friends of the administration to positions in which they could control local affairs. The fact that this effort at disfranchisement was largely superseded two years later with the disfranchising Constitutional Convention does not make it any less

undemocratic or any less racially motivated; the fact that it was aimed at conservative whites, Republican whites, as well as African Americans does not make it any less a part of a well-developed program of white supremacy.

Tillman was not at all subtle about his racism. Francis Simkins explained that Tillman "cherished fervently the conviction that the Negro should be held in subjugation; and he was too honest intellectually, too 'brutally frank,' ... to gloss over realities in the interest of interracial and intersectional harmony. He told the nation, in characteristically blunt language, that white South Carolina had triumphed over black South Carolina by the use of shotguns, election frauds and intimidations, and that white South Carolina was determined, if necessary, to maintain its supremacy by a reapplication of these methods."²⁹ The great Southern Historian C. Vann Woodward agreed that Tillman was honest about his racism and the racist motives behind his efforts to establish a white supremacist government in South Carolina. Noting Ben Tillman's "characteristic candor," Woodward quoted Tillman at the 1895 disfranchising Constitutional convention: "Some have said there is fraud in this understanding clause. Some poisons in small doses are very salutary and valuable medicines.... The [registration] officer is responsible to his conscience and his God; he is responsible to nobody else. There is no particle of fraud or illegality in it. It is just simply showing partiality, perhaps, (laughter) or discriminating. Ah, you grin."³⁰ When the House and Senate acted under his command they are necessarily using race as a motivation for their decisions as well.³¹ South Carolina Democratic white legislators were concerned about both the African American and the white Republican voting populations. Black citizens were voting in elections during this time period. In fact, African-American legislators were involved in some of the debates, and the last black state representative did not leave the General Assembly until 1902. Without a doubt, the black vote was still considered a threat during the time period that the County Legislative Delegation System is set up (previous to the 1895 Constitutional Convention) and this helps explain why there are so many exceptions and variances in the Act.³² Even at the time that the bill was being proposed, Ben

²⁹ Francis Butler Simkins, "Ben Tillman's View of the Negro," *Journal of Southern History* 3 (May 1937), p. 161.

³⁰ *Journal of the Constitutional Convention of the State of South Carolina ... 1895* (Columbia, 1895), p. 469; C. Vann Woodward, *Origins of the New South, 1877-1913* (Baton Rouge: Louisiana State University Press, 1951), p. 333.

³¹ For examples of Tillman's control of the state legislature, see the *Charleston News and Courier*, "The Constitution Bah!," Dec. 8, 1893; "Tillman Plies the Lash," Dec. 15, 1893; "What the Legislative Did," Dec. 25, 1893; "The June Bug Legislature," Dec. 27, 1893; "The Doings of the Dictator," Dec. 28, 1893; "Carolina's Little King," Dec. 29, 1893; "Wedded to their Idols," March 26, 1894; "A Chorus of Condemnation," April 3, 1894; "Our Lord, the Czar," April 2, 1894.

³² See for example from *The Charleston News and Courier*, "Vengeance on Charleston," Dec. 9, 1893; "Tillmanites Grow Tired," Feb. 13, 1894; "Home Folk in Washington," March 9, 1894; "The Negro in Politics," March 25, 1894; "Under Negro Rule Again," Jan. 11, 1895; "The Republican Challenge," Jan. 8, 1895; "Who separated 'The Decent White People,' Governor?," Jan. 6, 1895; "A Dangerous Experiment," Dec. 18, 1893; "A Delusion and a Snare," April 19, 1894.

Tillman compared the potential of the black vote to a "frozen serpent" who could be at any time "warmed into life" and who could "sting us whenever some more white rascals, native or foreign, come here and mobilize the ignorant blacks."³³

When the South Carolina Senate and House met in November and December of 1893, the county government act was one of three very important bills discussed -- the highly disputed Dispensary law, a controversial redistricting bill which would include the City of Charleston in a black majority congressional district, and the county delegation bill. Interrelated debates occur in the House and the Senate during the time period that the county government act is being discussed. Though this third bill is the focus of this case, all three bills show a distinct pattern of racially motivated decision making by the policymakers in South Carolina at the time. Strong evidence relates the county governing bill to the disfranchising of African American voters. Furthermore, two other bills were being argued during the same session, redistricting and Tillman's dispensary system, and issues raised in one of these bills related to decisions made in all three.³⁴

While the redistricting discussions blatantly deal with racial issues, the less obvious example of Tillman's establishing a Dispensary System in South Carolina illustrates how almost every political action at the time had racial motivation. Prohibition was a national movement at this time, and white prohibitionists opposed white anti-prohibitionists in South Carolina. Tillman warned that such divisions in white unity would result in "an appeal to the negro as the balance of power." Another Tillmanite wrote Ben Tillman that it was crucial to avoid "that prohibition vortex, only fit to distract and disturb our social as well as political welfare."³⁵ Historians believe that Ben Tillman got his ideas for controlling liquor throughout the state in 1892 after he had received praise for enforcing liquor licensing and selling laws in the primarily black town of Hamburg, the same place that the infamous Hamburg Massacre had occurred in 1876.³⁶ Later, a pro-Tillman

³³ Edgefield Advertiser, 30 June 1892; Burn to Benjamin Ryan Tillman, 8 Nov. 1892 in the Papers of Governor Benjamin Ryan Tillman and D. S. Rice to John Gary Evans, 27 Sept. 1895, in the Papers of Governor John Gary Evans, both in the South Carolina Department of Archives and History; Journal of the Constitutional Convention of the State of South Carolina. Begun to be Holden at Columbia, S.C., on Tuesday, the Tenth Day of September ... until Wednesday the Fourth Day of December ... when finally adjourned (Columbia, 1895), pp. 443-472.

³⁴ The Charleston News and Courier, "A Glean of Common Sense," Dec. 8, 1893; "Vengeance on Charleston," Dec. 9, 1893; "The House obeys its Boss," Dec. 10, 1893; "Lawmaking under the Last," Dec. 11, 1893; Editorials Dec. 11, 1893; "The Black District Bill," Dec 14, 1893; "The Redistricting Bill," Dec. 27, 1893; "Will the Cities Flunk," Jan. 5, 1894; "Ourselves as Others See Us," April 4, 1894; "The Dispensary Law Upset," April 20, 1894; "Giving the Towns a Chance," Jan. 3, 1895.

³⁵ Shell to Ben Tillman, 24 Jan. 1887 in the Papers of Benjamin Ryan Tillman, Special Collections, Cooper Library, Clemson University and Congdon to Ben Tillman, 14 Dec. 1892, Tillman Papers, S.C. Department of Archives and History; Tillman, "Message of Benjamin R. Tillman to the General Assembly ..1892," (Columbia, 1892), p. 24. See also Stephen David Kantrowitz, "The Reconstruction of White Supremacy: Reaction and Reform in Ben Tillman's World, 1847-1918," (Ph.D. dissertation, Princeton University, 1995), pp.

³⁶ B. R. Tillman to Stubbbs, 1 June 1892, Tillman Letterbooks, Tillman Papers, S. C. Department of Archives and History; The Augusta Chronicle quoted in the Edgefield Advertiser and the Advertiser, 9 June 1892. Kantrowitz, "The Reconstruction of White Supremacy," p. 221.

newspaper would explain that the Dispensary war was "a race issue with all the rights of law and justice on the side of the white men as against the Negro desperadoes and their white sympathizers."³⁷ The loyal Tillmanite John Gary Evans sponsored and guided the Dispensary bill just as he guided the county government bill. Thus even a law seemingly unrelated to racial motivation was interpreted through a racial lens at this time when the county government act was being debated.

The county delegation bill was introduced almost exactly as Tillman had suggested. It allowed for a board of commissioners for each county which would consist of a county supervisor elected at-large from each county as well as the appointment of the township road commissioners for each of the several townships. These appointments would come from the Governor with recommendations from the Senators and House members from the respective county.³⁸ This motion effectively gave all local control over to the governor or more specifically Tillman. The motivation for ending local autonomy was directly related to disenfranchising the black vote in South Carolina. The Legislative County Delegation deprived blacks of local autonomy by appointing the county commissioners and other county officials. When the bill was initially written, the only positions which remained elected in each county were a judge of probate, a sheriff, a clerk of the court of general sessions and common pleas, and a coroner. Until the Bill, these positions were elected locally, allowing Blacks to hold office in Black Districts such as Beaufort, Georgetown, and black-majority areas near Charleston. While disenfranchising the black vote and inhibiting the election of African-American officials was not the sole reason for the current system of the county government, it certainly affected the decision making. At the time that the county governing bill was enacted, it was the stated white supremacist policy of Ben Tillman to keep African Americans out of office and that was always part of the political agenda in South Carolina during this time period.

The passage of this bill involved frequent readings and amendments, many of which were made with the intention of keeping African-American legislators out of office. The most striking of these decisions affected Charleston and Beaufort, where African American majorities had the potential to elect a black county supervisor. On December 12, 1893, Senator Verdier of Beaufort moved to have Beaufort exempt from the applications of the bill. The reason given in the Charleston News and Courier was

³⁷ Edgefield Advertiser, 4 Jan. 1894

³⁸ Charleston News and Courier, "County Government," Dec. 26, 1893, pp.1-2.

that "If the bill affected Beaufort she would have a Republican and a negro."³⁹ John Gary Evans agreed to let Beaufort be exempted from the provisions on the condition that the Governor be allowed to appoint the supervisor. Senator Verdier would not agree, and the motion was laid on the table. This was not the end of the discussion, however. This same day, an amendment was added exempting Charleston. According to the Charleston News and Courier, Charleston, an African-American county and part of the heavily "Black" district once Tillman's new redistricting plan was put into effect, "was left out for special reasons."⁴⁰ In other words Charleston did not have an elected official on the County Board of Commissioners. The General Assembly of South Carolina in December of 1893 was using race as a motivator for political decisions.

On December 25, 1893, the Charleston News and Courier ran an article which summarized the County Government bill. In the current form, the bill stated that the County road commissioners were to be appointed locally, while the County Supervisors were to be elected. This bill was only to be effective in those counties not exempt. According to the newspaper account, both Charleston, which, the paper pointed out, in Tillman's redistricting plan was now a predominantly Black district, and Beaufort, a historically Black district, would be exempt by the bill. This law went into effect in January 1894.

Throughout the debates and the implementation of the County Governance Act, Tillman and the South Carolina legislature were planning the crown jewel of the disfranchisement of African Americans and the establishment of the legal basis for white supremacy, the Constitutional Convention of 1895. Newspapers documented the racial motivation behind the Constitutional Convention and the 1895 Constitution.⁴¹

³⁹ Charleston News and Courier, "A Dangerous Experiment," 13 Dec. 1893.

⁴⁰ Charleston News and Courier, 13 Dec. 1893 "A Dangerous Experiment," p.1 and "Vengeance on Charleston," p.1.

⁴¹ See for example the Charleston News and Courier, "Conservatives Rules Out," Jan. 6 1894; "An Early State Convention," March 21, 1894; "A Lull in State Politics," March 27, 1894; "A Secret 'Reform Caucus,'" April 5, 1894; "All around the State," April 12, 1894; "No County Conventions in May," April 27, 1894; "Let us Start Right," Jan. 5, 1895; "Who separated 'The Decent White People,' Governor?," Jan. 6, 1895; "Undoing The Basic Law," Jan. 7, 1895; "To Fight or Not to Fight," Jan. 8, 1895; "A Non-Partisan Convention," Jan 8, 1895; "The Republican Challenge," Jan. 8, 1895; "The General Assembly," Feb.3, 1895.

Openly avowing their intention to disfranchise blacks through the rewriting of the state constitution, the Tillman forces secured passage of a new registration law designed to eliminate as many African-American voters as possible before the referendum on calling a constitutional convention. Governor John Gary Evans, Tillman's successor, ordered election officials not to issue registration forms to African Americans.⁴² "The whites," Tillman announced, "have absolute control of the government, and we intend at any hazard to retain it."⁴³

In 1895, now U.S. Senator Tillman chaired the convention's Committee on the Rights of Suffrage. At his urging the convention established as prerequisites for registration the payment of a poll tax at least six months before the election and proof of payment of all other taxes. In addition, a prospective voter had to satisfy a literacy test or demonstrate an understanding of any constitutional provision read to him by the registrar. The discretion of the registrar was unlimited. The convention also adopted a "petty crimes" provision that disfranchised all those convicted of certain crimes that whites believed blacks frequently committed. Conservative historian David Duncan Wallace referred to this provision as "the black squint of the law."⁴⁴

In 1896 the South Carolina legislature authorized statewide party primaries.⁴⁵ Henceforth the State Democratic Executive Committee prohibited all African Americans from voting in the primary, which was, in the one-party system after disfranchisement,

⁴². In *Mills v. Green*, 67 F. 818 (D.S.C. 1895), a federal district court ruled that this registration law was racially discriminatory and thus unconstitutional. The appeals court reversed, however, see 69 F. 852 (4th Cir. 1895).

⁴³. Simkins 1944, 289-291; Kousser 1974, 147; Burton 1991, 169-170.

⁴⁴. Tindall 1952, 82; Kousser 1974, 150-151; McDonald 1986, 571; Burton 1991, 161, 170.

⁴⁵. In 1878 Gary had proposed that African Americans be excluded from the political process by barring them from the Democratic party primary. (*Charleston News and Courier*, 4 June 1878). In 1876 three counties, Anderson, Pickens, and Oconee, adopted a primary system. Eight more counties followed in 1878, nine in 1880, and four in 1882. In 1886 the Democratic party held the first primary for Congress.

the only election that mattered. The state poll tax requirement never applied to these primary elections, presumably because party rules already excluded African Americans.⁴⁶

The system of legislative county government that the Tillman forces established during the struggle for disfranchisement in the 1890s had eliminated county and township elections because conservative whites disliked elected local governments with their "identification with black political power, as well as with high taxes."⁴⁷ According to one student of county government, among the reasons for the adoptions of legislative county government "was the race problem, which cast all else into deep shadow."⁴⁸ Since that time the General Assembly provided that the governor appoint county officials upon recommendation of a county's state senator and representatives. This law effectively eliminated the opportunity of African Americans to elect local officials of their choice, even where they were an overwhelming majority of the population.⁴⁹

But the Constitution did not end amendments to the Act for County Government enacted under Tillman in 1893. One can trace the exempting of a large group of counties in 1899 back to amendments exempting Charleston and Beaufort in 1893.⁵⁰ At the regular session of the General Assembly in 1898, the "Act to provide for the County Government of the Various Counties of this State" was ratified. It became law on January 12, 1899 (See S. C. Journal of House and Senate). On the first day of February of 1899, the revised county legislation law went into effect.⁵¹ However, variance was still allowed as to the number of commissioners in each county. A motion made during the night session of the S. C. House on Feb. 1, 1899, to amend the county government act to apply to Richland, allowed Richland county to have the elected county supervisor and four appointed commissioners.⁵² Then on Feb. 5, 1899, The State reports that the S.C. House passed a bill to exempt Orangeburg from the operations of the County Governing Act.⁵³

⁴⁶. Tindall 1952, 89; Ogden 1958, 42, 123, 188.

⁴⁷. Underwood 1989, 68. As stated above, conservative whites tied this into Reconstruction when Republicans, and specifically African Americans were in power in many local areas.

⁴⁸ Andrews 1933, 33.

⁴⁹. McDonald 1986, 570; Underwood 1989, 67-69, 265-266; Andrews 1933, 33; Kousser 1982, 11-12; Burton 1991, 170.

⁵⁰ Charleston News and Courier, "A Dangerous Experiment," Dec. 13, 1893; "County Government," Dec. 26, 1893; "A voice from the Up-country," April 4, 1894; "Work of the Senate," Feb. 5, 1899.

⁵¹ Columbia State, "County Commissioners," 7 Feb. 1899, p. 8.

⁵² Charleston News and Courier, "Night Session of House," 1 Feb. 1899, p. 2.

⁵³ Columbia State, "Work of the Senate," 5 Feb. 1899, p. 6.

On February 7 the amended bill from the House was ordered for consideration the following day in the Senate. The report was favorable. (See S. C. Journal of the Senate). On February 14, 1899 the third reading went to the Senate. On February 18, 1899 more amendments were added which exempted not only Orangeburg county but Spartanburg county as well.⁵⁴ The House accepted the bill with the Senate's amendments on February 20, and the bill was enrolled for ratification. On March 6, 1899 the amended bill was ratified. It stated that in all counties, the county supervisor was to be elected while all commissioners, usually two to a county, were to be appointed. However, various sections of the bill identify counties where this is not the case; certain counties were exempted from the operations of the law. These counties were Bamberg, Barnwell, Beaufort, Charleston, Cherokee, Chester, Kershaw, Hampton, and Orangeburg. The amendments made during February and March of 1899 did not affect that fact that one county supervisor was elected and two county commissioners were appointed in each county excluding the counties mentioned above in section eight of the law (See S.C. House and Senate Journals).

As both Andrews (1933) and Underwood (1989) suggest, the fact that variance was allowed at all in the County Government Act is suspect in itself.⁵⁵ The newspaper articles listed above show that disfranchising African American and Republican votes was a main reason for this variance.⁵⁶ The enclosed table of counties exempted by the amendments show a clear pattern -- a majority black population. Some of these counties also contain South Carolina's larger cities which were not favorably disposed to Tillman's agrarian "reform" agenda. In a community like Spartanburg (with a growing city population and expanding textile mill economy) and Cherokee County (where traditional "mountain" unionists and white Republicans might be able to form a coalition with a sizable minority African-American population), there was fear that the black vote might be appealed to by opposing groups of whites. Political power in South Carolina was not responsive to the local electorate.⁵⁷

The power of legislative delegations over county government remained largely intact from 1895 until 1965, even in those few counties where some form of elected councils had been established through local legislation. As the federal court put it in 1966 in *O'Shields v. McNair*: "With the exception of a few counties, the legislative authority in county affairs is still vested in the General Assembly." In practice, the court noted, decision-making was exercised by the county's legislative delegation. "When a

⁵⁴ S.C. House and Senate Journals; Columbia State, "The Work of the House," 18 Feb 1899, p. 3.

⁵⁵ Underwood, *The Constitution of South Carolina*, II, see esp. pp. 68-104, esp. p. 92-95; Andrews, *Administrative County Government in South Carolina*, pp. 34-40, esp. p. 37.

⁵⁶ Charleston News and Courier, "A Dangerous Experiment," 13 Dec. 1893; "Night Session of the House", 1 Feb. 1899, p. 2.

⁵⁷ See also the Table 8.2 of just males twenty-one years and older from Diane Neal, "Benjamin Ryan Tillman: The South Carolina Years, 1847-1894," (Ph.D. dissertation, Kent State University, 1976), p. 203.

particular county delegation reaches a conclusion on a county legislative matter, 'local' bills are introduced in the General Assembly which are routinely passed in both houses without scrutiny by other members of the General Assembly."⁵⁸ The General Assembly was the center of governmental power in South Carolina, and the senate was clearly the dominant house. Each of the forty-six counties had one senator, elected county wide, and one or more representatives, also elected at-large. In no other state was legislative dominance over local government so strong. Political scientist V.O. Key, Jr., put it succinctly: "county legislative delegations constitute the real governing bodies of their respective counties."⁵⁹

The local legislative delegation often appointed the county governing body, as well as local school boards, public service districts, and park boards. Sometimes the legislators themselves served as members of the county council. The delegation supervised the selection of employees and appointments to boards and committees. Most importantly, the delegation set tax levels and submitted the county budget, which was adopted by the entire legislature as the county's "supply bill."⁶⁰ Each county's senator, because he could veto any local legislation, usually became its "first-ranking politician."⁶¹

⁵⁸ . Columbia State and Record, 5 December 1965, D3, D20; Graham 1984; *O'Shields v. McNair*, 254 F.Supp. 708, 719 (D.S.C. 1966).

⁵⁹ . Key 1949, 151; Graham 1984.

⁶⁰ . Andrews 1933; Underwood 1989, 92-96.

⁶¹ . Key 1949, 152; Columbia State and Record, 5 December 1965, D3, D20. In November 1995, I commented upon a paper at the annual meeting of the Social Science History Association where the author showed how the county delegation system worked in tandem with the county lines since population was not used as the basis for determining political boundaries. With the great patronage and the number of people (especially when African Americans were basically disfranchised), low country state senators had fewer citizens to campaign among and hence could more easily get reelected. This developed in more powerful positions in the S.C. state senate for "under-populated black-majority counties of the rural low country." It was not until 1965 that the Supreme Court ordered the South Carolina General Assembly to reapportion the state Senate on the basis of one person one vote. By creating multi-member Senate Districts, the S.C. Senate continued to exclude African Americans and allowed powerful state senators to hold on to their sinecures. Finally, in the 1970s and 1980s after more litigation, the General Assembly moved to use population as the basis for

Controlling election laws and voter registration was crucial to maintaining white supremacy. Moreover, the concern about African Americans voting did not end with the disfranchising Constitution in 1895, as the conventional wisdom suggests. Politicians as a group continued to consider possible repercussions from the African American population when making laws. The Phoenix Riot of 8 November 1898 in Greenwood County (created partly from Tillman's home county of Edgefield) was the result of African Americans' attempts to vote and to test the laws passed at the Constitutional Convention of 1895, three years before. On 29 September 1900 in Georgetown, a four day racial riot ended the sharing of county offices between white Democrats and African Americans (mostly Republicans). Thus, accommodation and fusion politics that allowed African Americans to participate in politics at the local level was still going on five years after the Constitutional Convention. Note that amendments to the County Governing Bill occur around the time and following the Phoenix Riot.⁶² When the city of Columbia, South Carolina moved from a ward system of electing council members to an at-large system in 1910, blacks still voted in the city elections and the precincts which were most heavily populated by African Americans voted most heavily against the change from district to at-large elections in Columbia.

The election of "Pitchfork" Ben Tillman to the governorship in 1890 was only the first of many demagogic politicians able to attain state leadership. Tillman, Cole Bleasdale, and, in the 1940s, "Cotton" Ed Smith rode the race issue into political prominence. They succeeded in altering the state constitution to codify segregation laws to further restrict

legislative districts and a more representative General Assembly passed the Local Government Act, beginning a measure of home rule to the counties. See Burton, et al. "South Carolina," pp. 202-205; Walter A. Edgar, *South Carolina in the Modern Age* (Columbia: University of South Carolina Press, pp. 117-119; Michael A. Maggiotto, "Reapportionment and Voting Rights," in Graham and Tyler, eds. *Local Government in South Carolina*, Vol. II, pp. 87-106; Simon, "The Devaluation of the Vote," esp. pp. 7-12; and Tables 1-2, Figures 1-5.

⁶² Benjamin E. Mays, *Born to Rebel* (Athens: University of Georgia Press, 1987 ed.), Appendix A, pp. 323-348, esp. pp. 328-334; Walter B. Edgar, *South Carolina in the Modern Age* (Columbia: University of South Carolina, 1992), p. 144.

black South Carolinians' voting rights. African Americans unsuccessfully challenged both the literacy test and the poll tax that Southern states enacted after Reconstruction, and by 1940 segregation was entrenched in South Carolina society. However, African Americans were never totally omitted from the electorate and immediately after World War II, African Americans began challenging the laws that denied them the opportunity to elect candidates of their choice. My former Ph.D. student, Terence Finnegan concluded in his Ph.D. dissertation that lynchings when studied in their local context were often about politics in South Carolina and often directed against black political leaders in the local community well into the twentieth century.⁶³ Finnegan found that the issue of the importance of local control of politics was a continuing concern about control of the local political scenes.

Congressman James F. Byrnes, who eventually became a senator, Supreme Court justice, secretary of state, and governor of South Carolina, cautioned in 1920: "It is certain that if there was a fair registration they [African Americans] would have a slight majority in our state. We cannot idly brush the facts aside. Unfortunate though it may be, our consideration of every question must include the consideration of this race question."⁶⁴ A year later, historian Francis Butler Simkins confirmed the intent of his native state's legislation. "Reviewing the South Carolina law in respect to the Negro since 1876, it is apparent that its frank purpose is to perpetuate the division of society into two distinct castes--the white, or dominant ruling class, and the Negro, or subject class."⁶⁵ This historical context clearly demonstrates that the implementation of the county legislative delegation had its origins in discriminatory intent.

⁶³ Terence Robert Finnegan, "At the Hands of Parties Unknown": Lynching in Mississippi and South Carolina, 1881 - 1940" (Ph.D. dissertation, University of Illinois at Urbana-Champaign, 1993). Henry Kamerling is writing his dissertation at this time. The above information comes from drafts of his research for the dissertation that I have read.

⁶⁴ . Burton 1991, 170-171.

⁶⁵ . Simkins 1921, 177.

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Burton, S.C. Legislative Delegation System, 8 December 1995, page 24

I have prepared this report after consulting all relevant academic literature that I can locate. To the best of my knowledge that literature is contained in the enclosed bibliography. I have also attempted to footnote specifically my historical arguments. I have also done primary research in newspapers, legislative journals, court records, and manuscript collections. The relevant newspaper articles are also enclosed. I declare under penalty of perjury that the foregoing report is true and correct to the best of my knowledge and that this was executed on 8 December 1995 at Urbana, Illinois.

Respectfully submitted,

Orville Vernon Burton
Professor of History and Sociology
Professor National Center for Supercomputing Applications
University Scholar
University of Illinois at Urbana-Champaign



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Saturday, February 2, 2002

Legislators may redraw 3 Louisville House districts One new district lacks majority of voting-age African Americans

By Joseph Gerth
The Courier-Journal

FRANKFORT, Ky. — A day after passing a divisive legislative redistricting plan, House leaders yesterday considered changing the lines of three Louisville districts to ensure solid African-American voting majorities.



As drawn, the three districts have black population majorities. But only two have majorities of African Americans of voting age; the third has more voting-age whites than blacks because House leaders mistakenly used overall population data rather than voting-age data in drawing them.

Increasing the percentages of voting-age blacks in the districts would be intended to fend off a possible lawsuit by the National Association for the Advancement of Colored People.

The NAACP and black legislators say the percentages of African Americans in the districts have been so diluted that it could be difficult to elect blacks, even if African-American voters constitute a majority.

"To let this stand will represent the most serious damage done to the black community this century or last," said Sen. Gerald Neal, DLouisville.

Neal, the only African American in the Senate, alerted House leaders to the problem.

House Speaker Jody Richards said he and other Democratic leaders hope to meet with NAACP representatives soon to determine what, if anything, can be done. Richards said changes in the districts could be made during the current legislative session. He doesn't believe the deadline for filing to run for office, which was at 4 p.m. yesterday, would have to be extended to make changes.

"We certainly think they've got a good case," Richards said when asked about the NAACP's concerns. "They want us to hear the whole case, and I think that's what we want to do."

Rep. Paul Bather, D-Louisville, said he expects to arrange the meeting next week.

But even AS Richards was talking about meeting with NAACP officials, the civil-rights organization was considering filing a lawsuit.

"Our lawyers are looking at it now," said Raoul Cunningham, director of Kentucky voter empowerment for the NAACP. "If Jody Richards or anyone in House leadership called and asked to meet, I would certainly let our lawyers know right away."

Legislative leaders had intended to create three black-majority House districts in Louisville -- and thought they had until Neal pointed out the problem yesterday.

Because officials used overall population figures rather than the number of voting-age residents, the two historically black Louisville districts now give blacks only a marginal advantage, and what was thought to be a new black-majority district actually has a voting-age population only 47.6 percent black.

Cunningham said Democrats should have accepted the NAACP's recommendations provided to them on Jan. 10.

"I wish the House had taken a more serious look at our proposals," he said. "It was clearly outlined -- our districts were compact, they were contiguous. It was not that ridiculous crap they produced."

Republicans offered a plan that was advantageous to them but that also created three black-majority districts in Louisville and another district that would have been more than 35 percent black.

Bather, who helped draw the district lines for the Democrats, said yesterday that mistakes were made because the population figures were the only ones he and Rep. Reginald Meeks had at the time, and that they were given little time to draw the districts.

Bather and Meeks, the only two Louisville African Americans in the House, were allowed input in drawing their own districts within certain limits set by House leaders.

Meeks' old 42nd District was 71.2 percent voting-age African American, while 68.1 percent of Bather's 43rd District was voting-age blacks. Under the new district lines, Meeks' district dropped to 52.6 percent voting-age African American, and Bather's dropped to 54.1 percent.

The 41st District, represented by Rep. Tom Riner, D-Louisville, was supposed to be the third black-majority district, with 53.1 percent black residents. But only 47.6 percent of the district's voting-age residents are black.

Courts have generally found that the 1965 Voting Rights Act requires that figure to be about 60 percent in black-majority districts to ensure that African Americans are a majority of the people voting.

Bather said yesterday that all three districts could be changed to include a higher percentage of blacks by swapping a few precincts with Democratic Rep. Dennis Horlander's 40th District. Bather said he hadn't yet spoken with Horlander but wouldn't attempt such a switch



Sen. Gerald Neal said, "To let this stand will represent the most serious damage done to the black community this century or last." Neal said he learned about the problem with the districts Thursday night and alerted House leaders.

without his approval.

Horlander couldn't be reached for comment.

Bather said he didn't know if the changes would get the black voting-age population up to the 60 percent goal. But he said he'd feel more comfortable "if all three districts were in the high fifties."

He also suggested the percentage of voting-age blacks in Neal's Louisville Senate district could be boosted above its current 56.7 percent by trading voters with Sen. David Karem, D-Louisville.

Senate President David Williams, a Burkesville Republican, said he does not believe the districts can be changed now that the filing deadline has passed. But he said he's concerned about the makeup of the House districts.

"We had been assured that those lines that were drawn had been drawn in conjunction with the NAACP and were in compliance with the Voting Rights Act of 1965," he said. "Now I pick the newspaper up this morning and I found out the NAACP had great reservations with these lines.

"I don't know what we can do about that," Williams said. ". . . It would appear to me that they (House Democrats) have invited litigation."

Neal said he learned about the problem Thursday night.

Neal has accused Williams of using the Voting Rights Act for political purposes. If Williams is committed to ensuring that blacks are represented, Neal said yesterday, he should help find a solution.

"As much as David Williams used the NAACP, it seems to me he should be thankful and show his gratitude by supporting any effort they have to correct the mistake that's been made," Neal said.

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Aid blacks in redistricting, group urges House could gain minority representation

By AJ Cross
The Courier-Journal

FRANKFORT, Ky. -- The National Association for the Advancement of Colored People wants the legislature to create more state House districts that are dominated or strongly influenced by African Americans.

The NAACP's national redistricting specialist, Sam Walters, revealed ways to do that at the group's state convention in Frankfort yesterday. Rep. Tom Riner, a white legislator whose district would become majority black under the plan, later endorsed it.

Walters showed how the legislature could draw three majority-black House districts in Louisville instead of the current two, and create districts in Christian and Jefferson counties that would be about 40 percent black.

Such plans are designed to give African Americans more influence in legislative elections and elect more African-American legislators. Currently, the 100-member state House has four African Americans, though Kentucky's population is 7.4 percent black. The state's voting-age population, that 18 and over, is 6.9 percent African American.

Jefferson County has two African-American state representatives, Democrats Paul Bather and Reginald Meeks, who represent districts with overwhelming black majorities. It once had three black House members, but after the 1980 census one was placed in a majority-white district with Riner, who defeated her in a Democratic primary and remains in office.

The NAACP plan would redraw Riner's 41st District, Meeks' 42nd District and Bather's 43rd District, all in Louisville, to make each district about 61 percent black. All three have lost population and need to expand; Walters said there are many different ways to create three majority-black districts.

Riner, whose district is already 40 percent black, and Bather said they support such a plan. Meeks said, "I would not be opposed to it and would be very supportive of looking at that."

Riner, who could face tough opposition from an African-American opponent, said, "That's probably not even the most important question. It empowers the black community to put into office whoever they have trust in." He said whoever represents the district, including himself, "would be more apt to represent their concerns."

Bather said Jefferson County's African Americans are under-represented in the House because the county is 19 percent black but only two of its 18 House members, or 11 percent, are African Americans.

"This is really no different from the arguments that came about over merged government," Bather



Democrats Paul Bather, left, and Reginald Meeks represent Louisville districts with overwhelming black majorities. The NAACP plan would redraw their districts.

...
 ...

The NAACP, which says African Americans are unlikely to have sufficient representation on the Greater Louisville council that will be elected next year, is still considering whether to file a lawsuit challenging the council districts, said Raoul Cunningham, state director of the NAACP Voter Empowerment Program.

Asked if the NAACP might go to court if the legislature doesn't create three majority-black districts in Louisville, Cunningham said, "We will probably try to pursue it all the way through if there's a basis for it."

MEEKS SAID the NAACP needs to get its plan in front of legislators, because they have been working on their own plans for some time.

Similar advice came from House Speaker Pro Tem Larry Clark, who as Jefferson County's top-ranking House member has much influence over redistricting.

Clark, D-Okolona, said in an interview that a final plan "is probably three to four weeks away. If the African-American community has a plan, they ought to be sharing it with somebody."

Cunningham said the NAACP is being more aggressive than it was 10 years ago, when it privately offered a plan. "In the past, the African-American community has always had to react to what was proposed," he told the convention.

Clark said, "I'll meet with anybody but I'm not gonna be yelled and screamed at like they did Dr. (Bill) Dakan," the University of Louisville geographer who drew the council map.

Clark said he has not considered the issue of African-American representation in the current redistricting because "we're having a very difficult time just trying to draw the districts" in a way not to pit incumbents against each other. He said that is especially difficult because almost all the House districts west of Bardstown Road need to gain population and the county has just enough population to keep its current House delegation of 18 members. That leaves less maneuvering room than usual in drawing districts.

Meeks said those problems make it unlikely that the legislature will grant the NAACP's wish for a House district, centered on the Newburg area, that would be about 40 percent black. Such a plan would require taking strongly Democratic precincts from several other districts, including Clark's 46th District.

THE NAACP would like to create another such district in Christian County, essentially by extending the 8th District of Rep. John Adams, D-Hopkinsville, south along U.S. 41 to pick up the area in and around Fort Campbell, where many African Americans live.

However, doing that would require taking territory from the 9th District of Rep. Jim Bruce, D-Hopkinsville, the longest-serving member of the House and the longtime chairman of its Banking and Insurance Committee.

"I don't think I'd be for that," Bruce said in an interview. "Just to go down a small corridor, I don't think that would be a proper way to do it."

Walters, the NAACP specialist, presented several examples of districts in other states that use narrow corridors to join voters with similar backgrounds and voting patterns, as encouraged by the federal Voting Rights Act of 1965.

Raoul Cunningham
Exhibit 3

Memorandum

To: Honorable Rebecca Jackson, Judge-Executive, Russ Maple, District A Commissioner, Dolores Delahanty, District B Commissioner, and Darryl Owens, District C Commissioner, Members of the Fiscal Court of Jefferson County, Kentucky

From: The Louisville and Jefferson County Branch of the NAACP

Re: Proposed Greater Louisville Council District Plan

Date: July 20, 2001

I. Introduction

The proposed election district plan for the first Greater Louisville Council elections is before you. This memorandum is presented to you to supplement the brief comments which we were allowed to present at the public hearing held by Commissioners Owens and Delehanty on July 19, 2001. It will explain why this plan is in violation of the Voting Rights Act of 1965 and why you not only have the power, but actually a duty, under the U.S. Constitution and federal law, to reject this plan.

Most importantly to the NAACP, and to many others who spoke at the July 19 hearing, the plan dilutes minority voting strength because it fails to create effective voting age majorities in Districts 2 and 3. Several alternative plans submitted to Professor Dakan by the NAACP clearly demonstrate that it is possible to create majorities of voting age African-Americans sufficient to provide the citizens of those districts with a reasonable opportunity to elect their candidates of choice, as is required by the Voting Rights Act of 1965. Exhibit 1 to this memorandum presents a comparison of the final proposal submitted by the NAACP and the plan that is before you. The essential information for comparison is the third column from the right for Districts 2 and 3. From his public comments, it is clear that Dr. Dakan has ignored, or has been confused about, several well established legal principles required by the Voting Rights Act during the process of developing this plan. Furthermore, in attempting to deflect criticism of his plan, Dr. Bill Dakan, has invented several other legal doctrines out of whole cloth and also has misquoted state law. He also has made factually incorrect statements as he has tried to justify his plan.

For these reasons, which will be set forth below, we urge you to fulfill your responsibilities to the U.S. Constitution, and the Voting Rights Act of 1965, and return the election district plan to Professor Dakan with instructions to eliminate the vote dilution that is shown by the NAACP alternative proposals.

II. The Fiscal Court Has Both the Power and the Duty To Reject This Plan.

The literal terms of the Kentucky law that established the merger plan appear to give you

Act are often ordered by a Federal Court to implement changes in their voting system which contradict provisions of the state or local law which defined the challenged voting system. Governments who choose to settle Voting Rights Act claims to prevent costly and time consuming litigation often do the same and rely on their obligations under the U.S. Constitution and statutes for the authority to do so.

III. How The Proposed Plan Dilutes Minority Voting Strength.

Dr. Dakan's proposal contains three election districts, Districts 1, 4, and 5, which contain sufficient African-American voting age population to present the African-American voters of those districts with a realistic opportunity to elect their candidates of choice. His proposals for Districts 2 and 3, which contain an estimated 47 and 52 percent African-American voting age population do not present such an opportunity. The alternative proposals presented by the NAACP show that it is possible to meet every legitimate concern expressed by Mr. Dakan and develop an election plan that has four districts in Louisville with 60% or greater African-American voting age population. No sitting African-American incumbent City Council members are paired in the latest of these proposals while Mr. Dakan's proposal pits at least two African-American incumbents. These West Louisville area districts from the NAACP proposal can be constructed using whole precincts. In addition, it is possible to create an election district in the Newburg area that has in excess of 55% African-American voting age population, in contrast to the current District 2 which has approximately a 47% African-American voting age population. This requires the revision of several precinct boundaries - an act explicitly anticipated and permitted by the provisions of the merger bill.⁵

Because of his misunderstanding of the relationship between the Voting Rights Act, the One-Person, One-Vote doctrine, and the merger law, Mr. Dakan fails to present the most important data for assessing an election plan's compliance with the Voting Rights Act - the racial composition of the voting age population of each election district. Exhibit 1 contains voting age population figures for the NAACP's proposal as well as for our analysis of Dr.

⁵ While it is the common perception that Dakan has no power to create new precinct lines, Section 18(8) of the merger law explicitly states: "Precinct lines shall be drawn when necessary in accordance with the provisions of law. No precinct shall be in more than one (1) district." The word "shall" means "must" not may, i.e., it is mandatory, not permissive. The phrase "provisions of law" must include consideration the requirements of federal law. The two sentences taken together mean that new precinct lines should be created whenever it is necessary to split existing precincts in creating these districts.

If District 2 is created in a configuration similar to that proposed by the NAACP then new precinct line will have to be created. KRS 117.056 has been cited as a prohibition on creating new precincts. This must give way to the protections of the Voting Rights Act. In addition, it should be noted that the merger law was passed after KRS 117.056 and to give the earlier statute precedence over this one would render this provision of the merger law a nullity.

best that can be done. All of these rationalizations are either factually or legally wrong. First, many are disproved simply by the fact that the NAACP proposals create a more representative and fair plan. If we can develop such plans, Dr. Dakan and/or his graduate students could also have done so. They chose not to do so, even though we have presented them with a clear blueprint for designing districts that afford fair representation to the African-American community.

This memo will analyze Dr. Dakan's assertions one by one and reveal the level to which erroneous information has been presented to the public.

- A. Dakan erroneously asserts that his plan is the best that can be developed and that it maximizes African-American voting strength.

As stated above, the NAACP has produced several proposals that have four election districts in Louisville with 60% or greater African-American voting age population. This is superior to the results produced by Mr. Dakan and this was accomplished with whole precincts and with the town of Shively remaining intact, although not in a majority minority district. Our District 3 contains 10.5% more African-American voting age population than the configuration proposed by Dakan. In the Newburg area our District 2 contains almost 8.9% points more African American voting age population. The existence of our proposal clearly shows that a better plan is possible if one simply reconfigures the assignment of precincts contained in Districts 1, and 2-6, and breaks some precinct lines to create District 2.⁹

Dakan asserts that he has tried to maximize minority voting strength. If he actually has tried to do this, he has failed. It is actually possible to create five, not four election districts in the Louisville area which have 57% or greater African-American voting age population. This is in addition to the District 2 configuration that the NAACP has developed for the Newburg area. In other words, it is possible to create 6 districts with 56% or greater African-American voting age population.¹⁰

⁹ In one newspaper article, Dakan was quoted as saying the he could do nothing more to improve the percentages in the majority black districts because there were no more majority black precincts to be put into these districts. The key is how to arrange the precincts. The NAACP proposals have shown that there are numerous ways to accomplish this and achieve better results.

¹⁰ The NAACP does not advocate this proposal, included as Exhibit 4 as it contains a number of majority black voting age population districts in excess of the proportion of the African-American population in Jefferson County. Whether a plan contains a number of effective majority black, or other minority, districts equal to the black populations proportion in a jurisdiction is always relevant evidence when evaluating whether the Voting Rights Act has been violated. *Johnson v. De Grandy*, 512 U.S. ___, 114 S.Ct. 2647 (1994). Consideration of proportionality of the number of effective "supermajority" districts, not elected candidates, is always "a relevant fact in the totality of circumstances to be analyzed when determining whether members of a minority group have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their

- C. Dakan asserts that the decrease in residential segregation that has occurred in Jefferson County during the last ten years makes it impossible to create a more fair election district plan than the one he has proposed.

First, the fact that the NAACP can create a better plan using the same data shows the speciousness of this argument. In actuality, the specific patterns of increased residential integration that have taken place in Jefferson County make it easier to draw a fair election district plan. The areas of the county which have much of the "integrated" housing patterns are either in the City of Louisville or to the immediate south and southwest of the City, rather than randomly distributed around the county.¹¹ Therefore, in creating an election plan, the areas one finds in these areas contains a more diverse population. When an area with a 70% white population is added to a district that is 70% African-American, the percentage of the district that is African-American is reduced less than if an area that was over 90% white was added to the district. Exhibit 2 to this report contains a map of the county showing census blocks color coded by their percentage African-American population. It is clear from this map that many of the areas of residential reduced residential segregation are primarily adjacent to areas of concentrated African-American population.

V. Governments Still Are Obligated to Comply With Section 2 of the Voting Rights Act.

In a number of highly publicized constitutional challenges to Congressional redistricting plans adopted after the release of the 1990 Census data, the Supreme Court struck down, or affirmed the invalidation of, redistricting plans that created majority black Congressional districts in North Carolina, *Shaw v. Reno*, 509 U.S. 630 (1993), Georgia, *Miller v. Johnson*, 515 U.S. 900 (1995), Louisiana, *United States v. Hayes*, 515 U.S. 737 (1995), and Texas, *Bush v. Vera*, 517 U.S. 952 (1996). The first of these cases, *Shaw v. Reno*, *supra*, created a new cause of action under the 14th Amendment to the U.S. Constitution by which white voters could attack the creation of majority minority election districts. Much of the discussion in these decisions focused on the shape of the majority black districts and the degree to which it showed impermissible consideration of race in the creation of the challenged plans. Many commentators, pundits, and much of the public thought that these decisions meant the death knell of the Voting Rights Act. While these decisions are very important and certainly do impact the legal landscape we all face as the post-2000 Census redistricting begins, it would be a mistake to assume that Voting Rights Act considerations can be ignored or deemed an inconsequential part of planning by local jurisdictions.

- A. The Supreme Court has confirmed the continued viability of Section 2.

First, one could look at Justice O'Connor's concurrence to her own majority opinion in

¹¹ If the areas of integrated population were more randomly distributed around the county, then Dr. Dakan's assertion would probably be correct. However, this is not the case and his assertion is just an attempt to deflect criticism from his proposed plan.

Similarly, other recent federal court decisions show that the Courts will continue to enforce claims of vote dilution brought under the VRA. See, *Vander Linden v. Hodges*, 193 F.3d 268 (4th Cir. 1999), *Clark v. Calhoun County*, 88 F.3d 1393(5th Cir. 1996), *Teague v. Attala County*, 17 F.3d 796(5th Cir. 1994), and *Houston v. Lafayette County*, 51 F.3d 547, *reh. denied*, __ F.3d __ (5th Cir. 1995).

In addition, lower courts have been very reluctant to setting aside local redistricting plans due to *Shaw* challenges by white plaintiffs. For example, in *Theriot v. Parish of Jefferson*, 185F.3d 477 (5th Cir. 1999), the Fifth Circuit affirmed the rejection of a *Shaw* based equal protection challenge to a majority black election district created for the Jefferson Parish. After a thorough review of the evidence in the case, the court concluded that,

“[r]esolution of this case turns on the issue of whether race predominated in the redistricting plan. Like the district court before us, we cannot find that race predominated. While relevant, issues pertaining to race were subordinated to concerns for political incumbency, joining communities of interest, satisfying one-person, one-vote requirements, and geographical realities.”

Id., 185 F.3d at 491. These issues are always present in redistricting considerations, so with proper preparation and consideration of the factors Justice O'Connor discusses in her *Vera* concurrence, governments can withstand equal protection challenges to redistricting plans adopted to comply with the Voting Rights Act.

VI. Conclusion.

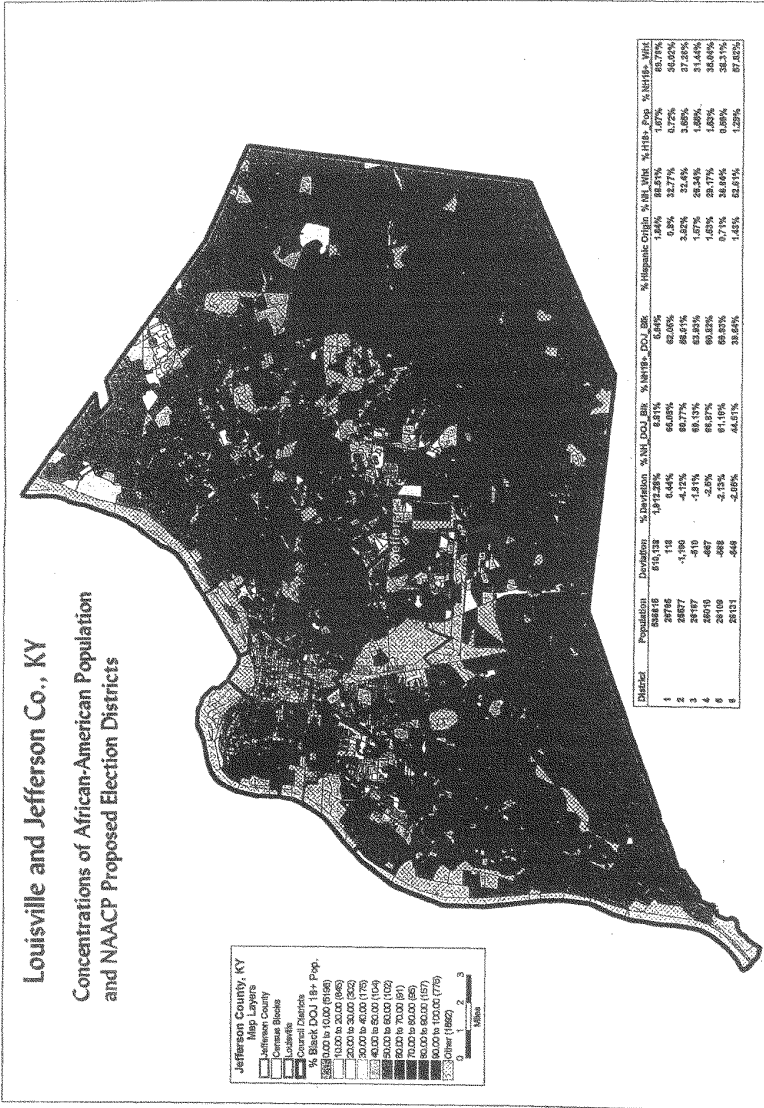
The election plan submitted to the Fiscal Court by Professor Dakan's impermissibly dilutes African-American voting strength. The members of the Fiscal Court should recognize their duties under the U.S. Constitution and its Supremacy Clause as well as the provisions of the Voting Rights Act, all of which supercede Kentucky law and instruct Dr. Dakan to cure these deficiencies in his plan before they will vote on the plan.

This memorandum was prepared by Samuel L. Walters, Esq., Redistricting Coordinator for the NAACP Redistricting Project located at the NAACP National Headquarters in Baltimore, MD. Mr. Walters directed the NAACP's Redistricting Project from 1990 until 1994 and has recently rejoined the Legal Department to perform this same function. Mr. Walters has been practicing law for over 20 years. He has litigated numerous cases under the Voting Rights Act at all levels of the U.S. Federal Courts, including the U.S. Supreme Court. Mr. Walters has been using GIS software to develop redistricting plans since early 1991 when these programs were first released. He has drafted over 150 redistricting plans ranging from very small towns to Congressional redistricting plans.

Comparison and Analysis of Dakan and NAACP Proposed Election Districts

District	Plan	Population	Deviation	% Deviation	% NH DOJ Black	% Black	% Hispanic Origin	% NH White	% White	% NH18+ DOJ Blk	% NH18+ Pop	% NH18+ White
1	NAACP Proposal	26795	118	0.44%	65.08%	87.00%	0.80%	32.77%	31.00%	62.05%	0.72%	36.02%
	Dakan	26366	-537	-2.00%	66.97%	87.00%	1.00%	30.78%	31.00%	63.84%	0.72%	34.16%
	Dakan analyzed Difference	-429	-429	-1.56%	-0.09%	0.00%	0.20%	-2.99%	0.00%	1.79%	0.00%	-1.86%
2	NAACP Proposal	25577	-1100	-4.12%	60.77%	52.00%	3.82%	32.40%	43.00%	56.01%	3.55%	37.28%
	Dakan	26090	-813	-3.02%	52.00%	52.00%	3.00%	42.10%	43.00%	47.10%	3.04%	47.39%
	Dakan analyzed Difference	-142	-142	-0.54%	0.00%	0.00%	-0.82%	-1.70%	0.00%	-1.09%	-0.49%	-0.11%
3	NAACP Proposal	26167	-510	-1.91%	66.13%	57.00%	1.57%	26.34%	41.00%	63.93%	1.55%	31.44%
	Dakan	27180	277	1.03%	57.27%	57.00%	1.00%	40.37%	41.00%	53.39%	0.95%	44.53%
	Dakan analyzed Difference	-38	-38	-0.14%	0.00%	0.00%	-0.57%	-13.63%	0.00%	-10.54%	-0.40%	-13.09%
4	NAACP Proposal	26010	-667	-2.50%	66.87%	66.00%	1.53%	26.17%	29.00%	60.82%	1.53%	35.04%
	Dakan	26287	-616	-2.29%	67.00%	66.00%	1.00%	28.98%	29.00%	62.61%	1.05%	34.00%
	Dakan analyzed Difference	177	177	0.67%	0.00%	0.00%	-0.53%	2.81%	0.00%	1.79%	0.52%	-0.96%
5	NAACP Proposal	26109	-568	-2.13%	61.16%	61.00%	0.71%	36.84%	37.00%	59.93%	0.59%	36.31%
	Dakan	26144	-759	-2.82%	61.16%	61.00%	0.71%	36.84%	37.00%	59.93%	0.59%	36.31%
	Dakan analyzed Difference	-35	-35	-0.13%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
6	NAACP Proposal	26131	-546	-2.05%	44.51%	45.00%	1.43%	52.61%	50.00%	39.54%	1.29%	57.62%
	Dakan	25423	-1480	-5.50%	45.14%	45.00%	2.00%	49.07%	50.00%	39.94%	2.29%	54.26%
	Dakan analyzed Difference	371	371	1.46%	0.00%	0.00%	-2.30%	0.00%	0.00%	0.40%	0.90%	3.36%

NH = Non-Hispanic origin



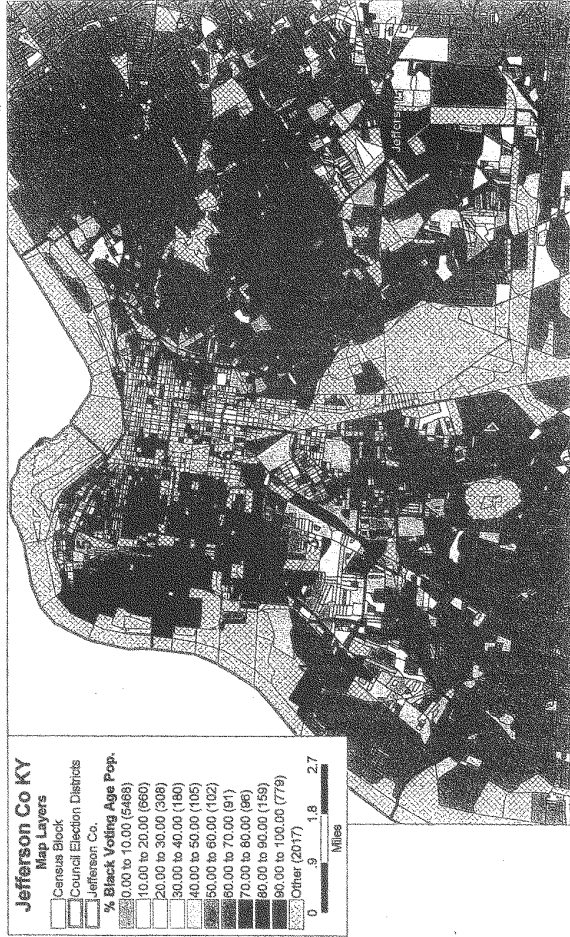
Quick Table QT-PL: Race, Hispanic
or Latino and Age:2000

Geographic Area: Jefferson County, Kentucky

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
RACE				
Total population	693,604	100	525,333	100
One race	683,762	98.6	520,029	99
White	536,721	77.4	419,247	79.8
Black or African American	130,928	18.9	89,255	17
American Indian and Alaska Native	1,523	0.2	1,146	0.2
Asian	9,640	1.4	7,277	1.4
Native Hawaiian and Other Pacific Islander	255	0	197	0
Some other race	4,695	0.7	2,907	0.6
Two or more races	9,842	1.4	5,304	1
HISPANIC OR LATINO AND RACE				
Total population	693,604	100	525,333	100
Hispanic or Latino (of any race)	12,370	1.8	8,631	1.6
Not Hispanic or Latino	681,234	98.2	516,702	98.4
One race	672,397	96.9	511,974	97.5
White	530,056	76.4	414,455	78.9
Black or African American	130,003	18.7	88,633	16.9
American Indian and Alaska Native	1,409	0.2	1,072	0.2
Asian	9,562	1.4	7,222	1.4
Native Hawaiian and Other Pacific Islander	224	0	176	0
Some other race	1,143	0.2	416	0.1
Two or more races	8,837	1.3	4,728	0.9

Source: U.S. Census Bureau
Census 2000
Redistricting Data
(Public Law 94-171)
Summary File

Jefferson Co. Council - Draft Proposal w. 6 Majority Black VAP Districts



District	Population	% Deviation	% NH_DOU_Blk	% NHIB- DOU_Blk	% Hispanic Origin	% NH_WHI	% HIB- Pop	% NHIB- WHI
1	540389	1,925.86%	6.6%	5.87%	1.79%	88.74%	1.84%	69.16%
2	25414	-4.73%	63.05%	60.1%	0.83%	34.63%	0.74%	27.14%
3	25733	-3.64%	60.66%	55.98%	3.85%	32.33%	3.77%	26.41%
4	26814	-3.23%	64.76%	80%	1.43%	32.51%	1.4%	26.52%
5	26371	-4.9%	66.38%	61.01%	1.83%	29.14%	1.73%	24.37%
6	25442	-4.63%	62.81%	61.41%	0.62%	35.32%	0.64%	26.87%
	25471	-4.52%	62%	58.68%	1.86%	33.91%	1.89%	28.43%

NAACP Illustrative Kentucky House Districts

District	Population	Deviation	% Deviation	% NH DOJ Black	% NH18+ DOJ Black	% NH18+ DOJ Asian	% Hsp. 18+ Pop	% NH18+ White
District 3 - Paducah area								
3	38539	-1879	-4.65%	17.86%	15.04%	0.71%	1.13%	82.19%
District 8 - Hopkinsville, Fort Campbell, Christian County area, plus related districts 5 and 9								
8	39921	-497	-1.23%	38.03%	35.61%	1.42%	7.16%	53.34%
9	39016	-1402	-3.47%	8.12%	7.42%	0.65%	1.04%	90.09%
5	39341	-1077	-2.66%	3.64%	3.48%	1.42%	1.11%	93.24%
This configuration uses only the land area and population that comprised these three districts during the 1990's.								
District 20 - Bowling Green area								
20	38500	-1918	-4.75%	14.79%	12.96%	2.02%	4.00%	79.69%
Districts 41, 42, & 43, Louisville and 30 & 46, Jefferson County								
41	39600	-818	-2.02%	66.74%	61.34%	0.81%	1.51%	34.69%
42	41267	849	2.10%	65.78%	61.45%	0.30%	1.81%	35.34%
43	39427	-991	-2.45%	63.53%	61.85%	0.13%	0.59%	36.31%
30	38977	-1441	-3.57%	45.78%	41.35%	1.88%	3.10%	52.39%
46	39761	-657	-1.63%	6.85%	5.68%	0.95%	2.20%	90.35%
District 57 - Frankfort area								
57	39129	-1289	-3.19%	11.49%	10.98%	0.86%	1.10%	86.25%
District 65 - Covington area								
65	39133	-1285	-3.18%	13.07%	10.75%	0.35%	1.39%	86.34%
District 77 - Lexington area								
77	39627	-791	-1.96%	45.67%	42.34%	0.78%	7.15%	48.49%

Maptitude Plan Components Report (short format)

Plan: **KY House Districts 3**
 Plan Type: Partial House
 Administrator: Samuel L. Walters, Redistricting Coordinator

Saturday, January 5, 2002

Due to an error in the construction of this database, the Maptitude Report generation utility is not reporting the code for census blocks from split precincts with complete accuracy. Those precincts which are on a line with another precinct name or which are not followed by information about Blocks in a smaller font are wholly contained in a district. Those precinct listings which are followed by one or more lines of information about blocks are split between two districts. The last four digits of the block numbering is correct as is the listing of the precinct from which they come. However, the number in parenthesis, e.g., (011505), following the word "Blocks" is incomplete and should have additional digits to properly identify the tracts from which the blocks come. The following information does allow us to know which precincts are whole and which are split as well as the number of blocks from a particular precinct that are in a specific illustrative district. The ESRI shape file that is being provided with this information will allow any GIS based redistricting or mapping software to import the exact boundaries of these districts. In addition, block level equivalency files can be provided as an alternative means of importing these district configurations into any mapping software.

District 3**McCracken County**

VTD: ARCADIA
 VTD: BUDDIE
 VTD: CARSON PARK
 VTD: CONCORD
 VTD: FARLEY
 VTD: HENDRON # 1
 VTD: JETTON
 VTD: LONE OAK #2
 VTD: RIEKE
 VTD: SCHNEIDMAN
 VTD: WILLIAMS

VTD: AVONDALE
 VTD: BUTLER
 VTD: CECIL
 VTD: COUNTRY CLUB
 VTD: GALLMAN
 VTD: HENDRON # 4
 VTD: KENNEDY
 VTD: PAXTON PARK
 VTD: ROLLING HILLS
 VTD: UNION STATION
 VTD: WOODLAWN

VTD: BERNHARD
 VTD: CARDINAL POINT
 VTD: CHEROKEE
 VTD: EMMA MORGAN
 VTD: GOTT
 VTD: HOVEKAMP
 VTD: LONE OAK #1
 VTD: REED
 VTD: SAVAGE
 VTD: WALLACE PARK
 VTD: YANCY

Maptitude Plan Components Report (short format)

Plan: **KY House Districts 5, 8, & 9 Galloway, Tripp, Jefferson County**
 Plan Type: Partial House
 Administrator: Samuel L. Walters, Redistricting Coordinator Saturday, January 5, 2002

Due to an error in the construction of this database, the Maptitude Report generation utility is not reporting the code for census blocks from split precincts with complete accuracy. Those precincts which are on a line with another precinct name or which are not followed by information about Blocks in a smaller font are wholly contained in a district. Those precinct listings which are followed by one or more lines of information about blocks are split between two districts. The last four digits of the block numbering is correct as is the listing of the precinct from which they come. However, the number in parenthesis, e.g., (011505), following the word "Blocks" is incomplete and should have additional digits to properly identify the tracts from which the blocks come. The following information does allow us to know which precincts are whole and which are split as well as the number of blocks from a particular precinct that are in a specific illustrative district. The ESRI shape file that is being provided with this information will allow any GIS based redistricting or mapping software to import the exact boundaries of these districts. In addition, block level equivalency files can be provided as an alternative means of importing these district configurations into any mapping software.

District 5**Trigg County**

VTD: BETHESDA
 VTD: CANTON 1
 VTD: WEST CADIZ

VTD: CANTON #2
 VTD: NORTHWEST CADIZ
 VTD: X002

Galloway County (entire county)**District 8****Christian County**

VTD: AARON MCNEIL CENTER
 VTD: BAPTIST LIFE CENTER
 Blocks (200100): 0102 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (200100): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (200100): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 VTD: CHRISTIAN COUNTY RD DEPT.
 Blocks (200300): 0202 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (200300): 0102 0101 0202 0101 0101 0101 0101 0101 0104 0304 0404 0101
 Blocks (200300): 0303 0101 0203 0102 0102 0102 0202
 Blocks (201200): 0101 0101 0101 0101
 Blocks (201300): 0202 0101 0101 0101 0101 0101 0101
 VTD: COURTHOUSE
 VTD: COURTHOUSE II
 Blocks (200100): 0203 0202 0101 0202
 Blocks (200300): 0101 0101 0102 0101
 VTD: HICKORY SMOKEHOUSE
 Blocks (200300): 0204 0202 0102 0203 0303 0101 0102
 VTD: HILLCREST BAPTIST CHURCH
 Blocks (200300): 0101 0101 0101 0101 0101 0202 0101 0101 0202 0202 0101 0101
 Blocks (200300): 0101 0202 0102
 Blocks (200400): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (200400): 0101 0101 0101 0101 0202 0101 0101 0101 0101 0101
 VTD: MIDDLE SCHOOL
 Blocks (200200): 0101 0101 0102 0101 0101 0101 0101 0101 0202 0101 0101 0101 0101
 Blocks (200200): 0101 0101 0101 0101
 Blocks (200300): 0104 0101 0101 0202
 VTD: NORTH DRIVE MIDDLE SCHOOL
 Blocks (200200): 0101
 Blocks (200800): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (200800): 0101 0101 0101
 VTD: NORTH PEMBROKE
 Blocks (201300): 0101 0101 0101 0101 0101 0101 0101
 VTD: OAK GROVE
 VTD: PARISH HALL

Blocks (200100): 0101 0101 0101 0101 0101 0101
 Blocks (200300): 0204 0101 0103 0203 0101 0101 0101 0101 0101 0101 0101 0103
 Blocks (200300): 0303 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (200300): 0101 0101 0101 0101 0101 0101 0101 0202 0101 0101 0102
 Blocks (200400): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (200400): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 VTD: PENNYRILE RURAL ELECTRIC
 Blocks (200100): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (200100): 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (200500): 0101 0102 0101 0101 0101
 VTD: RECREATION DEPARTMENT
 Blocks (200200): 0101
 Blocks (200700): 0101
 Blocks (200800): 0202 0202 0101
 VTD: SECOND BAPTIST ACTIVITIES
 VTD: SOUTH PEMBROKE
 Blocks (200300): 0102 0102 0101 0101
 Blocks (201300): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (201300): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (201300): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (201300): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
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 Blocks (201300): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (201300): 0101 0101 0101 0101 0101 0101 0101
 VTD: ST. ELMO
 Blocks (201400): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 VTD: WALNUT STREET CENTER
 VTD: X001

District 9

Hopkins County

VTD: ILSLEY 17

Trigg County

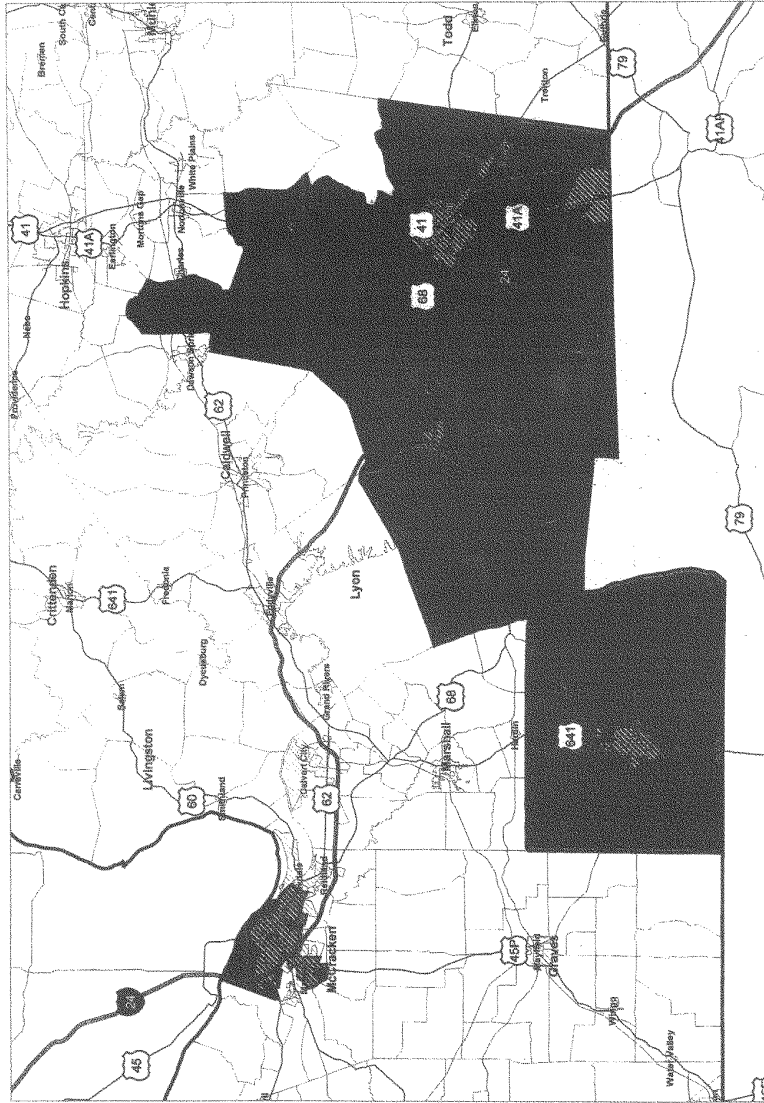
VTD: CERULEAN-WALLONIA
 VTD: MONTGOMERY
 VTD: NORTH CADIZ 2
 VTD: SOUTH CADIZ #1
 VTD: X001

VTD: LINTON-MAGGIE
 VTD: NORTH CADIZ #1
 VTD: ROARING SPRINGS
 VTD: SOUTH CADIZ 2

Christian County

VTD: BAPTIST LIFE CENTER
 Blocks (200100): 0101 0101 0101
 VTD: CALVARY BAPTIST CHURCH
 VTD: CHRISTIAN COUNTY RD DEPT.
 Blocks (201200): 0102 0202 0202 0102
 VTD: COURTHOUSE II
 Blocks (200300): 0101 0101 0202 0404 0101
 VTD: EAST CROFTON
 VTD: FRIENDSHIP HOUSE 1
 VTD: FRIENDSHIP HOUSE 2
 VTD: GAIL'S COUNTRY KITCHEN
 Blocks (201200): 0102 0102 0102 0102 0101 0101 0102 0102 0101 0101 0101 0101
 Blocks (201200): 0102 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (201200): 0101 0101 0101 0101 0101 0101 0202 0102 0202 0101 0101 0101
 Blocks (201200): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 VTD: HERNDON
 VTD: HICKORY SMOKEHOUSE
 Blocks (200300): 0101 0101
 Blocks (200900): 0101 0101 0101 0101 0101 0101 0102 0101 0101 0101 0101
 Blocks (201100): 0102 0101 0101 0101 0303 0102 0202 0101
 Blocks (201200): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (201200): 0101 0101 0101 0101 0101 0101
 VTD: HILLCREST BAPTIST CHURCH
 Blocks (200500): 0101 0101 0101 0101

VTD: HOPKINSVILLE HIGH SCH #2
 VTD: HOPKINSVILLE HIGH SCHOOL
 VTD: LAFAYETTE
 VTD: LUTHERAN CHURCH
 VTD: MIDDLE SCHOOL
 Blocks (200200): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (200300): 0304
 VTD: MILLBROOKE SCHOOL
 VTD: MORNINGSIDE SCHOOL
 VTD: NEW PALESTINE BAPT CHURCH
 VTD: NORTH DRIVE MIDDLE SCHOOL
 Blocks (200200): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (200200): 0101 0101
 Blocks (200300): 0102 0204
 Blocks (200800): 0101 0101 0101 0101 0101 0102 0101
 VTD: NORTH PEMBROKE
 Blocks (201200): 0101 0101 0101 0101 0101 0101
 Blocks (201300): 0101 0101 0101 0102 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (201300): 0101 0101 0101 0101 0101 0101 0101 0101
 VTD: PARISH HALL
 Blocks (201200): 0102
 VTD: PENNYRILE RURAL ELECTRIC
 Blocks (200500): 0101 0101
 VTD: RECREATION DEPARTMENT
 Blocks (200100): 0101
 Blocks (200700): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (200700): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (200700): 0101 0101 0101 0101 0101 0101 0101 0101 0203
 VTD: SINKING FORK SCHOOL
 VTD: SOUTH PEMBROKE
 Blocks (200300): 0202 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (200500): 0102 0102 0101 0101 0101 0101
 Blocks (201300): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (201300): 0101 0101 0101 0101 0101 0101 0101 0101 0101
 VTD: SOUTH UNION BAPT CHURCH
 VTD: SOUTHSIDE CHURCH OF CHR
 VTD: SQUARE DEAL
 VTD: ST. ELMO
 Blocks (201400): 0102 0101 0101 0101 0101 0101 0101 0101 0101 0102 0101 0101 0101
 Blocks (201400): 0101 0101 0102 0102 0102
 VTD: WEST CROFTON



Maptitude Plan Components Report (short format)

Plan: **KY House Districts 20**
Plan Type: Partial House
Administrator: Samuel L. Walters, Redistricting Coordinator

Saturday, January 5, 2002

District 20

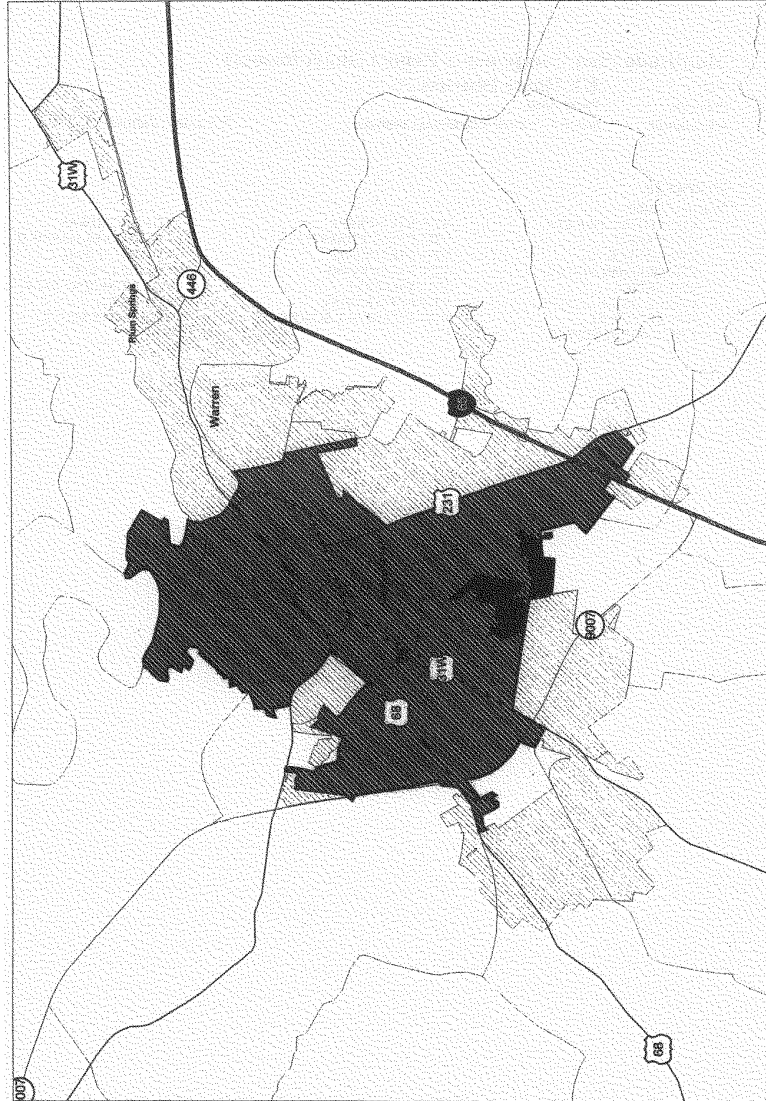
Warren County

VTD: 11TH ST. FIRE STA.
VTD: CABELL
VTD: CHURCH ST.
VTD: GREENMEADOWS
VTD: MCNEIL
VTD: OCTAGON CASTLE
VTD: SHIVE KIEL
VTD: WHAYNE SUPPLY

VTD: B.G. TOWERS
VTD: CARVER HARRIS I
VTD: CRESTMOOR
VTD: GREENWOOD
VTD: MILLERS I
VTD: POTTER GRAY
VTD: T C CHERRY SCHOOL

VTD: BROADWAY
VTD: CARVER HARRIS II
VTD: DELAFIELD
VTD: HILLVIEW
VTD: MUNICIPAL PARK
VTD: REELS
VTD: WATTS MILL II

3137



Maptitude Plan Components Report (short format)

Plan: **KY House Districts 41-42 Louisville and Jefferson County**
 Plan Type: Partial House
 Administrator: Samuel L. Walters, Redistricting Coordinator

Saturday, January 5, 2002

District 41**Jefferson County**

VTD: PRECINCT 104 40 DISTRICT
 VTD: PRECINCT 107 41 DISTRICT
 VTD: PRECINCT 109 41 DISTRICT
 VTD: PRECINCT 110 42 DISTRICT
 VTD: PRECINCT 112 41 DISTRICT
 VTD: PRECINCT 113 42 DISTRICT
 VTD: PRECINCT 115 42 DISTRICT
 VTD: PRECINCT 117 42 DISTRICT
 VTD: PRECINCT 121 42 DISTRICT
 VTD: PRECINCT 122 41 DISTRICT
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 VTD: PRECINCT 125 42 DISTRICT
 VTD: PRECINCT 130 41 DISTRICT
 VTD: PRECINCT 133 41 DISTRICT

VTD: PRECINCT 104 41 DISTRICT
 VTD: PRECINCT 108 41 DISTRICT
 VTD: PRECINCT 110 41 DISTRICT
 VTD: PRECINCT 111 41 DISTRICT
 VTD: PRECINCT 113 41 DISTRICT
 VTD: PRECINCT 114 42 DISTRICT
 VTD: PRECINCT 116 42 DISTRICT
 VTD: PRECINCT 120 42 DISTRICT
 VTD: PRECINCT 121 43 DISTRICT
 VTD: PRECINCT 122 43 DISTRICT
 VTD: PRECINCT 124 42 DISTRICT
 VTD: PRECINCT 129 42 DISTRICT
 VTD: PRECINCT 131 42 DISTRICT
 VTD: PRECINCT 136 42 DISTRICT

District 42

VTD: PRECINCT 101 38 DISTRICT
 VTD: PRECINCT 103 40 DISTRICT
 VTD: PRECINCT 104 42 DISTRICT
 VTD: PRECINCT 106 42 DISTRICT
 VTD: PRECINCT 107 42 DISTRICT
 VTD: PRECINCT 110 40 DISTRICT
 VTD: PRECINCT 113 40 DISTRICT
 VTD: PRECINCT 114 40 DISTRICT
 VTD: PRECINCT 117 44 DISTRICT
 VTD: PRECINCT 118 43 DISTRICT
 VTD: PRECINCT 119 44 DISTRICT
 VTD: PRECINCT 122 40 DISTRICT
 VTD: PRECINCT 125 40 DISTRICT
 VTD: PRECINCT 130 40 DISTRICT
 VTD: PRECINCT 133 42 DISTRICT

VTD: PRECINCT 103 37 DISTRICT
 VTD: PRECINCT 103 44 DISTRICT
 VTD: PRECINCT 105 42 DISTRICT
 VTD: PRECINCT 107 40 DISTRICT
 VTD: PRECINCT 108 40 DISTRICT
 VTD: PRECINCT 111 40 DISTRICT
 VTD: PRECINCT 113 43 DISTRICT
 VTD: PRECINCT 116 44 DISTRICT
 VTD: PRECINCT 118 40 DISTRICT
 VTD: PRECINCT 119 43 DISTRICT
 VTD: PRECINCT 121 40 DISTRICT
 VTD: PRECINCT 123 40 DISTRICT
 VTD: PRECINCT 127 37 DISTRICT
 VTD: PRECINCT 130 42 DISTRICT

District 43

VTD: PRECINCT 101 41 DISTRICT
 VTD: PRECINCT 102 42 DISTRICT
 VTD: PRECINCT 103 41 DISTRICT
 VTD: PRECINCT 103 43 DISTRICT
 VTD: PRECINCT 104 44 DISTRICT
 VTD: PRECINCT 105 44 DISTRICT
 VTD: PRECINCT 107 43 DISTRICT
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 VTD: PRECINCT 135 42 DISTRICT

VTD: PRECINCT 101 43 DISTRICT
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 VTD: PRECINCT 106 43 DISTRICT
 VTD: PRECINCT 107 44 DISTRICT
 VTD: PRECINCT 109 43 DISTRICT
 VTD: PRECINCT 111 43 DISTRICT
 VTD: PRECINCT 115 43 DISTRICT
 VTD: PRECINCT 124 43 DISTRICT
 VTD: PRECINCT 134 42 DISTRICT

Maptitude Plan Components Report (short format)

Plan: **KY House Districts 30 & 46 Jefferson County**
 Plan Type: Partial House
 Administrator: Samuel L. Walters, Redistricting Coordinator Saturday, January 5, 2002

Due to an error in the construction of this database, the Maptitude Report generation utility is not reporting the code for census blocks from split precincts with complete accuracy. Those precincts which are on a line with another precinct name or which are not followed by information about Blocks in a smaller font are wholly contained in a district. Those precincts listings which are followed by one or more lines of information about blocks are split between two districts. The last four digits of the block numbering is correct as is the listing of the precinct from which they come. However, the number in parenthesis, e.g., (011505), following the word "Blocks" is incomplete and should have additional digits to properly identify the tracts from which the blocks come. The following information does allow us to know which precincts are whole and which are split as well as the number of blocks from a particular precinct that are in a specific illustrative district. The ESRI shape file that is being provided with this information will allow any GIS based redistricting or mapping software to import the exact boundaries of these districts. In addition, block level equivalency files can be provided as an alternative means of importing these district configurations into any mapping software.

District 30**Jefferson County**

VTD: PRECINCT 101 30 DISTRICT
 VTD: PRECINCT 103 30 DISTRICT
 VTD: PRECINCT 105 30 DISTRICT
 VTD: PRECINCT 107 46 DISTRICT
 Blocks (011505): 0101 0101 0101 0202 0202
 VTD: PRECINCT 108 30 DISTRICT
 VTD: PRECINCT 110 30 DISTRICT
 VTD: PRECINCT 112 35 DISTRICT
 Blocks (011301): 0101 0101 0202 0102 0103 0303 0101 0103 0203
 VTD: PRECINCT 113 31 DISTRICT
 VTD: PRECINCT 118 33 DISTRICT
 Blocks (011005): 0102 0102 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (011005): 0101
 Blocks (011105): 0101 0101 0101 0101 0101 0101 0101 0101
 VTD: PRECINCT 119 33 DISTRICT
 Blocks (011005): 0101 0202 0202 0202
 VTD: PRECINCT 120 33 DISTRICT
 Blocks (011003): 0101
 VTD: PRECINCT 121 33 DISTRICT
 Blocks (011004): 0101
 Blocks (011105): 0101
 VTD: PRECINCT 121 35 DISTRICT
 Blocks (011403): 0101 0101 0101 0101 0101
 VTD: PRECINCT 122 46 DISTRICT
 Blocks (011405): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 VTD: PRECINCT 123 46 DISTRICT
 VTD: PRECINCT 124 46 DISTRICT
 Blocks (011405): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (011405): 0101 0101 0101 0101 0101
 VTD: PRECINCT 125 30 DISTRICT
 VTD: PRECINCT 127 35 DISTRICT
 VTD: PRECINCT 127 46 DISTRICT
 Blocks (011002): 0102 0102
 Blocks (011505): 0102 0102 0101 0101 0101 0101 0101 0101
 VTD: PRECINCT 128 30 DISTRICT
 VTD: PRECINCT 129 30 DISTRICT
 Blocks (010901): 0101 0101 0101
 VTD: PRECINCT 131 30 DISTRICT
 VTD: PRECINCT 136 31 DISTRICT
 Blocks (011105): 0101 0101 0102 0102 0101

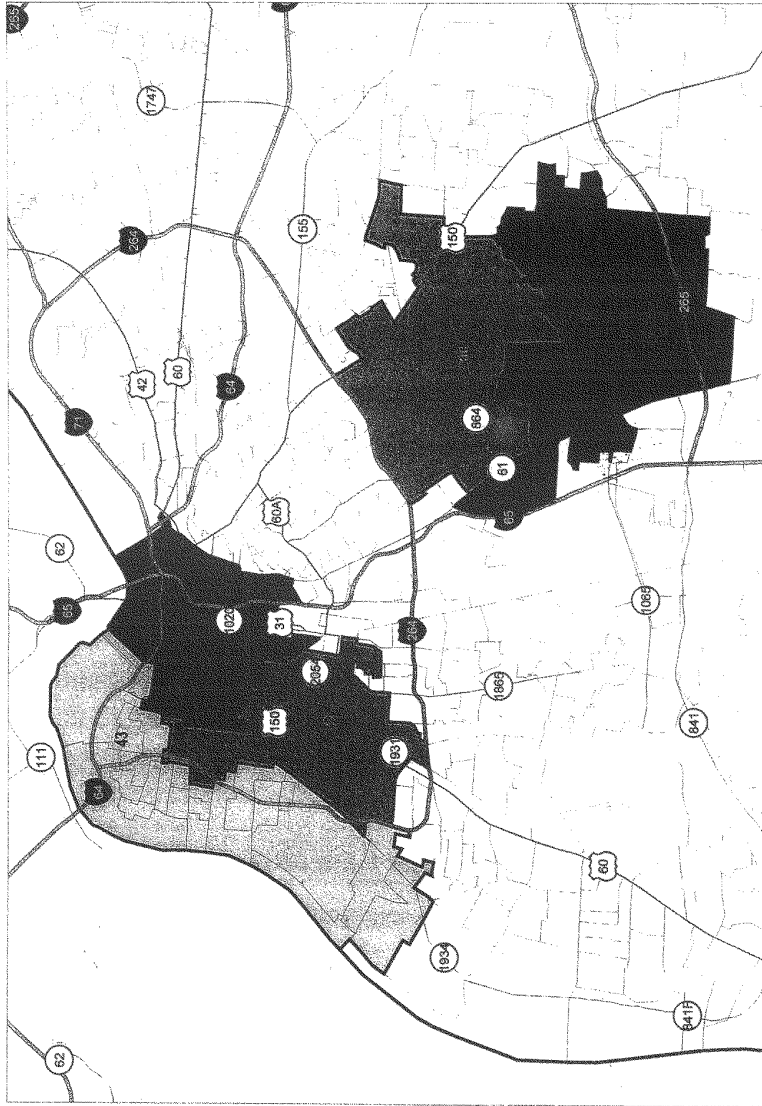
VTD: PRECINCT 102 30 DISTRICT
 VTD: PRECINCT 104 30 DISTRICT
 VTD: PRECINCT 106 30 DISTRICT
 VTD: PRECINCT 109 30 DISTRICT
 VTD: PRECINCT 111 30 DISTRICT
 VTD: PRECINCT 115 30 DISTRICT
 VTD: PRECINCT 126 30 DISTRICT

District 46

Jefferson County

VTD: PRECINCT 101 46 DISTRICT	VTD: PRECINCT 103 46 DISTRICT
VTD: PRECINCT 104 46 DISTRICT	VTD: PRECINCT 105 46 DISTRICT
VTD: PRECINCT 107 46 DISTRICT	
Blocks (011505): 0303 0101 0101 0101 0101	
Blocks (011508): 0101 0202 0101 0101 0101 0101 0101 0202 0101 0101 0101 0101	
Blocks (011508): 0101	
VTD: PRECINCT 109 46 DISTRICT	VTD: PRECINCT 112 46 DISTRICT
VTD: PRECINCT 113 30 DISTRICT	VTD: PRECINCT 113 46 DISTRICT
VTD: PRECINCT 114 46 DISTRICT	VTD: PRECINCT 115 46 DISTRICT
VTD: PRECINCT 116 46 DISTRICT	VTD: PRECINCT 117 46 DISTRICT
VTD: PRECINCT 118 46 DISTRICT	VTD: PRECINCT 119 46 DISTRICT
VTD: PRECINCT 122 46 DISTRICT	
Blocks (011406): 0101 0101 0101 0101 0101 0202 0102 0101	
VTD: PRECINCT 124 35 DISTRICT	
VTD: PRECINCT 124 46 DISTRICT	
Blocks (011800): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101	
Blocks (011800): 0101 0101 0101 0101 0101 0101 0101 0101	
VTD: PRECINCT 125 35 DISTRICT	VTD: PRECINCT 125 46 DISTRICT
VTD: PRECINCT 126 46 DISTRICT	
VTD: PRECINCT 127 46 DISTRICT	
Blocks (011505): 0101 0202 0101	
VTD: PRECINCT 129 33 DISTRICT	VTD: PRECINCT 132 29 DISTRICT
VTD: PRECINCT 133 29 DISTRICT	VTD: PRECINCT 138 29 DISTRICT
VTD: PRECINCT 139 29 DISTRICT	

3141



Maptitude Plan Components Report (short format)

Plan: **KY House Districts 57& 77**
 Plan Type: Partial House
 Administrator: Samuel L. Walters, Redistricting Coordinator

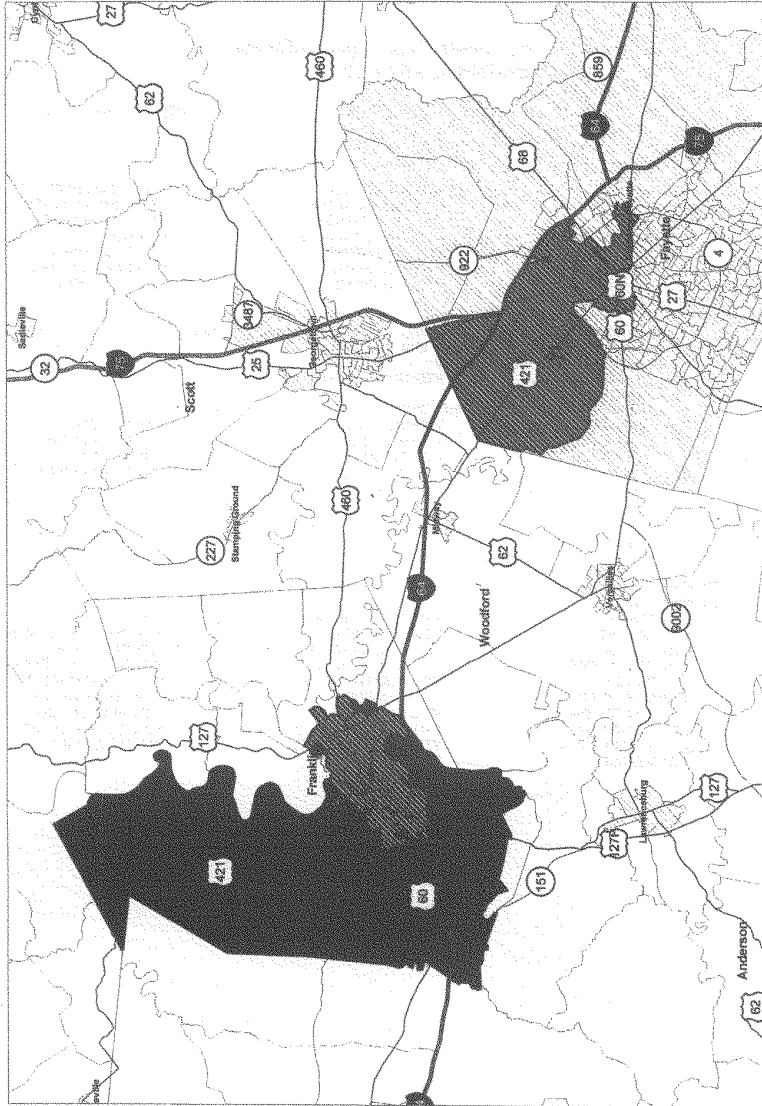
Saturday, January 5, 2002

District 57**Franklin County**

VTD: ARNOLD	VTD: BALD KNOB	VTD: BELLEPOINT
VTD: BELLVIEW	VTD: BRIDGE-GLENN	VTD: BRIDGEPORT-BOTKINS
VTD: CAPTOL	VTD: CHOATEVILLE	VTD: CLOVERDALE
VTD: COLLINS LANE	VTD: COLLINS LANE-2	VTD: COUNTRY CLUB
VTD: COURTHOUSE	VTD: CRESTWOOD	VTD: EVERGREEN
VTD: FAIRVIEW	VTD: FARMDALE	VTD: FRANKLIN HEIGHTS
VTD: GAINS-HOLMES	VTD: GLENWOOD	VTD: GREEN HILL
VTD: HICKORY HILLS		
VTD: JETT		
Blocks (070600): 0203 0203 0102 0102 0102 0202 0202 0101 0101 0101 0101 0101		
Blocks (070600): 0101 0101 0101 0101 0101 0101 0101 0102		
Blocks (070700): 0101 0101 0101 0102		
VTD: LOUISVILLE RD	VTD: NORTH WESTGATE	
VTD: OWENTON RD		
Blocks (070100): 0202 0102 0101 0101 0202		
VTD: RIDGEVIEW	VTD: RIDGEVIEW-2	VTD: RUSSELL
VTD: SCHENKEL LANE	VTD: SCRUGGS	VTD: SILVER LAKE
VTD: SOUTH BENSON	VTD: ST JOHN	VTD: SUNSET
VTD: THISTLETON	VTD: THORN HILL	VTD: TIERRA LINDA
VTD: VOGLER-COLEMAN	VTD: WESTGATE	

District 77**Fayette County**

VTD: ALABAMA	VTD: ASPENDALE-BLUEGRASS	VTD: BELL SCHOOL HOUSE
VTD: CAMPSIE	VTD: COOLAVIN	VTD: DOUGLAS-WASHINGTON
VTD: EASTLAND	VTD: FAIRGROUNDS	VTD: FAIRLAWN
VTD: GREEN ACRES	VTD: GRIFFIN GATE	VTD: HAMPTON COURT
VTD: HIGHLANDS	VTD: HOLLOW CREEK	VTD: JULIUS MARKS
VTD: MARLBORO	VTD: OAKWOOD	VTD: OHIO-WALNUT
VTD: PRESTON INN	VTD: RADCLIFFE	VTD: SILVER CREEK
VTD: ST. MARTINS	VTD: TRAILSIDE	VTD: TRIANGLE PARK
VTD: VALLEY FARM	VTD: WARFIELD PLACE	VTD: WEST MAIN
VTD: WINBURN	VTD: X001	



Maptitude Plan Components Report (short format)

Plan: **KY House Districts 65**
Plan Type: Partial House
Administrator: Samuel L. Walters, Redistricting Coordinator

Saturday, January 5, 2002

District 65

Campbell County

VTD: NEWPORT C

VTD: NEWPORT F

Kenton County

VTD: BROMLEY
VTD: COVINGTON #10
VTD: COVINGTON #13
VTD: COVINGTON #20
VTD: COVINGTON #24
VTD: COVINGTON #34
VTD: COVINGTON #41
VTD: LUDLOW #2
VTD: X001

VTD: COVINGTON # 1
VTD: COVINGTON #11
VTD: COVINGTON #15
VTD: COVINGTON #21
VTD: COVINGTON #3
VTD: COVINGTON #36
VTD: COVINGTON #7
VTD: LUDLOW #3

VTD: COVINGTON # 31
VTD: COVINGTON #12
VTD: COVINGTON #19
VTD: COVINGTON #23
VTD: COVINGTON #33
VTD: COVINGTON #39
VTD: LUDLOW #1
VTD: LUDLOW #4



NAACP Illustrative Kentucky Senate Districts for Louisville Area

District	Population	Deviation	% Deviation	% NH DOJ	% NH DOJ Asn	% NH18+ DOJ Black	% NH18+ DOJ Asn	% H18+ Pop	% NH18+ White	% Dem. Reg.	% Tot Reg.	
Configuration with 60% BVAP Senate District in												
33	101938	-4424	-4.16%	63.91%	0.34%	60.21%	0.38%	0.93%	37.35%	78.14%	78.13%	
38	101538	-4826	-4.54%	39.67%	2.17%	35.86%	2.21%	3.36%	57.15%	68.16%	73.49%	

Note: The term "DOJ" refers to the racial-classifications that the Department of Justice uses in evaluating compliance with the Voting Rights Act. The Department of Justice allocates any multiple-race census response that included white and one of the five other race categories to the minority race listed in the response. Thus the DOJ minority population figures include persons who identified themselves as (1) a single-race minority, (2) white plus that same racial minority, if there are significant responses to other multiple-race items (where more than one minority race is listed), DOJ may make further adjustments to the minority population and voting age population totals for Voting Rights analysis. This definition is in accordance with Department of Justice policy pursuant to Part II of OMB Bulletin 00-02. (Source: [Federal Register: January 18, 2001 (Volume 66, Number 12)] [Notices] [Page 5411-5414] From the Federal Register Online via GPO Access [wais.access.gpo.gov] [DOCID:fr18ja01-171].

Plan: NAACP Kentucky Senate 01
Plan Type: Partial Kentucky Senate Plan
Administrator: Samuel L. Walters
User: Samuel L. Walters

Maptitude Plan Components Report

Thursday, January 3, 2002

District 33

Jefferson County

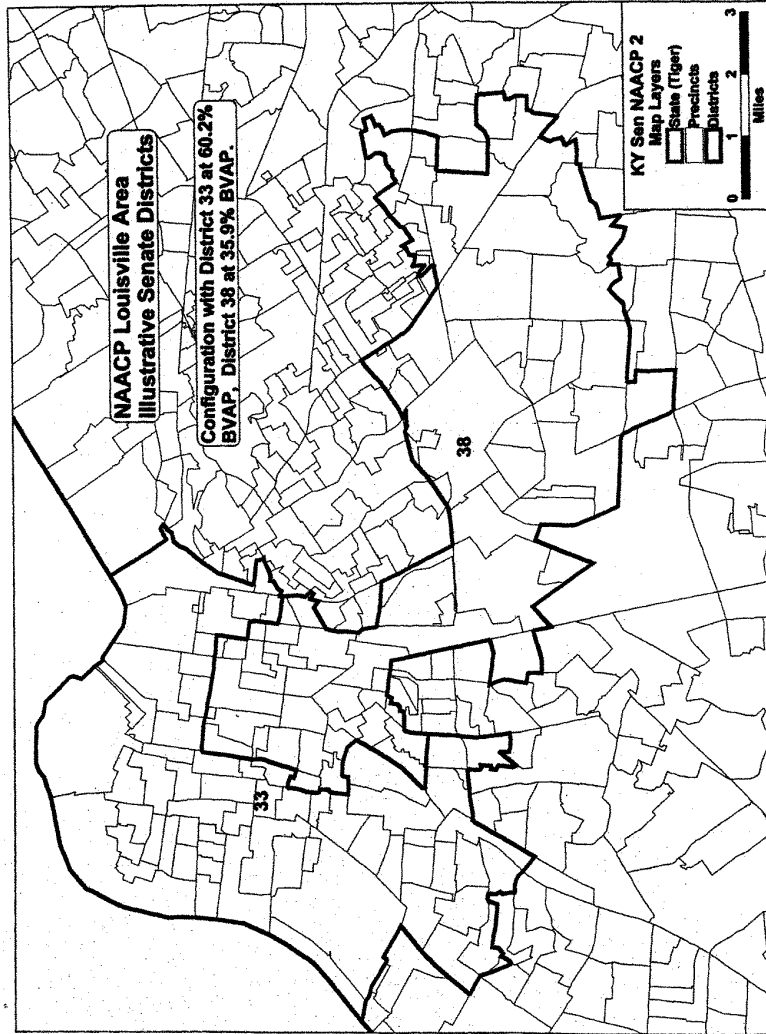
VTD: PRECINCT 101 38 DISTRICT
VTD: PRECINCT 101 41 DISTRICT
VTD: PRECINCT 101 43 DISTRICT
VTD: PRECINCT 102 42 DISTRICT
VTD: PRECINCT 102 43 DISTRICT
VTD: PRECINCT 103 41 DISTRICT
VTD: PRECINCT 103 42 DISTRICT
VTD: PRECINCT 103 43 DISTRICT
VTD: PRECINCT 103 44 DISTRICT
Blocks (012801): 0101 0101 0101 0101 0101 0101 0101 0101 0101
VTD: PRECINCT 104 38 DISTRICT
VTD: PRECINCT 104 41 DISTRICT
VTD: PRECINCT 104 42 DISTRICT
VTD: PRECINCT 104 43 DISTRICT
VTD: PRECINCT 104 44 DISTRICT
Blocks (012601): 0102 0101 0101 0101 0101
Blocks (012701): 0103 0101 0101 0101 0101 0101 0101 0202 0101 0101 0101 0101 0101
Blocks (012701): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
Blocks (012701): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
Blocks (012701): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
Blocks (012701): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0102
Blocks (012801): 0202 0102 0102 0101
VTD: PRECINCT 105 43 DISTRICT
VTD: PRECINCT 105 44 DISTRICT
Blocks (012601): 0102 0101 0101 0101 0101 0101 0102 0202 0101 0101 0101 0101 0101 0101
Blocks (012601): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
Blocks (012604): 0101 0101
Blocks (012701): 0101 0101 0101 0202 0101 0101 0101 0101 0101 0101
VTD: PRECINCT 106 42 DISTRICT
VTD: PRECINCT 106 43 DISTRICT
VTD: PRECINCT 107 38 DISTRICT
VTD: PRECINCT 107 41 DISTRICT
Blocks (002400): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
Blocks (003000): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0102 0202 0101
Blocks (003000): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
Blocks (003000): 0101 0101 0101 0101 0101 0101
Blocks (004900): 0103 0102
VTD: PRECINCT 107 42 DISTRICT
VTD: PRECINCT 107 43 DISTRICT
VTD: PRECINCT 107 44 DISTRICT
Blocks (012604): 0202 0202 0202 0101 0101 0101 0101
Blocks (012701): 0101 0101 0101 0101 0101 0101 0101 0101 0101
Blocks (012702): 0101 0101 0101 0101 0101 0101 0101
VTD: PRECINCT 108 41 DISTRICT
VTD: PRECINCT 108 43 DISTRICT
VTD: PRECINCT 109 41 DISTRICT
VTD: PRECINCT 109 43 DISTRICT
VTD: PRECINCT 109 44 DISTRICT
VTD: PRECINCT 110 41 DISTRICT
VTD: PRECINCT 110 43 DISTRICT
VTD: PRECINCT 111 41 DISTRICT
VTD: PRECINCT 111 43 DISTRICT

VTD: PRECINCT 111 44 DISTRICT
 VTD: PRECINCT 112 41 DISTRICT
 VTD: PRECINCT 112 43 DISTRICT
 VTD: PRECINCT 113 40 DISTRICT
 Blocks (003600): 0202 0101 0101 0101 0101 0101 0101 0202
 VTD: PRECINCT 113 41 DISTRICT
 VTD: PRECINCT 113 43 DISTRICT
 VTD: PRECINCT 113 44 DISTRICT
 Blocks (012503): 0101 0101 0101 0101 0101
 VTD: PRECINCT 114 40 DISTRICT
 VTD: PRECINCT 115 43 DISTRICT
 VTD: PRECINCT 116 42 DISTRICT
 Blocks (004900): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (004900): 0101 0101 0101 0101
 VTD: PRECINCT 116 44 DISTRICT
 VTD: PRECINCT 117 43 DISTRICT
 VTD: PRECINCT 117 44 DISTRICT
 VTD: PRECINCT 118 40 DISTRICT
 VTD: PRECINCT 118 43 DISTRICT
 VTD: PRECINCT 119 43 DISTRICT
 VTD: PRECINCT 119 44 DISTRICT
 VTD: PRECINCT 121 40 DISTRICT
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 Blocks (012801): 0101 0101 0101 0202
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 VTD: PRECINCT 122 40 DISTRICT
 Blocks (012802): 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101 0101
 Blocks (012802): 0101 0101 0101 0101 0101 0101
 VTD: PRECINCT 122 41 DISTRICT
 VTD: PRECINCT 123 40 DISTRICT
 VTD: PRECINCT 123 44 DISTRICT
 VTD: PRECINCT 124 43 DISTRICT
 VTD: PRECINCT 125 40 DISTRICT
 VTD: PRECINCT 126 44 DISTRICT
 VTD: PRECINCT 130 40 DISTRICT
 VTD: PRECINCT 130 41 DISTRICT
 VTD: PRECINCT 131 40 DISTRICT
 VTD: PRECINCT 131 41 DISTRICT
 VTD: PRECINCT 132 42 DISTRICT
 VTD: PRECINCT 133 38 DISTRICT
 VTD: PRECINCT 133 41 DISTRICT
 VTD: PRECINCT 133 42 DISTRICT
 VTD: PRECINCT 134 42 DISTRICT
 VTD: PRECINCT 135 42 DISTRICT
 Blocks (012701): 0101 0101

District 38**Jefferson County**

VTD: PRECINCT 101 30 DISTRICT
 VTD: PRECINCT 101 46 DISTRICT
 VTD: PRECINCT 102 30 DISTRICT
 VTD: PRECINCT 103 30 DISTRICT
 VTD: PRECINCT 103 37 DISTRICT
 VTD: PRECINCT 103 40 DISTRICT
 VTD: PRECINCT 103 44 DISTRICT
 Blocks (012801): 0101 0101 0202 0202 0101
 VTD: PRECINCT 104 30 DISTRICT
 VTD: PRECINCT 104 37 DISTRICT
 VTD: PRECINCT 104 40 DISTRICT
 VTD: PRECINCT 104 46 DISTRICT
 VTD: PRECINCT 105 30 DISTRICT
 VTD: PRECINCT 105 40 DISTRICT
 VTD: PRECINCT 105 42 DISTRICT
 VTD: PRECINCT 106 30 DISTRICT
 VTD: PRECINCT 107 40 DISTRICT

VTD: PRECINCT 127 46 DISTRICT
VTD: PRECINCT 129 41 DISTRICT
VTD: PRECINCT 129 42 DISTRICT
VTD: PRECINCT 130 35 DISTRICT
VTD: PRECINCT 130 42 DISTRICT
VTD: PRECINCT 131 42 DISTRICT
VTD: PRECINCT 132 31 DISTRICT
VTD: PRECINCT 136 31 DIST
Blocks (011105): 0101 0101 0101 0101 0102 0102 0101
VTD: PRECINCT 136 42 DISTRICT
VTD: PRECINCT 142 35 DISTRICT



Raoul Cunningham
Exhibit 5



NAACP Kentucky Voter Empowerment Office
1800 West Muhammad Ali Boulevard, Suite 2D
Louisville, Kentucky 40203
(502) 561-2001, Fax (502) 561-2008



February 6, 2002

The Honorable Jody Richards
House Speaker
Frankfort, Kentucky 40601

Dear Mr. Speaker:

I was encouraged to learn through the Courier-Journal of February 2nd that you and other Democratic leaders in the House are willing to meet with NAACP representatives soon to determine what, if anything, can be done to change the redistricting plan that was enacted by the General Assembly and signed by the Governor on January 31.

The NAACP's illustrative configurations, which were presented to you on January 10, 2002, again on January 14, 2002, in testimony before the House State Government Committee, and which have been discussed publicly since November 2, 2001, demonstrate that it is possible to create more districts that present the African-American communities more realistic electoral opportunities than are found in the House plan passed last Thursday. Coupled with the history of racially polarized voting in Kentucky, this ability to create these additional majority and near-majority African American districts establishes an obligation under the Voting Rights Act for the Legislature to develop a plan that matches the level of minority empowerment found in the NAACP's illustrative districts.

In our original illustrative proposals, we sought three majority African American House districts in Louisville instead of the current two and increases in the African American population in House Districts 3, 5, 8, 20, 30, 57, 65, and 77. The NAACP concurs with the construction of House districts 3, 57, 65, and 77 as passed on January 31. We do not agree with the configuration of districts 5, 8, 20, 30, 41, 42, and 43. To be quite frank with you Mr. Speaker, districts 41, 42, and 43 are in worse shape today than they were before this process began.

For your consideration, I am enclosing a spreadsheet, which gives you a comparison of all of the redistricting plans affecting African Americans that were presented during this session and a memorandum that also analyzes the various proposals from our perspective.

I look forward to hearing from you in the near future.

With best wishes, I am

Sincerely,

Raoul Cunningham

CC: Governor Paul Patton
Senator David Williams

JUL 02 2001 10:34 FR NRCOP

Raoul Cunningham
Exhibit 6SAMUEL L. WALTERS
Attorney at Law &
Redistricting Consultant4805 Mt. Hope Drive
Baltimore, MD 21215410-486-0102
410-358-0330 (fax)
slw@slw.com

MEMORANDUM

To: Bill Dulan

From: Samuel L. Walters, Redistricting Coordinator/Demographer
NAACP Redistricting Project

Date: July 2, 2001

Subject: NAACP Submission of Alternative Election Districts

Attached in either paper or electronic form are the alternative election districts for the Jefferson County Council which I have developed in conjunction with input from Raoul Cunningham of the Kentucky NAACP Voter Fund and the Louisville-Jefferson County Branch of the NAACP. There are actually two configurations for the districts in the Louisville area. These differ mainly in the configuration of Districts 4 and 6.

First, I should point out that your continued assertion that you are required, or somehow limited by some legal decision, to use only population figures, and to ignore voting age population and other data in the creation of this election plan is totally wrong. Not only is there no statutory or appellate case law to support this position, it is contrary to the pronouncements of the U.S. Supreme Court and all of the Federal appellate courts. One is restricted to use of total population figures for determining total district population, ideal district size, and deviation to ensure an election plan complies with the 14th Amendment's One-Person, One-Vote doctrine and contains the requisite degree of population equality. However, this doctrine does not carry over and prohibit the consideration of other data in developing election districts that comply with the Voting Rights Act.¹

Second, the relevant data, in the context of Jefferson County, for determining whether a district conforms to the Voting Rights Act with respect to the African American population is the percentage of Non-Hispanic Black DOJ 18+ population. Unless there is data indicating that different minority groups vote cohesively, their populations cannot be grouped together for purposes of meeting the threshold requirements of the VRA. No one has produced such data, nor is it likely to be available given the very small minority populations in the Louisville area and the recent influx of much of that population.

The maps and data submitted show that it is possible to create 5 districts with a Non-Hispanic Black DOJ 18+ population of 56% or better. On the other hand, packing has been eliminated and

¹ I have been involved in the development of over 150 redistricting plans and have litigated numerous voting rights cases at all levels of the federal judiciary and this standard has never been applied.

MEMORANDUM

Subject: NAACP Council Plan Submission

Date: July 2, 2001

Page 2

none of the districts contains a Non-Hispanic Black DOJ 18+ population in excess of 65%. In addition, depending on which configuration is used, these maps and data also show that District 6 can have a Non-Hispanic Black DOJ 18+ population of 39 to 43%. All of these districts have a deviation from the ideal district size with an absolute value of less than five percent and would therefore not impede with the creation of a full election plan with the range of deviation allowed by the one-person, one-vote doctrine, i.e., a total deviation of 10%.²

The configuration submitted for District 2 is comprised of census blocks and does not conform to precinct lines. It contains almost 56% Non-Hispanic Black DOJ 18+ population, a 9 percentage point improvement over your District 2 configuration, which has a 47% Non-Hispanic Black DOJ 18+ population. The Supremacy Clause dictates that the requirements of the Voting Rights Act take precedence over the provisions of state law. Since it is necessary to use census blocks to create an election district that in the Newburg area even has a Non-Hispanic Black DOJ 18+ population in excess of 50%, much less one that begins to afford African-Americans a realistic opportunity to elect the candidates of their choice, then state law requirements pertaining to precinct boundaries must give way.³ The lower rate of registration among black voters in the area dictates that one use more than a mere majority black voting age population and therefore the configuration with the 56% Non-Hispanic Black DOJ 18+ population is legally justified and required.

The boundaries for Districts 1, 3, 4, 5, and 6, are formed from aggregated census blocks since there is no population data from the U.S. Census Bureau for Kentucky VTDs. However, the blocks selected for those districts conform as closely as possible to the precinct boundary file that you provided to us. There are small variations, but none that I think are of any substantial significance. I have provided you with both lists of the blocks that comprise each of these districts as well as District 2. In addition, I have included a file with the precincts that make up Districts 1, 3, 4, 5, and 6.

The plan that has been proposed and presented to the public dilutes the voting strength of African-Americans. This is clear when it is contrasted with the configurations that we have presented

² The actual standard for one-person, one-vote is a total deviation of 10%, not plus or minus 5%. A plan which had a maximum positive deviation of 4% and a maximum negative deviation of -3.5% would have a total deviation of 0.5% and meet this requirement.

³ We agree with your assertion that it is not possible to create a District 2 configuration with a majority black VAP using whole precincts. However, KRS 117.056 does not prohibit District 2 from being created with something other than whole precinct boundaries. It merely requires that county boards of elections maintain existing precinct boundaries from 2000 until the legislature completes redistricting. It would be very easy for a small number of precincts in the Newburg area to setup and use what is often called "split boxes" when the County Council elections were conducted. Those voters who lived in District 2 would vote at one box at their precinct polling place and those who lived in another council district vote at a second box.

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MEMORANDUM

Subject: NAACP Council Plan Submission

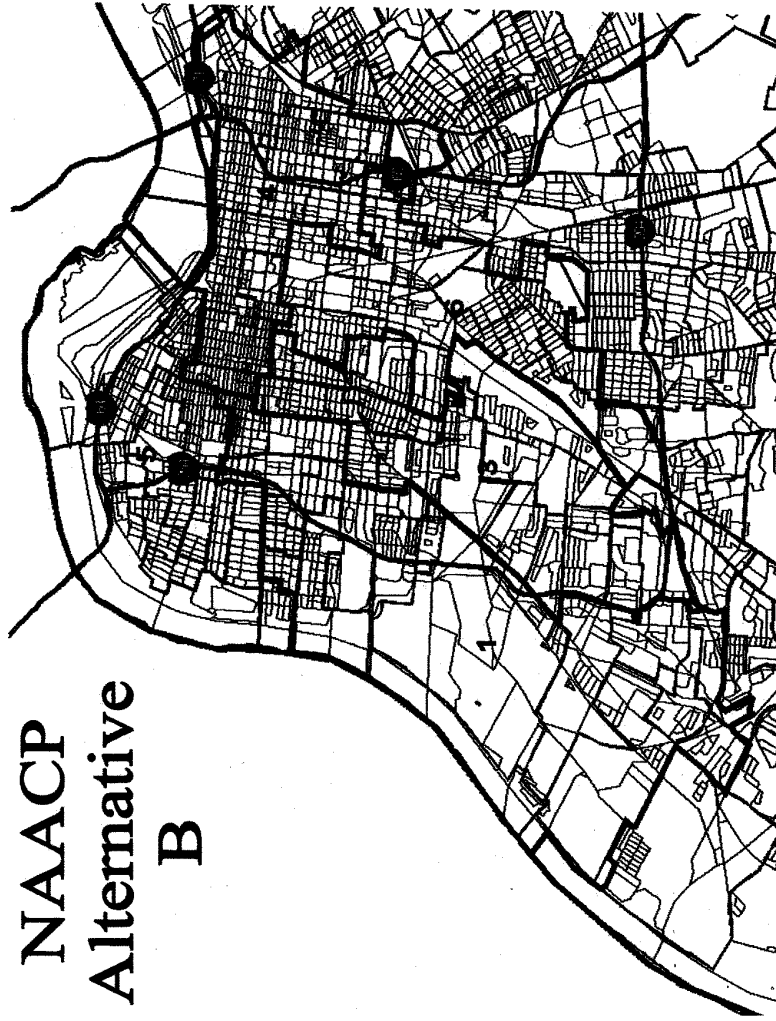
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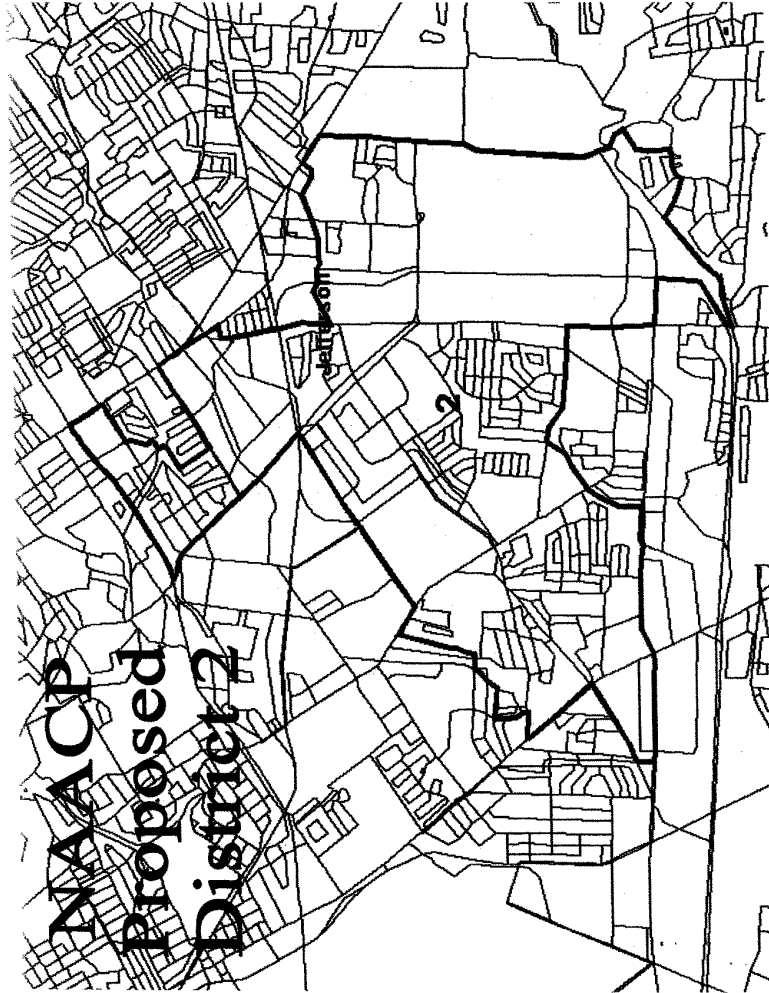
to you. Other similar configurations that had approximately the same African-American population composition were also possible. We urge you to make adjustments to the plan that you will forward to the Fiscal Court that will meet the benchmarks developed by our proposals and avoid the possibility of litigation to enforce the rights granted to African-American citizens under the Voting Rights Act.



**NAACP
Alternative
A**



**NAACP
Alternative
B**



NAACP Alt A summary

District	Population	Deviation	% Deviation	NH DOJ Blk	% NH DOJ Blk	NH18+ DOJ Blk	% Hispanic Origin	% NH Wht	NH18+ Wht	NH18+ Wht
	537972	511295	19.1661	0.07	6.4%	0.0182	0.8807	369208	0.893	
1	26423	-254	-0.0095	0.65	61.6%	0.0089	0.3251	6807	0.362	
2	25948	-729	-0.0273	0.52	47.1%	0.0322	0.4210	8759	0.473	
3	25694	-983	-0.0368	0.69	64.8%	0.0107	0.2928	6296	0.332	
4	25932	-745	-0.0279	0.70	64.2%	0.0137	0.2637	6006	0.319	
5	26109	-568	-0.0213	0.61	59.9%	0.0071	0.3684	6988	0.383	
6	25526	-1151	-0.0431	0.45	39.1%	0.0263	0.5002	10391	0.556	

NAACP Alt B summary

District	Population	Deviation	% Deviation	NH DOJ Blk	% NH DOJ Blk	NH18+ DOJ Blk	% Hispanic Origin	% NH Wht	NH18+ Wht	NH18+ Wht
	537972	511295	19.1661	0.0721	6.4%	0.0182	0.8807	369208	0.893	
1	26423	-254	-0.0095	0.6505	61.6%	0.0089	0.3251	6807	0.362	
2	25948	-729	-0.0273	0.5208	47.1%	0.0322	0.4210	8759	0.473	
3	25694	-983	-0.0368	0.6853	64.8%	0.0107	0.2928	6296	0.332	
4	25932	-1118	-0.0419	0.5635	60.4%	0.0145	0.2973	6593	0.355	
5	26109	-568	-0.0213	0.6116	59.9%	0.0071	0.3684	6988	0.383	
6	25526	-778	-0.0292	0.4867	43.2%	0.0253	0.4636	9804	0.517	

Memorandum

To: Kentucky House of Representatives

From: Kentucky NAACP State Conference of Branches
William E. Cofield, President
NAACP Voter Empowerment Project
Raoul Cunningham, Regional Director
NAACP National Redistricting Project
Samuel L. Walters, Esq., Redistricting Coordinator

Re: Failure to Cure Vote Dilution Previously Identified in the Kentucky House
Redistricting Plan

Date: February 6, 2002

I. Introduction

Just as it was in the early 1990's, the NAACP is actively involved throughout the nation in making sure that the rights of African-Americans and other minorities granted by the Voting Rights Act and the U.S. Constitution are protected during the process of legislative redistricting that began after the release of the 2000 Census data. The National office has once again established a Redistricting Project that uses state of the art computer technology to develop redistricting plans that configurations that provide for fair and equitable levels of electoral opportunity for African-Americans.

The NAACP Redistricting Project has been working with the Kentucky NAACP State Conference of Branches to conduct a statewide analysis of potential areas of African-American voting strength. We have created a set of illustrative election districts that would demonstrate how to construct a redistricting plan would give African-Americans throughout the State their fair share of electoral power and opportunity. The Project has developed numerous configurations for election districts that contain sufficient majorities of Black voting age populations to afford African-American communities realistic opportunities to elect the candidates of their choice.

The NAACP's illustrative configurations, which were presented to you on January 14, 2002, and which have been discussed publicly since November 2, 2001, demonstrate that it is possible to create more districts that present the African-American communities with these realistic electoral opportunities than are found in the House redistricting plan that was passed recently and the current House configuration. Coupled with the history of racially polarized voting in Kentucky, this ability to create these additional majority and near-majority African-American districts establishes an obligation under the Voting Rights Act for the Legislature to develop a plan that matches the level of minority empowerment found in the NAACP's illustrative districts.

It is particularly disappointing that the House Democrats, recognizing that there were deficiencies in HB1 as presented last week, have revised that plan twice and chosen not to cure the problems related to Voting Rights Act compliance even though these were identified by the NAACP in its January 14, 2002, testimony. The NAACP even provided the Legislature with computer files that made importing our configurations into the redistricting software a simple matter.

The NAACP did not then and does not contend that the illustrative districts submitted last week should be adopted in their exact configurations. These districts were developed and were presented for the purpose of establishing a benchmark of minority voting opportunity that we believe is required by the Voting Rights Act. We assert that any plan that the State adopts should give the African-American voters of Kentucky a number of districts that constitute a realistic opportunity to elect the candidates of their choice equal to that demonstrated in its proposal. This assessment should be made using the voting age population components of each district.

As will be explained in more detail below, the plan for the Kentucky House developed by the Republican party demonstrates that there are alternate configurations that would establish virtually the same level of African-American voting empowerment as is found in the NAACP proposals. These districts found in the Republican plan are part of a comprehensive state-wide plan for the full House. Compliance with the Voting Rights Act is not an optional matter. The oath of office of every legislator included a pledge to uphold the laws and Constitution of the United States.

II. Comparison of election plans.

This testimony is presented to explain why the House plan is deficient with regard to compliance with the Voting Rights Act. The State has a duty, under the U.S. Constitution and federal law, to modify the House districts found in HB1 so as to increase the electoral opportunities for African-American voters. A spreadsheet presenting the information discussed below accompanies this memorandum.

A. Louisville

The NAACP's House configuration creates three districts located primarily in Louisville with approximately 61% Non-Hispanic Black voting age population. These are labeled D41, 42, and 43 in our materials although the designation could be changed depending on the configuration.¹ In contrast the new House plan fractures the African-American population among 5 districts, Districts 40 through 44. Districts 42 and 43 are the only ones of these to even

¹ There are many possible configurations of the population in the area generally covered by Districts 41, 42, and 43 in the NAACP proposal that would achieve a similar result.

have a majority black voting age population, having Non-Hispanic Black VAP's of 52.1% and 53.7% respectively. Even though these districts do have majority Black VAP's, there present limited opportunities for the African-American community given the lower rates of voter registration and turnout found in these areas due to the continuing impact of past and present racial discrimination. The NAACP contends that districts in this area of Louisville / Jefferson County should have approximately 60% Black VAP in order to present a strong likelihood that the African-American community will be able to elect its candidate of choice. The Republican House bill presented a configuration for Louisville based House Districts 42, 43, and 44, which contain 59.1, 60.1 and 60.1 percent Black voting age population, respectively. This configuration would seem to be sufficient to comply with the Voting Rights Act.²

The three election districts from this area found in both the NAACP plan and that proposed by the Republican party show that three such viable districts can easily and simply be established.

The current plan does not even establish a third majority black VAP district, choosing instead to divide the black population among Districts 40, 41, and 44, which have black VAP of 31.8%, 47.1% and 14.2%. While District 41 presents some degree of electoral opportunity for African-Americans, it is unacceptable to reduce the electoral opportunity as it has been done in this configuration, when it has so clearly been established that three districts with concrete electoral viability can be established. The fracturing, or cracking, of minority populations among several districts in a manner that prevents the creation of a viable majority black district also has been recognized repeatedly by the Federal Courts as a violation of the Voting Rights Act.³

² The NAACP does not mean in any way to endorse the totality of the plan drafted by either party. It is only commenting on the degree to which it believes that the plans measure up to the requirements of the VRA.

³ In *Voinovich v. Quilter*, 507 U.S. _____, 1134 S.Ct. 1149, 122 L.Ed.2d 500 (1993), the U.S. Supreme Court explicitly explained the basis for challenges to single-member redistricting plans based on Section 2 of the Voting Rights Act, explaining how comparison of the number of electoral districts in the challenged plan and plaintiffs' proposed alternatives was central part of the analysis.

"In the context of single-member districts, the usual device for diluting minority voting power is the manipulation of district lines.... Dividing the minority group among various districts so that it is a majority in none may prevent the group from electing its candidate of choice.... This case focuses not on the fragmentation of a minority group among various districts but the concentration of minority voters within a district. How such concentration or "packing" may dilute minority voting strength is not difficult to conceptualize: A minority group, for example, might have sufficient numbers to constitute a majority in three districts. So apportioned, the group will inevitably elect three candidates of its choice, assuming the group is sufficiently cohesive. But if the group is packed into two districts in which it constitutes a supermajority, it will be assured only two candidates. As a result, we have recognized that "dilution of racial minority group voting strength may be caused" either "by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from concentration of blacks into districts where they constitute an excessive majority. [*Gingles*], at 46, n 11, 92 L Ed 2d 25, 106 S Ct 2552."

In contrast, HB1 creates only two such majority black voting age population districts, Districts 42 and 43, which contain 71.2 and 68.1% black voting age population, respectively, a figure which we think exceeds what is necessary to present a realistic electoral opportunity to the African-American voters of those areas. This unnecessary packing of voters into these districts is a practice long recognized by the courts as a violation of the Voting Rights Act. In addition, it appears that the House plan in HB1 splits the remainder of the Black population found in the NAACP's third majority black House district among nearby Districts 40, 41, and 44.

A. Newburg area of Jefferson County

The NAACP has also presented a configuration for District 30 in the Newburg area of Jefferson County. This district contains a 41.4% Non-Hispanic Black voting age population. The NAACP would recognize that this district does not present the degree of electoral opportunity found in its configurations for Districts 41, 42, and 43. However, with the level of Black voting age population in the NAACP configuration, it is likely that the African-American voters would constitute a sufficient voting force to have a not insignificant opportunity to elect the candidate of their choice, or in the alternative, strongly influence, the outcome of House elections in such a district. They would likely form a majority of the voters in the Democratic primary in a district that is over 69% Democratic registration.⁴

The recently passed plan's configuration for District 30, which is the same as that found in HB1, does not present a realistic opportunity for African-Americans as it contains only a 30.4% Black voting age population in a district with a 66% Democratic registration. In contrast, the Republican House plan for District 30 has 40.8% Black voting age population and a 69.15% Democratic registration. In light of the possibilities demonstrated by the NAACP and Republican configurations, establishing a district that so greatly limits the electoral opportunity of the African-American community in the Newburg area is vote dilution prohibited by the Voting Rights Act.

B. Christian County

The NAACP configuration for District 8 is wholly located in Christian County and contains 35.9% Non-Hispanic Black voting age population in a district that is over 68% Democratic but which has a registration rate of 41.2%.⁵ A significant portion of the population in the NAACP

Id., 122 L.Ed.2d at 511.

⁴ A demographic and political landscape similar to this was the basis of plaintiff's success in *Armour v. State of Ohio*, 775 F.Supp. 1044(N.D. Ohio 1991).

⁵ The NAACP's current configuration differs somewhat from the one first submitted for evaluation.

configuration comes from Fort Campbell. Christian County precinct X001 is in Fort Campbell and contains 15,386 people, 10,279 people of voting age, and no registered voters.⁶ All of the populated areas of this precinct are in NAACP D8. If this area's population is "subtracted" from NAACP D8, the result is the demographic breakdown of the people from which the districts' actual voters are drawn. The resultant area has a population that is 43.5% Black voting age population with 66.8% registration. Of those registered, 67.5% are Democrats. In those areas of NAACP D8 where the population is 80% or greater Black VAP, the registration rate is approximately 74%. In other words, Black registered voters in the district are actually likely to be approximately 50% of the overall electorate and a clear majority in the Democratic primary. This would mean that this district would present a much more viable opportunity for the African-American community to elect its candidate of choice, or strongly influence electoral outcomes, that would be expected from simply looking at the Black voting age population percentage of the overall district.⁷

The configuration for Christian county found in the recently adopted plan, again unchanged from the Democrats HB1, has the area found in NAACP D8 primarily in its District 9 which has only an 18.2% Black voting age population and a 42.35% registration rate due to the Fort Campbell population. District 8 has a 24.5% Black voting age population in a district with an 82.4% registration rate. In contrast, the Republican House plan for this area contains a District 9 which has a 33.02% Black voting age population and a 44.0% registration rate. When the portion of the Fort Campbell precinct in GOP D9 is excluded, the district has a 38.1% Black voting age population, with 67.1% registration and 68.0% of the registrants being Democratic. While this district has an actual Black voting age population that is 5% less than NAACP D8, and therefore does not present the degree of electoral opportunity as that found in NAACP D8, it is far superior to the configuration recently enacted and that found in HB1.⁸

⁶ Traditionally, the overwhelming majority of military base personnel maintain their registration in their home towns.

⁷ See footnote 4 above.

⁸ Removing the Fort Campbell precinct from HB1's D8 actually lowers its Black population. See the attached chart.

III. The Kentucky Legislature Has The Duty To Reject This Plan.

However, the Supreme Court of the United States has clearly stated that state officials who are involved in the redistricting process must recognize the Supremacy Clause of the U.S. Constitution and ignore provisions of state constitutions or statutes which would result in, or create, violations of the Voting Rights Act.⁹ Your oath of office included a pledge to uphold the Constitution and laws of the United States. Therefore, you have the power, and indeed the duty, to take those actions that are necessary to cure the dilution of minority voting rights that the NAACP has demonstrated are present in this plan.

IV. Governments Still Are Obligated to Comply With Section 2 of the Voting Rights Act.

In a number of highly publicized constitutional challenges to Congressional redistricting plans adopted after the release of the 1990 Census data, the Supreme Court struck down, or affirmed the invalidation of, redistricting plans that created majority black Congressional districts in North Carolina, *Shaw v. Reno*, 509 U.S. 630 (1993), Georgia, *Miller v. Johnson*, 515 U.S. 900(1995), Louisiana, *United States v. Hayes*, 515 U.S. 737(1995), and Texas, *Bush v. Vera*, 517 U.S. 952 (1996). The first of these cases, *Shaw v. Reno*, *supra*, created a new cause of action under the 14th Amendment to the U.S. Constitution by which white voters could attack the creation of majority minority election districts. Much of the discussion in these decisions focused on the shape of the majority black districts and the degree to which it showed impermissible consideration of race in the creation of the challenged plans. Many commentators, pundits, and much of the public thought that these decisions meant the death knell of the Voting Rights Act. While these decisions are very important and certainly do impact the legal landscape we all face as the post-2000 Census redistricting begins, it would be a mistake to assume that Voting Rights Act considerations can be ignored or deemed an inconsequential part of planning by local jurisdictions.

A. The Supreme Court has confirmed the continued viability of Section 2.

First, one could look at Justice O'Connor's concurrence to her own majority opinion in *Vera v. Bush*, 517 U.S. at 990-995. In this opinion, Justice O'Connor, drawing support from a variety of the Justices, affirms the constitutionality of the effects test of § 2 of the Voting Rights Act, and declares that "the States have a compelling interest in complying with the results test as this Court has interpreted it." *Id.* at 992. The opinion explains the continuing viability of § 2 as

⁹ In *Voinovich v. Quilter*, 507 U.S. _____, 1134 S.Ct. 1149, 122 L.Ed.2d 500 (1993), the Supreme Court reversed a federal district court's finding of discriminatory intent that violated the Fifteenth Amendment. *Id.*, at 514. The Supreme Court stated that the person who drew the maps for Ohio's state legislative districts disregard of Ohio Constitutional provisions when he thought Voting Rights Act required a different result was not violation of the 15th Amendment, but was a display of "proper respect for the Supremacy Clause of the United States Constitution." *Id.*, at 515.

follows:

1. When they are redistricting, governments may create majority-minority districts and "otherwise take race into consideration" without triggering strict scrutiny, as long as they do not "subordinate traditional redistricting criteria to the use of race for its own sake or as a proxy," *Id.* at 993.
 2. "Section 2 prohibits [redistricting governments] from adopting redistricting schemes that would" dilute minority voting strength § 2. Section 2 "may require a [government] to create a majority-minority district where the three *Gingles* factors are present. *Id.*"
 3. "[T]he state interest in avoiding liability under § 2 is compelling. *Id.*"
 4. A government that creates a majority-minority district to "substantially address" its potential § 2 liability and which "does not deviate substantially from a hypothetical court-drawn § 2 district for predominantly racial reasons, will have that district "deemed narrowly tailored." *Id.* at 994.
- B. The Supreme Court and other federal courts have not stopped enforcement of Section 2 of the Voting Right Act, and the *Shaw* doctrine has been applied to strike down almost nothing but Congressional redistricting plans.

In several less publicized rulings, or affirmances of lower court decisions by the U.S. Supreme Court and several key federal appellate court decisions, one can also see that § 2 of the Voting Rights Act has not been laid to rest by *Shaw v. Reno* and its progeny, and that all *Shaw*-type equal protection challenges to majority black, or other minority group, are not granted as a matter of course. For example, the Supreme Court has affirmed decisions by lower courts creating majority minority districts in *Cane v. Worcester County*, 35 F.3d 921, 926-27 n.6 (4th Cir. 1994), *cert. denied*, 115 S. Ct. 3616 (1995), (holding that *Shaw* is not implicated in Section 2 challenge to at-large election scheme where proposed majority-black remedial district was comparable to other election districts drawn by the county), *Harvell v. Blytheville School District #5*, 71 F.3d 1382(8th Cir. 1995)(*en banc*), *cert. denied*, 116 U.S. 1876(1996)(§ 2 plaintiffs had won in district court and established majority black school board district. Board appealed relying in part on *Shaw* theory); and both *DeWitt v. Wilson*, 856 F.Supp. 1409(E.D., D. CA 1994)(three judge court), *cert. denied*, 515 U.S. 2637 (1995), and *King v. Illinois Bd. Of Election*, 118 S.Ct. 877 (1998), *affirming*, 979 F.Supp. 582, 619 (N.D. Ill. 1996)(District court rejected plaintiffs' *Shaw* based equal protection challenge to legislative districts drawn by a special masters' commission which intentionally drew majority minority districts.)

Similarly, other recent federal court decisions show that the Courts will continue to enforce claims of vote dilution brought under the VRA. See, *Vander Linden v. Hodges*, 193 F.3d 268 (4th Cir. 1999), *Clark v. Calhoun County*, 88 F.3d 1393(5th Cir. 1996), *Teague v. Attala County*, 17 F.3d 796(5th Cir. 1994), and *Houston v. Lafayette County*, 51 F.3d 547, *reh. denied*, ___ F.3d

(5th Cir. 1995).

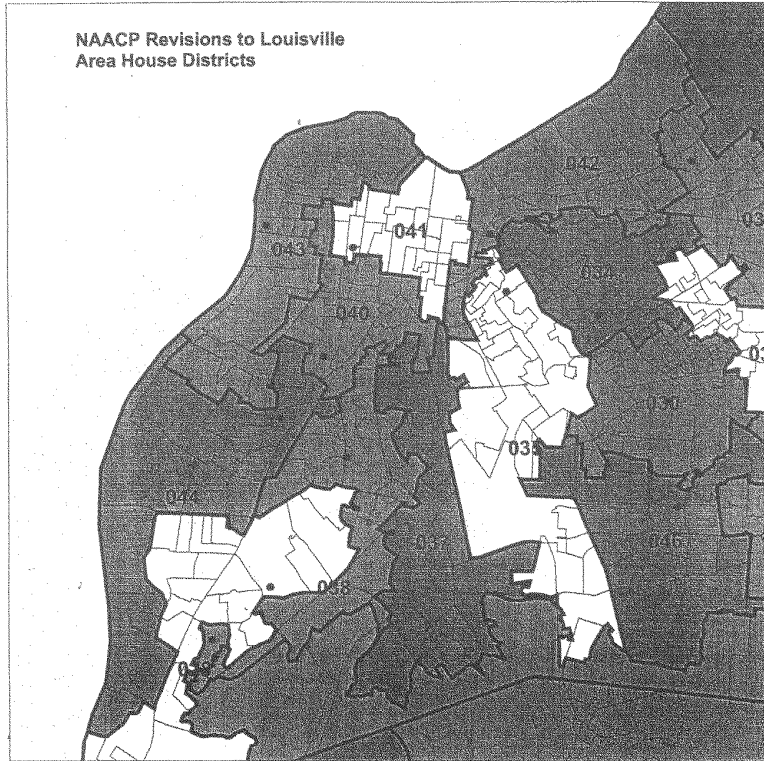
In addition, lower courts have been very reluctant to setting aside local redistricting plans due to *Shaw* challenges by white plaintiffs. For example, in *Theriot v. Parish of Jefferson*, 185F.3d 477 (5th Cir. 1999), the Fifth Circuit affirmed the rejection of a *Shaw* based equal protection challenge to a majority black election district created for the Jefferson Parish. After a thorough review of the evidence in the case, the court concluded that,

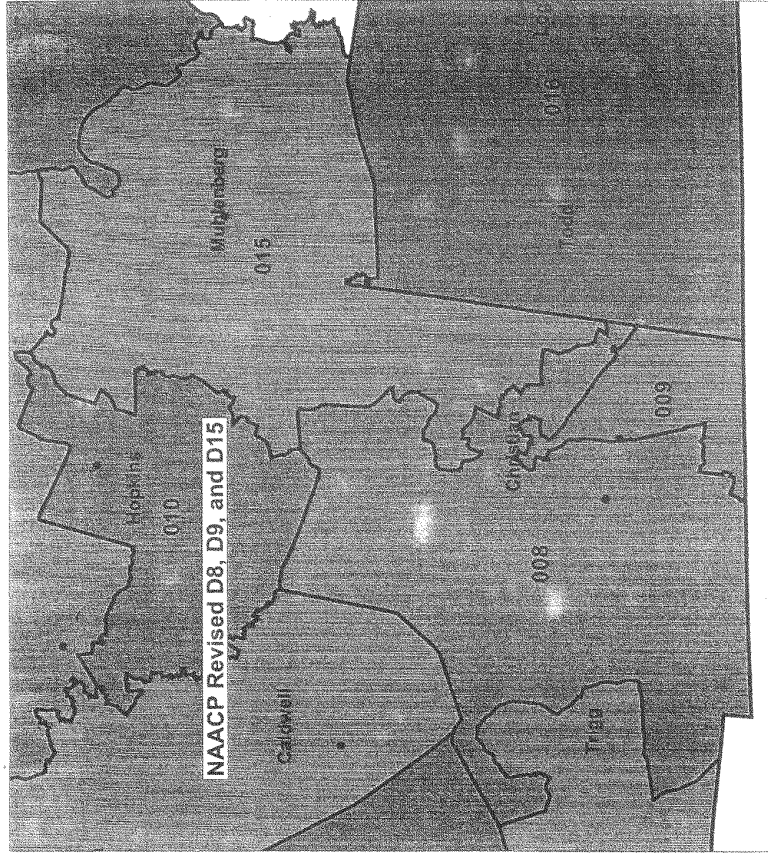
“[r]esolution of this case turns on the issue of whether race predominated in the redistricting plan. Like the district court before us, we cannot find that race predominated. While relevant, issues pertaining to race were subordinated to concerns for political incumbency, joining communities of interest, satisfying one-person, one-vote requirements, and geographical realities.”

Id., 185 F.3d at 491. These issues are always present in redistricting considerations, so with proper preparation and consideration of the factors Justice O'Connor discusses in her *Vera* concurrence, governments can withstand equal protection challenges to redistricting plans adopted to comply with the Voting Rights Act.

V. Conclusion.

The proposed election plan impermissibly dilutes African-American voting strength. The members of the Kentucky legislature should recognize their duties under the U.S. Constitution and its Supremacy Clause as well as the provisions of the Voting Rights Act and create a revised redistricting plan for the Kentucky House which cures these deficiencies.





The Courier-Journal

FRIDAY, MARCH 22, 2002

RECONSIDER REDISTRICTING

BY RAOUL CUNNINGHAM

The voter in the Kentucky Constitution for the NAACP Voting Empowerment Program.

TWO MONTHS before the Kentucky General Assembly convened, the National Association of Colored People (NAACP) travelled a set of illustrative election districts that demonstrated how to construct a redistricting plan that would give African Americans throughout the state a fair share of electoral power and opportunity. The NAACP configurations included three majority African-American House districts in Louisville instead of the current two, and created influence districts in Christian and Jefferson counties that would



Raoul Cunningham

be about 40 percent black. On the second day of the legislature, Jan. 10, the proposals were presented to the leadership of both houses and representatives of the association testified before the House State Government Committee on Jan. 14 and the Senate Committee on Jan. 24.

During the debate on the Free Conference Committee report to House Bill 1, Speaker Pro Tempore Larry Clark assured the House that a third African-American district in Jefferson County had been created. The Senate and House immediately passed the bill and Gov. Paul Patton affixed his

signature last same afternoon. The problem is that there is no third majority African-American district in Jefferson County and the other two districts have been greatly reduced to a bare minimum. Prior to this year's redistricting plan, the 42nd District had a 71.2 percent black voting age population and the 43rd District had a 68.1 percent BVAP. Under the new district lines, the 41st, the new majority black district, has 47.6 percent BVAP; the 42nd has 52.6 percent BVAP; and the 43rd has 54.1 percent BVAP.

The issue is fair representation for African Americans in the state legislature, not the tactics of Rep. Paul Bath-er, as *The Courier-Journal* portrayed in its editorial of March 8. Yes, Bath-er, along with the speaker, majority floor leader and other members of the House were hoodwinked by Clark when he provided them very limited information on the composition of the black districts. Now that the legisla-ture is aware that there are not three majority black districts in Jefferson County, the General Assembly should correct the mistake it made on Jan. 31 and pass new legislation.

Redistricting normally occurs every 10 years after the census. If House Bill 1 is not corrected during this ses-sion, African Americans will be un-derrepresented in the Kentucky Gen-eral Assembly until 2012 — 10 years. It is very unlikely that the legislature would touch redistricting until after the 2010 census.

Congress passed the Voting Rights Act in 1965. Section 2 of the act ap-plies to all jurisdictions and prohibits any voting procedure, practice or cus-

tom, including a districting plan, that has the effect of diminishing or denying the right to vote.

The Kentucky redistricting legisla-tion clearly fractures the African-American population in Louisville by spreading that population in the 40th, 41st, 42nd, 43rd and 44th districts. In Christian County and the Newburg area of Jefferson County, the legisla-ture spreads the minority population between two districts instead of one. The fracturing, or cracking, of minor-ity populations among several dis-tricts in a manner that prevents the creation of a viable majority black district has been recognized repeated-ly by the federal courts as a violation of the Voting Rights Act.

Since the enactment of the Voting Rights Act in 1965, the Kentucky Gen-eral Assembly has completed the re-districting cycles of 1970, 1980, 1990, and 2000 — none of them in compli-ance with federal law. It is hoped that it will not take the legislature as long to comply with the Voting Rights Act as it took it to ratify the 13th, 14th and 15th amendments to the U. S. Consti-tution — 111 years for the 13th, 109 years for the 14th and 107 years for the 15th.

The enacted redistricting legisla-tion impermissibly dilutes African-American voting strength. The mem-bers of the Kentucky General Assembly should recognize their duties under the U. S. Constitution as well as the provisions of the Voting Rights Act and create a revised redis-tricting plan for the Kentucky House that cures all deficiencies.

Special to The Courier-Journal

NAACP Comparison of KY House Plan Adopted with GOP1, Dem HB1 Sub and NAACP2B

District	Population	Deviation	% NH	% NH18+	% NH18+ Pop	% NH18+ Wht	% NH18+ DOJ Bk	% NH18+ Wht	% Dem Reg	% GOP Reg	% Other Party Reg	% of VAP Reg	
Louisville Districts													
NAACP													
42	40405	-13	-0.03%	30.51%	66.17%	1.84%	34.88%	34.88%	0.28%	79.06%	12.16%	8.76%	78.25%
43	39427	-981	-2.45%	34.37%	63.53%	0.59%	36.31%	36.31%	0.13%	79.49%	11.55%	8.96%	81.04%
41	39600	-818	-2.02%	29.33%	66.74%	1.51%	34.69%	34.69%	0.81%	77.42%	12.35%	10.23%	71.02%
GOP													
43	40806	388	0.96%	30.40%	65.53%	1.54%	35.74%	35.74%	0.86%	77.14%	12.52%	10.34%	70.75%
44	42426	2008	4.87%	32.23%	64.51%	1.78%	36.75%	36.75%	0.29%	78.61%	12.70%	8.69%	78.54%
42	42419	2001	4.95%	36.76%	61.05%	0.65%	39.02%	39.02%	0.15%	78.49%	12.47%	9.04%	81.00%
Democrats													
Original HB1													
042	38426	-1932	-4.93%	21.80%	75.00%	1.24%	26.38%	26.38%	0.48%	80.60%	10.31%	9.09%	79.55%
043	38434	-1984	-4.91%	28.88%	69.05%	0.61%	30.46%	30.46%	0.09%	80.83%	10.33%	8.85%	77.10%
040	38514	-1904	-4.71%	58.54%	36.68%	1.96%	63.41%	63.41%	1.55%	68.64%	19.75%	10.62%	70.08%
041	40920	502	1.24%	72.60%	23.19%	1.35%	76.53%	76.53%	1.50%	60.06%	29.94%	9.96%	82.60%
044	39832	-1986	-4.91%	81.75%	15.92%	0.77%	83.63%	83.63%	0.46%	63.83%	26.18%	9.99%	83.18%
Legislative Plan Passed by House													
043	39658	-1760	-4.35%	41.93%	55.84%	0.70%	44.24%	44.24%	0.31%	72.26%	18.99%	8.76%	84.12%
042	39658	-460	-1.14%	39.97%	58.81%	1.12%	44.88%	44.88%	0.54%	76.50%	13.54%	9.66%	80.25%
041	39164	-1254	-3.10%	43.43%	52.50%	1.43%	48.97%	48.97%	1.35%	68.67%	21.04%	9.24%	75.47%
040	38514	-1904	-4.71%	58.54%	36.68%	1.96%	63.41%	63.41%	1.55%	68.64%	19.75%	10.62%	70.08%
044	38432	-1986	-4.91%	81.75%	15.92%	0.77%	83.63%	83.63%	0.46%	63.83%	26.18%	9.99%	83.18%
NAACP revisions to House plan of 1/31													
041	38565	-1853	-4.58%	27.31%	68.10%	1.70%	32.92%	32.92%	1.39%	78.62%	11.56%	9.77%	67.51%
040	38724	-1694	-4.19%	31.97%	64.87%	1.41%	36.43%	36.43%	0.39%	78.33%	12.47%	9.20%	77.44%
043	38640	-778	-1.92%	35.89%	62.02%	0.59%	37.93%	37.93%	0.14%	78.83%	12.13%	9.05%	81.34%
042	39339	-1079	-2.67%	82.32%	13.29%	1.36%	84.70%	84.70%	1.67%	58.39%	31.38%	10.22%	83.83%
044	38758	-1660	-4.11%	87.50%	10.08%	0.92%	88.85%	88.85%	0.51%	61.96%	27.88%	10.13%	82.36%

This revised configuration for the Louisville area House districts changes only the

Newburg Area
GOP

030	39689	-719	-1.76%	48.11%	45.25%	3.68%	52.83%	1.63%	68.15%	20.59%	10.25%	77.19%
NAACP												
30	38977	-1441	-3.57%	47.62%	45.76%	3.10%	52.39%	1.88%	69.39%	20.73%	9.88%	77.26%
Democrats												
030	42413	1995	4.94%	58.87%	34.19%	3.15%	62.96%	2.31%	66.17%	23.92%	9.89%	80.34%
030	42413	1995	4.94%	58.87%	34.19%	3.15%	62.96%	2.31%	66.17%	23.92%	9.89%	80.34%
Christian County												
GOP												
009	39199	-1220	-3.02%	53.04%	35.27%	6.89%	56.27%	1.41%	68.30%	21.79%	9.80%	43.99%
09 wo Fort Campbell								0.97%	68.30%	21.79%	9.80%	67.13%
NAACP revised												
08	39297	-1121	-2.77%	49.80%	39.16%	7.29%	52.89%	1.45%	67.43%	22.50%	9.92%	41.19%
08 wo Fort Campbell precinct								0.97%	67.54%	22.49%	9.81%	66.82%
Democrats												
009	39492	-1926	-4.77%	68.01%	20.02%	7.00%	70.89%	1.50%	65.34%	25.38%	9.30%	42.35%
008	39429	-1989	-4.92%	69.16%	27.55%	1.31%	72.67%	0.65%	73.97%	21.25%	4.83%	82.37%
009 wo Fort Campbell precinct								1.07%	65.34%	25.38%	9.30%	66.61%
9	39492	-1926	-4.77%	68.01%	20.02%	7.00%	70.89%	1.50%	65.34%	25.38%	9.30%	42.35%
8	39429	-1989	-4.92%	69.16%	27.55%	1.31%	72.67%	0.65%	73.97%	21.25%	4.83%	82.37%
009 wo Fort Campbell precinct								1.07%	65.34%	25.38%	9.30%	66.61%
NAACP revisions to House plan of 1/31												
009	39446	-1972	-4.88%	49.08%	38.67%	7.43%	52.21%	1.45%	67.16%	22.67%	10.21%	40.56%
008	39440	-1978	-4.89%	88.06%	8.92%	1.06%	89.41%	0.69%	72.86%	22.60%	4.60%	82.89%
015	39467	-1951	-4.83%	94.17%	4.31%	0.62%	94.34%	0.18%	77.19%	18.61%	4.26%	86.77%
Lexington												
GOP												
77	39454	-1964	-4.86%	41.68%	47.47%	8.63%	45.07%	0.75%	68.73%	19.80%	11.45%	53.36%

NAACP																				
77	39627	-791	-1.96%	45.35%	45.67%	7.15%	48.49%	32.34%	0.78%	68.69%	19.41%	11.90%	51.47%							
Democrats																				
077	40346	-72	-0.18%	47.30%	43.56%	7.44%	50.07%	48.59%	0.69%	67.94%	20.69%	11.38%	55.93%							
	Legislative Plan Passed by House																			
77	40346	-72	-0.18%	47.30%	43.56%	7.44%	50.07%	48.59%	0.69%	67.94%	20.69%	11.38%	55.93%							

This analysis of the recently adopted House Plan was done in Mapitude for Redistricting Software using a block equivalency file provided to the NAACP Redistricting Project by the Legislative Research Commission, which uses the same software.

CITY REGION

SUNDAY, AUGUST 10, 2003 | WWW.KENTUCKY.COM | LEXINGTON HERALD-LEADER ★ SECTION B

Poll-challenger plan concerns NAACP

GOP to focus on black Louisville area

By Thom Allen
Lexington Herald-Leader Staff Writer

The NAACP says it's concerned about an effort by Republicans to recruit poll workers in the west end of Louisville, which has a high population of African-Americans.

Raoul Cunningham, state coordinator for the NAACP, called the recruitment a "form of intimidation."

"It's a Republican ploy that is used across the country in areas of African-American population,"

Cunningham said. Cunningham's concerns came in response to a letter sent last month by Mike Cosgrove, a Republican and activist in Louisville's Portland neighborhood.

In his letter to Jefferson Com-

By Republicans, Cosgrove said Republican Ernie Fletcher's campaign for governor had asked him to recruit poll workers to "protect the integrity of the voting process."

Cunningham said elderly voters, particularly those in just-unincorporated areas, often are intimidated by poll workers who lack "civility" challenges from such parties.

"In some polls, people who have been voting for years, they have the workers from their ID in their vote," Cunningham said. He means that any not used to white people participating, he said, are people. And in Louisville, he said, they've worked."

But Cunningham said it's unclear if the recruitment program is a part of the statewide process.

See POLLS, B2

POLLS | Republican links loss in part to fraud

From Page B1

"Historically, it has always been the responsibility of each individual party to recruit poll workers," he said Friday.

Last year, Republicans did not fill 57 poll worker positions, he noted in his memo.

State law allows each party to provide certified challengers who observe the voting process and can question voter eligibility.

Each county board of elections also appoints precinct election officers to oversee the polls.

Czerwonka said that he is recruiting for all of Jefferson County, but is concentrating on the west end because of "incidents of fraud."

Last year, Czerwonka lost to Paul Bather by 695 votes in a 43rd District House race. The district includes part of western Louisville.

Czerwonka said fraud played a part in the loss. One precinct, he said, included 15 more ballots than signatures of people who voted.

Czerwonka said the FBI is investigating the election, but David Beyer, an FBI spokesman, said he could neither confirm nor deny any investigation.

Cunningham called Czerwonka's assertions sour grapes.

"Fraud, especially election fraud, is a serious charge to be made, particularly when you are putting it on an entire community," Cunningham said.

Ellen Williams, state Republican party chairman, said Czerwonka's recruitment is part of a statewide effort to have a Republican certified challenger in every precinct across the state.

"We're that focused on the organization of the campaign this year," she said.

U.S. Rep. Ed Whitfield, R-Hopkinsville, announced last week at the Fancy Farm Republican breakfast that he was looking to recruit poll workers throughout Western Kentucky.

Williams said recruitment in Lexington and Eastern Kentucky has not begun yet.

Each party has until Oct. 15 to name certified challengers, all of whom are trained by the board of elections, said Mary Sue Helm, executive director of the state board of elections.

Fletcher said recruitment in west Louisville is "an example of the growing Republican Party in Jefferson County."

Democratic gubernatorial candidate Ben Chandler, the state's attorney general, said he wasn't aware of the Republican efforts but said intimidation will not be tolerated.

"I'd be concerned if there was an effort to suppress the vote," Chandler said.

Reach Ryan Alessi at (859) 231-1303; 1-800-950-6397, Ext. 1303; or ralessi@herald-leader.com.

Louisville Defender

Poll watchers plan concerns NAACP

LOUISVILLE, Ky. (AP) — A plan by Republicans to recruit poll watchers in a predominantly black area of Louisville has concerned a state leader for the NAACP.

Raoul Cunningham, state coordinator for the NAACP, called the recruitment a "form of intimidation."

"It's a Republican ploy that is used across the country in areas of African-American populations," Cunningham said.

Cunningham's concerns came in response to a letter sent last month by Mike Czerwonka, a Republican activist in Louis-

ville. In his letter to Jefferson County Republicans, Czerwonka said Republican Ernie Fletcher's campaign for governor had asked him to recruit poll workers to "protect the integrity of the voting process."

Cunningham said elderly voters, particularly, tend to feel uncomfortable when partisan poll workers are present, even though state law allows "certified challengers" from each party.

"In some polls, people who have been voting for years, they know the workers when they go in and vote," Cunn-

ham said. "In areas that are not used to this kind of participation, it intimidates people."

State law allows both Republicans and Democrats to provide certified challengers who observe the voting process and can question voter eligibility. Each county board of elections also appoints precinct election officers to oversee the polls.

Czerwonka said he was concentrating on the west end because of "incidents of fraud."

Last year, Czerwonka lost to Paul Bather by 695 votes

See Concerns, page 4A

Last year, Czerwonka lost to Paul Bather by 695 votes in a 43rd District House race, which includes part of west Louisville. Czerwonka alleges that fraud played a part in his loss.

Ellen Williams, state

Republican party chairman, said Czerwonka's recruitment is part of a statewide effort to have a Republican certified challenger in every precinct across the state. The party did not fill 57 positions last year.

Each party has until

Oct. 15 to name certified challengers, all of whom are trained by the board of elections.

The Courier-Journal

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NEWSPAPER • LOUISVILLE, KENTUCKY

GOP to put challengers in black voting precincts

Critics call strategy intimidation

By **SHELDON S. SHAFER**
 shafers@courier-journal.com
 The Courier-Journal

Jefferson County Republicans intend to place Election Day challengers at 89 voting precincts in black areas around Louisville, a move that NAACP leaders yesterday called blatant intimidation.

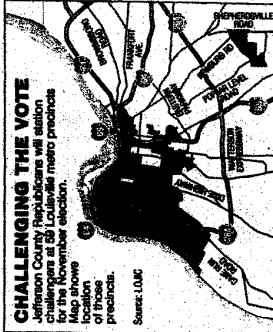
has had trouble finding registered voters in those areas to serve as election workers. The GOP is trying to get more people to sign training as precinct workers could fill in if needed.

Republicans said the precincts are in black areas because they suspect voters who they suspect aren't eligible. They said they are trying to get more people to sign training as precinct workers could fill in if needed.

everybody and the responsibility of both parties to protect the ballot integrity, Richardson said.

Republicans are allowing political parties to each place one challenger at any precinct on Election Day. The law says that any voter who they have a reason to believe isn't legitimate.

See GOP Page 9, col. 1, this section



CHALLENGING THE VOTE
 Jefferson County Republicans will station challengers at 89 Louisville metro precincts for the November election. The map shows the location of those precincts.
 Source: OAC

BY STEVE DUBINK, THE COURIER-JOURNAL

HOW IT WORKS

Precinct challengers can question whether people trying to vote are registered, whether they are who they claim to be or whether they live in the precinct.

Challenged voters must sign an oath swearing they aren't a felon, have been convicted of a crime, are not on probation, and are allowed to vote unless an election officer verifies that they meet voting requirements or that the challenge is unwarranted.

The state law says voters can't be challenged indiscriminately and that challengers must have "a reason to believe" a voter's qualifications are in question. Voters can help avoid challenges by bringing a picture ID with a current address to the precinct.

GOP plan called intimidation

Continued from Page One

challengers and precincts with the Jefferson County Board of Elections. Democrats have filed no list and say they have no plans to use challengers.

Those challenged must sign an oath swearing they are valid voters. Anyone who refuses won't be allowed to vote unless an election officer decides the challenge is unwarranted, said Walter Cato, a Democrat and one of the four members of the Jefferson County Board of Elections.

Raúl Cunningham, former state NAACP voting-empowerment coordinator, and former state Sen. Georgia Powers called the use of GOP challengers "an assault by voter intimidation and an effort to suppress the African-American community."

Cunningham urged voters in the precincts with challengers to carry identification and to be aware that challengers will be present. Jefferson County's election board policy calls for residents to show picture identification when they sign in to vote.

DEMOCRATS called the Republican challengers an attempt to intimidate black voters in what is expected to be a close race for governor between Ernie Fletcher, a Republican, and Democrat Ben Chandler.

"(They) have only one purpose: to intimidate and suppress votes in the West End and other minority areas," Tim Longmeyer, chairman of the Jefferson County Democratic Party, said during a news conference yesterday attended by County Attorney Irv Maze; Jefferson Commonwealth's Attorney David Stengel; and Louisville Metro Council members Cheri Bryant Hamilton and Mary Woolridge.

Longmeyer said nearly all of the challengers live outside their assigned precincts and many are from the East End, Fairdale and Okolona. He questioned whether those people will know who is voting or whether those voters reside in the precinct.

Fletcher said yesterday that the challengers "shouldn't be any barrier. ... We're doing legally what we can just to make sure that everything is done right in voting, and we invite all members of that community to come out and vote. We want them to vote, and there's absolutely no reason that they shouldn't feel welcome to come out and vote."

Both parties have employed challengers in the past, although county clerk spokeswoman Paula McCraney said the county election board doesn't keep records on challengers or challenged voters.

Democrats said they couldn't remember the last time they used challengers, but Cato said he recalls Democratic challengers in some ward races for alderman as recently as the mid-1990s.

RICHARDSON said Republicans used them in Jefferson County as recently as the 2000 presidential election, although he didn't remember how many challengers were used or where they were stationed.

He said the decision to use challengers this year had nothing to do with previous elections in which Republicans questioned the procedures or voting in some West End precincts. Republicans questioned voting practices in western Louisville in 1995 when Democrat Paul Patton narrowly defeated Republican Larry Forgy for governor.

And last year Republican Mike Czerwinski alleged there were a variety of voting irregularities on Election Day when he lost to Democrat Paul Bather by 695 votes in the 43rd District race. Jefferson election officials said they found no improprieties.

Harry Rothgerber, first assistant to Stengel, said the office used signed oath cards to investigate one or two voter challengers in the early 1990s, but no prosecutions resulted.

Among this year's challengers is Rita Seum, wife of Republican state Sen. Dan Seum. She lives in Fairdale and is assigned to the M-107 precinct near 28th and West Kentucky streets.

"My role is to be there, if anything comes up," she said. She said she plans to monitor the sign-in flow Nov. 4 and report to party officials instances in which improperly registered voters try to cast ballots.

Joann Gammon, who lives on Zorn Avenue, has been assigned to precinct N-110 at Christ the King Church on 44th Street. She said she will be at the voting site to report to party officials any voting irregularities, although she acknowledges she doesn't know anyone in her assigned precinct.

Gladys Bailey, who works at King Solomon Missionary Baptist Church in western Louisville and plans to vote Nov. 4, said she wouldn't be intimidated by challengers, although she worries that older residents might be deterred.

"I don't understand why they (challengers) would be there," she said.

MOST OF the 59 precincts where Republicans plan to assign challengers are heavily Democratic in voter registration.

State law requires each precinct to be staffed by at least three election officers, including at least one Democrat and one Republican. The officers do not have to live in the precinct.

Cato said Republicans traditionally have trouble finding a registered voter who lives in precincts to serve as the election officer at perhaps 20 to 30 polling sites, mostly in western Louisville. The NAACP said yesterday that Republicans have not been able to find GOP officers for at least 33 precincts.

Richardson predicted at least one-third of the challengers would end up serving as election officials. They would be paid \$89.56 by the Board of Elections for the 12-hour shift on Nov. 4.

Staff writer Al Cross contributed to this story.

The plan is intended "to protect the ballot integrity."

—GOP's Jack Richardson IV

Forum

FRIDAY, OCTOBER 24, 2003

"I hope the people in the western and central precincts of Louisville will go to the polls to vote despite the intimidation of the Republicans."

— Joan Humke, Louisville 40206

Targeting black votes

THERE is no denying Kentucky's shameful history of vote fraud. And although election reforms have made the most scandalous practices a thing of the past, it's perfectly legitimate for Jefferson County Republicans to put Election Day challengers at polls in heavily Democratic precincts.

The law allowing challengers was created so that political parties would keep each other honest. As Jefferson County GOP chairman Jack Richardson IV said, "it is in the best interest of everybody and the responsibility of both parties to protect the ballot integrity." Further, many Republicans believe that Larry Forgy, their candidate in the last real gubernatorial race, lost to Paul Patton because of campaign and voting irregularities. The investigation that followed didn't verify their suspicions, but didn't allay them, either. With a close vote possible again this year, many fear a repeat.

Unfortunately, their approach to combating one shameful part of Kentucky's past are reminiscent of another, even more shameful one. The party intends to send in challengers from the white suburbs to stand guard in black city precincts and mount any challenges they think warranted to African Americans' right to vote.

The anger, resentment and fear

being expressed by African Americans are entirely understandable, and not only because of the long history of African-Americans' disenfranchisement.

The GOP decision also recalls more raw and recent racial history, when Florida Republicans made a concerted effort to disqualify African Americans in that state's disastrous 2000 presidential election.

Two black leaders, Raoul Cunningham and former state Sen. Georgia Powers, connect the local GOP plan to "an assault by voter intimidation to suppress the African-American community."

The result is that the GOP's challengers are going to be under more scrutiny than the people they've been sent to challenge.

Precincts in poor, urban areas always face more problems than those in stable, prosperous ones: Poor people change addresses more often, for instance, and are less likely to have picture ID.

Will the challengers seek to overcome such problems in order to encourage as full a democratic expression as possible? Or will they exploit them to slow, disrupt and suppress legitimate voting?

The local GOP claims not to be hostile to African Americans and to want more of their support.

With this provocative action, it has created a certain test of its sincerity.

The Courier-Journal

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State poll challenger law may be reviewed

■ Democrats will wait to see how GOP checkers treat minority voters.

By JOSEPH BERTH
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The Courier-Journal

Democratic lawmakers say they will wait to see how GOP checkers treat minority voters on Election Day at 59 largely black voting precincts in Jefferson County before deciding whether to seek an end to the practice. "It's purely something that is used to suppress the voters," said

Rep. Larry Clark, D-Okolona, the House speaker pro tem. Republicans have "got political motives, and it's something that I think has to be looked at."

Republicans will put challenges to the law on the agenda for next year's March 4 primary. The party has alleged past voting irregularities.

Jefferson County GOP Chairman Jack Richardson IV said

earlier this week that the precincts were selected at random or because the Republican Party has had trouble finding registered voters in those areas to serve as election workers.

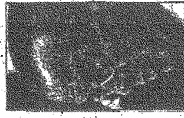
But word of the planned use of voters in the largely Democratic and largely black precincts called the more blatant intimidation and an attempt to make it more difficult for blacks to vote in next month's gubernatorial

election. Yesterday, Democratic National Committee Chairman Terry McAuliffe called on U.S. Attorney General John Ashcroft to intervene and "put an immediate end to this despicable intimidation tactic."

Republicans say that voter suppression is not only illegal but also unconstitutional. See DEMOCRATS Page 3, col. 1, this section

State Rep. Larry Clark, D-Okolona, is unhappy that Republicans plan to use poll challengers.

Clark is accusing them of using the law to suppress the votes," he said.



See DEMOCRATS Page 3, col. 1, this section

Democrats may review state law on poll challengers

Continued from Page One

moral, but a felony."

And Raoul Cunningham, former state NAACP voting-empowerment coordinator, said black ministers will take to the pulpits this weekend and next, urging their congregations to go to the polls — and reminding them to take photo identification with them.

Under state law, Republicans and Democrats are allowed to appoint challengers who can question voters they have "a reason to believe" aren't qualified to cast ballots.

THOSE CHALLENGED must sign oaths swearing they are qualified voters before they receive a ballot. Those who refuse won't receive a ballot unless an election officer decides they meet requirements.

Republican legislators yesterday defended the use of challengers, saying they are important, especially in rural areas, to ensure that elections are carried out without the shoddiness that has plagued the state in years past.

Senate President David Williams, a Burkesville Republican who said he served as a poll watcher in Louisville while he was in college, said the Democrats have nothing to fear from the challengers as long as election laws are followed.

"I wish we had challengers in every precinct in the state," he said.

Williams said he's heard of cases in which people registered as members of the wrong party just so they could be named as election officers and manipulate the vote.

"I've seen precincts where you had brothers who were the Republican and Democratic election officers who went in the booth to give voting assistance," he said. "There is still a problem with

fraud."

The use of "vote challengers" or "poll watchers" is widespread throughout the United States, said Doug Lewis, executive director of the nonpartisan National Association of State Election Directors.

"I can't think of any states that don't have them," said Lewis. "Unfortunately, especially in minority communities, they do create conflict sometimes. ... They are viewed as intimidating, whether they try to intimidate or they are just asking questions."

In Kentucky, challengers have been around since the turn of the century.

Walt Cato and Jim Steinfield, members of the Jefferson County Board of Elections, said challengers often checked the voter registries to see who hadn't voted and then rushed to get them to the polls.

The practice of using challengers in Kentucky waned over the years — especially after a 1992 law that required challengers to receive the same training as poll workers. Once poll workers became better trained and voters were required to show photo identification, challengers became unnecessary, Clark said.

"I THINK that really, our county clerks have done a good job trying to train and recruit people," he said.

Challengers "just create more havoc at the polls."

Kentucky's statute allows a challenger to question any voter whom the challenger has reason to believe:

■ is not a registered voter in the precinct;

■ is not a resident of the precinct;
■ is a felon; or
■ is not the person he claims to be.

Rep. Adrian Arnold, D-Mount Sterling, chairman of the House Elections, Constitutional Amendments and Intergovernmental Affairs Committee, said he doubts that Kentucky needs to keep its challenger law.

If people think they will be questioned intensely when they go to the polls, they might stop voting, he said.

"It could have a detrimental effect," Arnold said. "It's hard enough to get people to get out to vote now."

Cato, a Democrat who will train poll workers and challengers today in preparation for the Nov. 4 election, said he likes the idea of having challengers in polls — as long as they follow the law and don't try to intimidate voters.

Challengers can't make wholesale challenges of groups of voters. An election officer who believes that a challenger is intimidating or impeding voters can have the challenger removed from the polling area.

"There are some built-in safeguards that, if they're followed, have the effect of preventing challengers from taking over polls," Cato said.

But Steinfield said the law requiring people to prove who they are when they vote makes qualified election officers more than capable of handling polling places.

"I have said many times ... give me two good poll workers in every precinct and you don't need challengers," he said.

Challengers "are viewed as intimidating, whether they try to intimidate or they are just asking questions."

Doug Lewis, executive director, National Association of State Election Directors

Top Democrats chide local GOP

Presidential hopefuls urge halt to poll challenges

By AL CROSS
 across@courier-journal.com
 The Courier-Journal

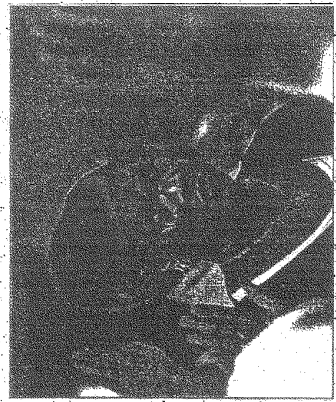
The nine major Democratic presidential candidates, including President Bush and GOP challenger Sen. John Edwards, urged Tuesday to stop a Republican effort "to intimidate and suppress the African-American vote in Louisville."

The undated letter, released yesterday on the stationery of the Democratic National Committee, refers to Republicans' placement of Election Day challenges at polling places in predominantly black neighborhoods in Jefferson County. The practice of singling out African-American precincts is a

bizarre attempt to disenfranchise voters," the letter says. "This practice is so intolerable that we feel compelled to call on you, as the national leader of the Republican Party and Congress, to stand against the Republican Party's effort to stop this immediately."

"No equivocation, no delay is necessary. A simple call by either of you will lead to an immediate halt to this blatant attempt to suppress African-American voter participation."

The letter was signed by former U.S. Sen. Carol Moseley Braun, retired Gen. Wesley



IN FIVE EPISODES, THE COURIER-JOURNAL
 Paula Thomas and others took an oath yesterday in a training session for poll workers for the Nov. 4 election.

Poll workers learn about vote challenge

By MARY C. MORRISSEY
 mmorrisse@courier-journal.com
 The Courier-Journal

More than 150 people participated in a training session for Jefferson County poll workers yesterday at Sullivan University, where they learned how they should handle challenges who might be stationed in their precincts.

Jefferson County Republicans said last week they intend to place challenges at 59 voting precincts in predominantly black neighborhoods on Nov. 4 — a move that has angered minority leaders, who call the move blatant intimidation.

Republican leaders say they selected the precincts in Louisville, Westwood and Portland neighborhoods at random or because the party has had trouble finding registered voters in those areas to serve as election workers. The precincts also have been the sites where Republicans have alleged past voting irregularities, although GOP leaders say that isn't the reason why challengers will be posted there this year.

Yesterday, election officials said they had filled all the remaining public positions they needed

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Presidential candidates demand halt to poll challenges

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Clark, former Vermont Gov. Howard Dean, U.S. Sen. John Edwards, Rep. Dick Gephardt, Sen. John Kerry, Rep. Dennis Kucinich, Sen. Joe Lieberman and civil-rights leader Al Sharpton, the major Democratic candidates for president.

"When you have those people against you, you gotta be doing something right," said Jefferson County Republican Chairman Jack Richardson IV. Richardson and Fletcher campaign manager Daniel Groves rejected the request.

"If Howard Dean and Al Sharpton want to campaign in Kentucky for Ben Chandler, they ought to come on,

Groves said, naming Fletcher's Democratic opponent.

"Even the Courier-Journal editorial board said that because of some voting irregularities in past elections what is being done is appropriate, and in fact what we are doing is exactly what is expected and allowed under Kentucky law."

The editorial cited Kentucky's history of vote fraud and said it is "perfectly legitimate for Jefferson County Republicans to put Election Day challengers at polls in heavily Democratic precincts."

But it also referred to the fact that most challengers will come from white suburbs and said, "The anger, resentment and fear being expressed by African Americans are entirely under-

standable, and not only because of the long history of African-Americans' disenfranchisement."

Richardson said the Republican strategy is not to target black precincts, but predominantly Democratic precincts, many of which are also predominantly black. "It appears that at least a third of those precincts are predominantly white," he said of the 59 precincts where the GOP has placed challengers.

"No way," said Raoul Cunningham, former NAACP voting-empowerment coordinator in Kentucky. He said a precise tabulation of the precincts' racial makeup is not available because precincts were redrawn in legislative redistricting after the 2000 Census.

Yesterday afternoon, Democrats,

including Democratic gubernatorial candidate Ben Chandler, attended a forum at West Chestnut Baptist Church that focused on rallying voters who might be intimidated by challengers.

"They don't want you to vote," said Chandler, speaking to the crowd. "You must say, 'No.' We're going to empower ourselves."

The Rev. Jim Miller, pastor at Lampton Baptist Church, also called for voters to mobilize.

"As we face this hanging chad of intimidation, so-called poll watchers, we must not hang around and sit around like folk at a funeral and be the living dead," he said.

Staff writer Nancy Rodriguez contributed to this story.

The Courier-Journal Forum D

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Nick Anderson
Pam Platt
Sheldon Forum
Kathleen Parker
Frank Rich

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GOP's push to monitor voting

Action targets African-American participation

By RAOUL CORNINGHAM
Special to The Courier-Journal

The writer, who lives in Louisville, is the former Kentucky NAACP Voter Empowerment Coordinator.

ACCORDING to the Kentucky Revised Statutes, in each election year the two political parties in Jefferson County must appoint two members of their party to serve as precinct election officers in each of the 483 voting precincts in the county. The duties of election officers include the opening of the polling place; the opening, examination and closing of the voting machines and making certain that only qualified voters enter the voting booth to cast their ballots. They also ensure that the election is conducted in a fair and honest manner. Each precinct should have two judges, one from each party; one clerk; and one sheriff from the opposite party of the clerk.



An elderly couple being assisted across the street as they prepare to register to vote in Mississippi in 1968. (From 'The Civil Rights Movement: A Photographic History, 1954-68')

For the past two years, the Republican Party has failed to field a complete slate of precinct election officials in Jefferson County. As of Oct. 17, the Republicans had not filled 33 precinct officer positions. Although the Jefferson County GOP had not met its statutory responsibility to appoint precinct election officers in each precinct, on Oct. 14, Jack Richardson IV, as chair-

man of the party, certified a list of 56 challengers to be placed in predominantly African-American precincts in the Newburg, Portland and West End communities.

In a memo issued to party chairs and county clerks, the State Board of Elections

See WILL EFFORT
Page 4, col. 1, this section

'Perfectly legal' practice will ensure fair results

By ELLEN WILLIAMS
Special to The Courier-Journal
The writer is chair of the Kentucky Republican Party.

THE Republican Party of Kentucky's ticket of candidates for office this year is billed as "Team Kentucky." We chose that name because we are promoting a team atmosphere, and we recognize that Republicans, Democrats and Independents from across Kentucky will join together as teammates to bring real change to Transylvania. One of the objectives of "Team Kentucky" is to ensure that we have fair, open, honest elections. We expect a great deal of integrity from our elected officials; if only stands to reason that we should expect the same level of integrity from the election system that puts them in office.

The Courier-Journal reported last week that several Republican challengers have been recruited to monitor precincts in Louisville. This is a perfectly legal practice, and we believe it is the responsibility of both the Democratic and Republican parties to encourage ballot integrity (unfortunately, the Democratic Party chose not to participate). These challengers do nothing more than observe the precinct to which they are assigned and raise objections only when they have reason to believe that election laws are not being followed. It's quite simple. If someone comes to a polling place in an attempt to break the law, they should know that people who care about fair elections are watching. If someone comes to a polling place to exercise their legal right to cast a ballot, they

See LEGAL PROCESS
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should know that people who care about fair elections are there to make sure all legal ballots are counted. There is nothing more important to us than ensuring that all legal voters have a chance to participate in this extremely important election. In addition to our poll watchers in Jefferson County, we have recruited a network of dozens of attorneys statewide who will be on call on Election Day to receive reports of election fraud and help determine if legal action is necessary. Attorneys from Eastern Kentucky, Western Kentucky and all points in between are giving their time because they too believe one of the most important things about the election system is that when the votes are counted we can trust the outcome. The peaceful and legitimate transfer of power is ensured by the knowledge that the people have spoken and their voices are not muted by a corrupt election system.

I am saddened that some have chosen to brand our efforts as an attempt to intimidate voters. If anything, we believe our efforts actually encourage voter turnout because people are more likely to participate in an election if they believe their vote is counted fairly and not diluted by a flood of illegitimate votes. Our message to all Kentuckians, regardless of party or race, is that we want you to vote. And above all, we want all registered, legal voters to know that their votes are being counted in an election that is fair, open, and honest.

Poll workers learn about vote challenge

Continued from Page B1

for the election. For many election workers, challengers will be a new and unknown commodity, said Walter Cato, a member of the Jefferson County Board of Elections, who spent about 45 minutes at the training session explaining the law regarding challengers.

"A challenger cannot take over the election process, and a challenger is only there to challenge votes," Cato said. "I'm confident that if the election officers and the challengers observe these statutes as they are set out, there is not going to be a problem that day."

Election workers and challengers undergo the same two-hour training and must be certified by the board of elections before serving at the polls. The board has been holding training sessions for several weeks.

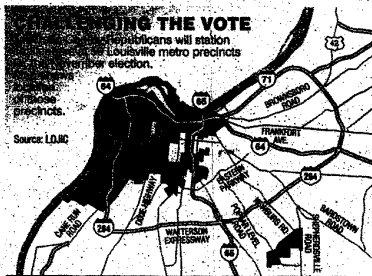
During his presentation, Cato stressed to election workers that all voters must show identification or be recognized by election workers before they are given a ballot and allowed to vote. Acceptable identification includes a driver's license, a Social Security card, credit card or voter identification card, he said.

"It does not have to be a picture ID. ... You could whip out a MasterCard or something, and that would suffice," Cato said.

Challengers can only question a voter's eligibility if they believe the voter:

- is not a duly registered voter in a precinct;
- is not a resident of the precinct;
- is a felon;
- is not whom he or she claims to be.

"The law requires that the challenger



BY STEVE DORBIN, THE COURIER-JOURNAL

has to have reason to believe the basis for his objections or his challenge," Cato said.

Challengers must be issued to election workers before a voter receives a ballot, Cato said. Challengers can't confront voters directly.

A challenged voter must sign an oath verifying his or her identity and right to cast a ballot in that precinct. The challenger must sign the same oath and write down the reason for the challenge.

Even if election workers know the challenge isn't correct, "they have to go ahead and make his challenge," Cato said. "It's not a case where the election officers can assume that they have the power to determine whether a chal-

lenge is valid or not. They don't have that power."

A challenged voter will be allowed to vote — and that vote will be counted in the election. Voters' oaths are collected later by the election office and forwarded to the commonwealth's attorney for investigation.

Cato stressed that challengers cannot campaign in the precincts, handle official election material or "attempt to intimidate or harass ... any voter who is being challenged, or any precinct election officer."

Challengers who are disruptive or interfere with election workers can be issued warnings or be ejected from precincts, Cato said. If election workers believe a challenger should be re-

"I'm confident that if the election officers and the challengers observe these statutes ... there is not going to be a problem that day."

Walter Cato, board of elections

moved, they should call the board of elections, he said.

A challenger who is removed is banned from resuming the position in any precinct for five years, Cato said.

Election workers said afterward that they were glad they learned the rules and doubt they will have problems on Election Day.

"As long as everyone acts professional, I think it will go smoothly. I don't foresee any problems," said Shawn Bertholt, who will work at the Community Towers precinct downtown, where a challenger will be stationed.

Jim Ragland, a worker who will be at the precinct at the Knights of Columbus on River Road, also didn't think there would be many problems.

"I think they're going to get there and find out there is really nothing for them to do," he said of the challengers. "If you're a challenger and you don't know the neighborhood, what are you going to challenge?"

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 Nick Anderson
 Penn Post
 Citizens Forum
 Kathleen Fowler
 Frank Rich

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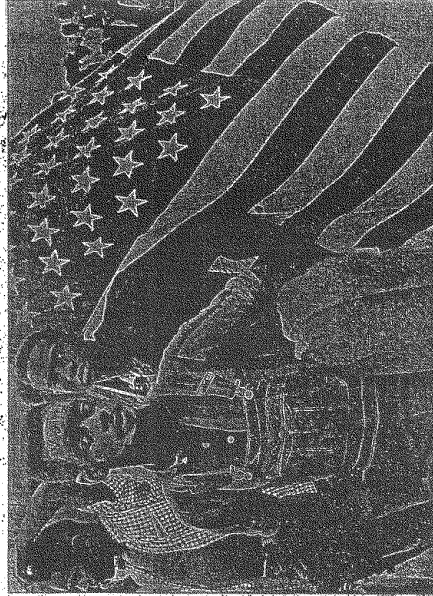
Will effort thwart black participation?

Continued from Page D1

stated, "a challenger's only responsibility is to show that he or she is qualified to serve in the office. The person is not a duly registered voter in the precinct, or is not a resident of the precinct, or a citizen of the state. The person who has not had their name on the voter list is not the person the voter chains to be." Of the 99 challengers listed, only 10 were African Americans. The other challengers will need detailed directions from the Internet to even find their way to the polls. In contrast, the African American who lives in the East End of New York is a resident of a particular precinct in the West End or who is a convicted felon. What does it mean for a person to be subject to a voter? The color of one's skin? Whether one's hair is braided? Or the color of one's eyes?

Of the other 89 voters of any race, many have never been properly educated in their responsibilities to the community. No matter what kind of public relations spin the Republican Party attempts to put on its actions, the fact remains that the party is trying to keep its name off the ballot. It is an attempt to prevent African Americans from participating in the election process and suppress the African-American vote.

Republicans are trying to suppress the vote comes in many forms. If there are no voters in a precinct, there is no need to announce there was to be a



A voting machine's gear, painted on like to be painted, as a participant in the debate to Michigan's vote for setting rights in 1988. (Photo by the author for The Call Rights Movement, a Photographic Society, 1987-1988.)

challenger's goal, painted on like to be painted, as a participant in the debate to Michigan's vote for setting rights in 1988. (Photo by the author for The Call Rights Movement, a Photographic Society, 1987-1988.)

independent nations, but in the last few years the GOP could not find decision officers to cover the African-Americans. When he received his call to the media, he also stated that the FBI was investigating the activities of the election process. The FBI completed its investigation and found no illegal election activities or decision fraud related to the get-out-the-vote effort. The FBI is now on the Philip Randolph Institute.

If the FBI had substantiated Republican Party, named what he called a "Citizens Election Integrity Call to Action" in Michigan. The call to action was issued by the NAACP and A. Phillip Randolph last

larger in African-American practices may have been in the best interest of protecting the integrity of the election process.

Should he be the concern of all Americans, it is ironic that the Republican Party would use a "Citizens Election Integrity Call to Action" to threaten the election process in the African-American community.

Unethical? Definitely.

REPUBLICANS ARE 'ACTING THEIR COLOR' BY RACIALLY PROFILING BLACK VOTERS

THURSDAY, OCTOBER 30, 2003

They have earned a terrible reputation among blacks from one end of the country to the other for doing everything they can to depress the black vote.

Challenging black voters at the polls is just one of their tactics. In Florida in 2000, for example, Republicans saw to it that 12,000 voters

empowerment coordinator for the Kentucky NAACP isn't being unreasonable to ask, "How will a challenger who lives in the East know who is a resident of a particular precinct in the West End or who is a convicted felon? What criteria will the challengers use to object to a vote? The color of one's shoes? Whether

"Republicans have earned a terrible reputation among blacks from one end of the country to the other for doing everything they can to depress the black vote."

most likely to be cowed by white people with authority and flustered by white strangers questioning their integrity.

Of course, if the Republican poll watchers do nothing but slow down the process so that some people will leave without casting their ballots, they will have accomplished something.

reminded that they're not only contradicting what the national GOP claims to be about, but what their man for governor, Ernie Fletcher, claims to be about.

in his African-American policy initiatives, Fletcher dodges, "I am committed to helping minorities realize full access to their government."

Needless to say, the Republicans' intentions have fired up many in the black community and have generated an all-out effort to get out the vote, everything from radio commercials to thousands of fliers, including copies of the Kentucky Voters' Bill of Rights, being distributed door-to-door in West Louisville, Newburg and Smoketown by a coalition of organizations, including the Louisville chapters of the A. Philip Randolph Institute, the Coalition of Black Trade Unionists and the Coalition of Labor Union Women, National Black Voter Participation Project, People for the American Way and the Lawyers' Committee for Civil Rights.

In addition, dozens of lawyers have volunteered to assist voters who are challenged, and people without transportation can call 504-4211 for free rides to the polls.

So yes, Jefferson County Republicans can legally do what they've said they're going to do on Tuesday in Louisville's black districts, but they should be

Betty Boyé's columns appear on Thursdays in The Forum. You can read them at www.courier-journal.com.

The Courier-Journal Metro

www.courier-journal.com

Friday, October 31, 2003

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Briefs B3
Kentucky and Region B4
Westland B4
Crested B4
Editors: Jean Potter
jpote@courier-journal.com
Phone: 502-403-1700 Fax: 502-403-1700

GOP defends vote challenge

Activists call flier to recruit poll workers racially biased

By ANDREW WOLFSON
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The Courier-Journal

The chairman of the Jefferson County Republican Party says the decision to place Election Day challengers in predominantly African-American precincts has nothing to do with race or alleged irregularities in past elections.

But a Republican recruiting flier tells a different story, say civil-rights activists who have seen it.

The flier asserts that in three previous Kentucky races, the NAACP and the A. Philip Randolph Institute, a black trade-unionist group, targeted "poor, black voters" and encouraged them to "commit voter fraud." The leaflet calls the Washington-based Randolph Institute "the black militant division of the AFL-CIO."

The flier was written and distributed in July by Republican Mike Czerwonka, who several GOP leaders say has been the central figure in recruiting poll workers for the party in Jefferson County. The leaflet has been posted on two Washington-based Web sites.

Raoul Cunningham, the former voting-empowerment coordinator for the state National Association for the Advancement of Colored People, said that the document shows that the Republicans' decision to place challengers in West End and Newburg precincts "is clearly racist."

Former state Sen. Georgia Powers said the flier is insulting to the African-American community by implying "we are dishonest and have no integrity."

Czerwonka, a construction manager who last year unsuccessfully challenged state Rep. Paul Eather in the 43rd District, said yesterday that the assertions in the letter are true and that there is nothing racist about them. He said he circulated the letter in July as part of a pitch to recruit precinct workers from Associated Builders and Contractors of Kentuckians and other trade groups.

Former county GOP chairman Bill Stone applauded Czerwonka for his recruiting work and said the flier "tells it like it is. There is nothing racist about it."

But officials with the campaign of U.S. Rep. Ernie Fletcher, the Republican candidate for governor, disavowed the letter, as did the Jefferson County Republican chairman, Jack Richardson IV.

In the flier, Czerwonka says he was "asked by the Fletcher campaign" to ensure "the integrity of the election process in the West End/Portland areas of Louisville." The letter also

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Activists question flier recruiting vote challengers

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says "please join Ernie Fletcher and me for an informational meeting" at the Associated Builders and Contractors office July 21.

Wes Irvin, a spokesman for the Fletcher campaign, said it never asked for Czerwonka's help, didn't see the letter in advance and "we don't condone it."

Philip Anderson, president and chief executive officer for the trade group, said he never received the letter, but spoke only of general campaign use. Anderson said Czerwonka spoke separately about the need for precinct workers.

Richardson said that he asked Czerwonka to help recruit volunteers but that he wasn't authorized to speak for the party. "He was operating on his own," Richardson said.

Richardson announced last week that Republicans intend to place challengers at 59 voting precincts in the West End and Newburg, but he said the precincts are chosen at random on the basis of a computer program. He said he had trouble finding registered voters in those areas to serve as election workers.

He also said that the precincts weren't selected because of their racial makeup, and that the decision to use challengers had nothing to do with previous elections in which Republicans alleged voting irregularities in some West End precincts.

Czerwonka's flier, however, cites three areas that he says were adversely affected by the get-out-the-vote efforts of the party. He says he is in contact with the Democratic National Committee. Czerwonka said their rac-

Republicans charged that organized labor helped seal the 1995 election. Patron in part by funneling money to the Randolph Institute, an officially non-partisan group that promotes political participation by African Americans and spent \$47,000 on the contest.

Norman Hill, the institute's president, said that it was involved in wrongdoing in the 1995 election and that it uses only lawful tactics to encourage minorities to register to vote and to vote. He said his Louisville affiliate is conducting a voter registration drive.

Hill said the organization was founded in 1985, is supported by the AFL-CIO but not endorsed by the AFL-CIO, and is supported by the Democratic National Committee. Suzanne Folkes, a spokeswoman for the AFL-CIO, said, "We think it is outrageous that they are using these tactics to discredit a respected group like the A. Philip Randolph Institute."

Czerwonka contends that his own race was affected by election fraud — specifically, that in several precincts, more ballots were cast than the number voters on the registration list. He said he has a copy of the registration book for each precinct, and he said he has more ballots than signatures, he said.

The FBI investigated a complaint filed by Czerwonka and found no violations of federal law, according to spokesman David Beyer. Walt Cato, a member of the county Board of Elections, said the discrepancies were probably the results of mistakes by poll workers, who handed voters ballots but forgot to ask them to sign their name.

Czerwonka, however, said that just because the FBI found no indications of fraud, "it doesn't mean there wasn't fraud, and that Cato's explanation is 'speculation.'" Czerwonka said he was asked by the

Republican executive committee to meet with the party's precinct workers in 1995. He said the party came in 57 precincts, but each party is allowed to assign two officials to each of the county's 433 precincts.

He said the party assigned challengers to some precincts only after the recruiting effort produced a surplus of poll workers. "My flier does not mention challengers," he said.

Kentucky law allows political parties to place a challenger at any precinct on Election Day to question the credentials of the incumbent. The law has "a reason to believe" isn't legitimate.

Several prominent Republicans, including former state Rep. Bob Helinger, said this week that they hadn't seen Czerwonka's flier, but that he recruited them to work at the polls. Asked about Czerwonka's role in the recruiting drive, Helinger said, "He told me he was heading it up."

Czerwonka said his failure to submit the flier for approval by the local party and the Fletcher campaign "may have been a mistake on my part," but the Fletcher campaign didn't ask him directly for his help, but noted that some Fletcher campaign officials are on the Jefferson County Republican executive committee, which asked him to recruit poll workers. Irvin said the Fletcher campaign asked local party organizations to recruit poll workers but "left it up to them how they were going to do it."

Fletcher has said that challengers shouldn't pose any barrier to voting. "We're doing legally what we can just to make sure that everything is done right in the end," he said. "It's not about the members of that community to come out and vote."

HOW PRECINCT CHALLENGES WORK

Precinct challengers can question whether people trying to vote are registered, whether they are whom they claim to be or whether they live in the precinct.

Challenged voters must sign an oath swearing they are bona fide residents of the precinct. Those who refuse will be allowed to vote unless an election officer verifies that they meet voting requirements or that the challenge is unwarranted.

State law says that voters cannot be challenged indiscriminately and that challengers must have "a reason to believe" a voter's qualifications are questionable. But it does not elaborate on what such a reason would be.

Voters can help avoid challenges by having a picture identification with a current address.

It included "encouraging people sometimes who aren't registered voters to vote ... or sometimes engaging in illegal election practice, i.e., vote buying etc."

The flier cites the 1995 governor's race in which Democrat Paul Patton defeated Larry Forgy last year's 3rd District congressional race in which Republican John C. Coker defeated Democrat Jack Conway, and Czerwonka's own race in which he lost to Bather by 695 votes.

Group aims for higher turnout in black areas



"Get up off your knees. ... We are somebody," businessman Charlie Johnson told the group countering vote challengers.

By SHELDON S. SHAFER
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The Courier-Journal

During a gathering infused with the fervor of a religious tent meeting, more than 100 civil-rights and labor leaders, elected officials and residents pledged yesterday to counter what they describe as a Republican attempt to intimidate African-American voters on Tuesday.

Saying they were organizing as a nonpartisan coalition, they announced a series of rallies, a motorcade and nearly nonstop, door-to-door canvassing through Tuesday to urge people in predominantly black precincts to vote.

They also set a goal of 80 percent turnout in 59 precincts in western and central Louisville and in Newburg, where the Jefferson County Republican Party said last week that it would station Election Day challengers. The turnout in those same precincts for the November 2002 election was 38.2 percent.

The GOP said the election workers will be on hand to challenge people who they suspect are not eligible to vote. Nearly all the challengers are white and live outside the precincts to which they have been assigned.

Although challengers are allowed under state law, civil-rights leaders and others yesterday criticized the Republicans' use of what they view as an arcane — and seldom-used — law.

"We won't let you roll back the clock," former state Sen. Georgia Powers, 53, said during yesterday's meeting, held at the Louisville Urban League office.

"I marched at Selma (Alabama) in 1965. ... We will go to the polls

Metro

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with our armor of dignity."

"Get up off your knees. ... We are somebody," businessman Charlie Johnson said to loud applause from the group.

"We've got to fight this," said the Rev. Louis Coleman, director of the Justice Resource Center.

Ben Richmond, president of the Louisville Urban League, said he hopes to raise \$30,000 to \$40,000 by Tuesday to support the coalition's efforts. As of midday yesterday, the group reported raising about \$11,500.

Richmond said the money will go for printed materials urging people to vote Tuesday — and to be sure to take identification with them and not to be intimidated by the challengers. He said the coalition also will buy time on radio stations to get out the message to vote.

The coalition also will rely on ministers at many churches to urge their congregations to vote, said Raoul Cunningham, a former voter-empowerment coordinator for the national NAACP and a key organizer of the coalition.

State Sen. Gerald Neal attended yesterday's gathering, as did at least eight of the 26 Louisville Metro Council members, all Democrats — Barbara Shan-

they don't view the cause as strictly an African-American concern. "All the unions here are with you," said Bill Lorigan, president of the Kentucky AFL-CIO. Among others represented were the American Civil Liberties Union, the Fairness Campaign, a half-dozen labor unions, the Kentucky Alliance Against Racism and Political Repression, several predominantly African-American societies and fraternities, about 10 pastors from at least five denominations, the National Association for the Advancement of Colored People, Pride Inc., and several business leaders.

Although coalition leaders claim to be nonpartisan and made it clear that people should vote for whomever they want, many of their comments yesterday were directed at Republicans. "GOP, you have turned up the hate," Powers said.

Jack Richardson IV, the county Republican chairman, affirmed in an interview after the rally that the local party made the decision to use challengers without consulting the state party office or Republican Ernie Fletcher's gubernatorial campaign.

The challengers, Richardson said, "can't do any more than the statutes provide. The only people who should be intimidated are those who intend to do

something wrong. Anybody who is registered and is who they say they are and has a right to vote will be able to vote. No one with the right to vote will be denied the right to vote."

Richardson said the challengers will observe voting and report any irregularities to the county Board of Elections.

Richardson also alleged that yesterday's meeting was orchestrated by Democrat Ben Chandler's gubernatorial campaign.

But Chandler campaign manager Mark Nickolas said the campaign had "nothing to do with this." He said that the Republicans, "rather than looking to blame people, maybe they should accept responsibility for this tactic and apologize to the community."

Nickolas called the GOP's use of challengers "unconscionable. I don't know how they can possibly defend the action."

Challengers, who get the same election training as precinct officers, can be tapped as Election Day precinct staff workers, if election officers are needed. Richardson said yesterday that probably only 30 to 35 of the 59 challengers will end up in that role and that the rest will serve as election workers because of a shortage of Republican precinct volunteers.

PLANNED ACTIVITIES

The coalition formed in response to plans for GOP challengers in certain precincts on Election Day plans these activities:

■ Today, 3 p.m. Fan out from Louisville Urban League, 1535 W. Broadway, to distribute materials and urge people to vote.

■ Tomorrow, 2 p.m. Motorcade from Lykes Mall, 28th Street and Broadway, to Velvet Rose Supper Club, 519 E. Jefferson St., for rally.

■ Sunday, 6 p.m. Rally at Peace Presbyterian Church, 4210 Indian Trail, in Newburg.

■ Monday, 6 p.m. Rally at St. Stephen Baptist Church, 1018 S. 15th St.

■ Tuesday, 6 p.m. Rally at St. Paul's Episcopal Church, 15th St. and Madona Flood (24th).

The officials made it evident that



PHOTOS BY KERH WILLIAMS, THE COURIER-JOURNAL

Robin Bray, above, of the Zeta Phi Beta sorority, wiped away a tear during yesterday's get-out-the-vote meeting at the Urban League office in Louisville. At right, more than 100 civil-rights and labor leaders, elected officials and residents applauded a speaker. The group is aiming for 50 percent turnout in certain precincts.



Metro

The Courier-Journal

Friday, October 31, 2003
Neighborhood news B2
Bleets B3
Kentucky and Region B4
Metro B5
Deaths B6, 7
Editor: Jean Porter
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The Courier-Journal

www.courierjournal.com

Forum

GOP SENDING THE WRONG MESSAGE

BY WILLIAM T. WARNER

The writer, a longtime Republican leader in Jefferson County, is an attorney who lives in Louisville.

IN HIS op-ed piece last Sunday, my friend Raoul Cunningham, as he usually does, cut right through all the political and cultural rhetoric about which we disagree and got to the heart of the matter — African-American voting precincts. He hit the bull's-eye when he asked why, if the Republican Party leadership is so concerned with proper elections, they didn't assign the same people to fill vacancies of Republican election officials in the targeted precincts — vacancies which that leadership argues necessitated the assignment of special challengers.

The sad irony is that the Republican member on the Election Commission, Jim Steinfeld, and the commissioner's Republican co-director, Bill Lile, have for years badgered and begged the local Republican Executive Committee to do just that — recruit and train volunteers to fill vacant election officer slots in precincts — mostly in the West End — where seldom is heard a Republican voice and seldom is seen a Republican worker.

of the precinct team, and not as some kind of alien threatening presence.

But whatever progress that small beginning effort made, it wasn't enough to slow the tide of a virtually unopposed Democratic Party slide in the Grand Old Party leadership, which quickly reverted to its default setting of "They don't vote for us, so to hell with them." And whatever the purity of their motives in throwing challengers into the breach this year, they forgot one of the oldest maxims in politics — that bad appearance matter more than good intentions.

The longstanding failure of the local Republican Party leadership to fill election officer vacancies, and to otherwise reach out to connect with a much neglected segment of our community, is a constant source of frustration and embarrassment to rank and file Republicans — including Republican elected officials — whose vision is inclusion, not exclusion, and who work hard to do just that. The local Republican Party leadership's shortsighted, poorly timed, last-minute effort to mislead African-American voters is a serious setback to that vision.

Opinion by The Courier-Journal

"Whatever the purity of throwing challengers into the breach this year, they forgot one of the oldest maxims in politics — that bad appearance matter more than good intentions."

Their entreaties paid off some 10 years or so ago when the local Republican leadership did in fact make a concerted effort to fill vacant election officer slots in that area. The response was good. If not consistent, and many of the precincts were filled by people who aren't the best, they were at least decent on election day. Those who have stuck it out in that work over the years have turned out to be the best kind of ambassadors for the Party — working as part

Courier-Journal

ACLU files suit to block GOP poll challengers

SATURDAY, NOVEMBER 1, 2003

By GREGORY A. HALL
ghall@courier-journal.com
The Courier-Journal

Attorneys for the American Civil Liberties Union filed lawsuits in state and federal courts yesterday alleging that the Jefferson County Republican Party's plan to post Election Day challengers at 59 precincts in the Louisville area is aimed at intimidating African-American voters and violates their civil and constitutional rights.

Also yesterday, the U.S. Department of Justice announced that Jefferson County is among 15 communities in the country whose elections Tuesday will be monitored by employees from its

Civil Rights Division.

A Justice Department spokesman declined to say specifically what prompted the decision to send employees to Louisville. But a press release said the monitors will observe "whether certain counties and localities are complying with federal voting laws, for example ... determining whether any voters are challenged improperly on the basis of their race, color or membership in a language minority group."

The suit that the ACLU filed yesterday in U.S. District Court at Louisville argues that the GOP effort targets polling places with large numbers of African-American voters, and consequently vi-

olates the federal Voting Rights Act of 1965.

The suit filed in Jefferson Circuit Court alleges the Republican plan violates provisions of state statutes and the Kentucky Constitution that protect voters from intimidation.

"We think the evidence will be clear that their only purpose is to do mischief, that their only purpose is to delay and to impede and to impair the right to vote," said David Friedman, general counsel for Kentucky ACLU.

The suits, which seek class-action status, name five plaintiffs: the Rev. George C. Curing-

See GOP

Page 5, col. 1, this section

Continued from Page One

ton Sr., Metro Council members Cheri Bryant Hamilton, D-5th District, and Barbara Shanklin, D-2nd, former state Sen. Georgia Powers and Wanda Baker.

They name as defendant Jefferson County Republican Chairman Jack Richardson IV.

Richardson said yesterday he believes neither suit will be successful and that the GOP plan is lawful. "This is a frivolous political suit timed right before an election to try and alter the outcome of the election," he said in an interview.

Richardson announced last week that Republicans intend to place challengers at 59 voting precincts in the West End and Newburg neighborhoods, but he said the precincts were chosen at random or because the Republican Party has had trouble finding registered voters in those areas to serve as election workers.

He also said the precincts weren't selected because of their racial makeup, and that the decision to use challengers had nothing to do with previous elections in which Republicans alleged voting irregularities in some West End precincts.

But activists this week alleged that a Republican recruiting flier distributed over the summer tells a different story. The flier asserts that in three previous Kentucky races, the NAACP and the A.

Philip Randolph Institute, a black trade-union group, targeted "poor, black voters" and encouraged them to commit "voter fraud."

Republican Mike Czerwonka said in the flier that he'd been asked by the campaign of U.S. Rep. Ernie Fletcher, the Republican candidate for governor, to ensure "the integrity of the election process in the West End/Portland areas" by recruiting poll workers.

But officials with Fletcher's campaign, and Richardson, disavowed the letter, and Czerwonka acknowledged in an interview that he didn't clear it with them.

Kentucky law allows political parties to place a challenger at any precinct on Election Day to question the credentials of any voter who the challenger has "a reason to believe" isn't legitimate.

Both ACLU suits ask for an injunction that would apply to Tuesday's elections and prevent Republicans from using their challengers. Friedman said he expects to seek a hearing on those requests in one or both courts on Monday.

Regardless of whether an injunction is obtained, Friedman said the lawsuits would proceed, in an effort to prevent such targeting in future elections.

Friedman denied that the lawsuits are politically motivated.

"This is about the right of African Americans to vote freely and fairly and

without intimidation, harassment or any kind of imposition of an added burden," he said. "This is about stopping any move to return to Jim Crow election laws."

In an interview, Friedman's co-counsel on the case, Brian Edwards, said the way that Republicans selected the precincts "amounts to nothing more than racial profiling."

Richardson said yesterday that he targeted predominantly Democratic precincts for GOP challengers, saying it would be "stupid" to do otherwise.

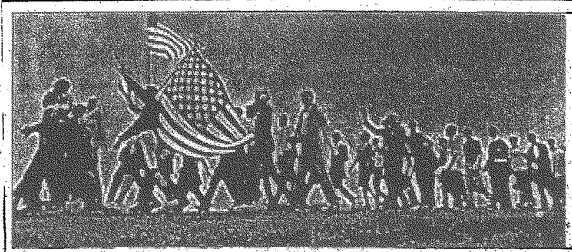
"We're not going to put them in Republican areas," he said. "That's silly." Both parties have used challengers in the past, he said.



"This is about the right of African Americans to vote freely and fairly."

ACLU Attorney David Friedman

GOP denies basing plan on race



The 1985 Selma march, which followed efforts to block African-Americans from voting.

'AN ASSAULT' ON COMMUNITY, DEMOCRACY

BY GERALD NEAL

The writer is a Louisville attorney, A Democrat, he represents the 33rd state senatorial district.

A GROUP of organizations and individuals came together this past Thursday to hold a press conference to express outrage at the Republican Party's latest tactic, which may have the effect of intimidating and thus suppressing the African-American vote in Tuesday's elections.

What was remarkable about this group was its diversity. It included a range of prominent citizens to everyday folks, business people to factory workers, social and Greek organizations to activist groups, ministers to elected officials, young and old, as well as white and black. It was indeed a remarkable group.

Due primarily to the call of Rasoul Cunningham, formerly of the NAACP voting-empowerment project, and former State Sen. Georgia Powers, these individuals and groups responded. They responded in the only appropriate way to the thinly veiled, disgraceful tactics of a Republican initiative that is viewed by many as an assault on our democracy.

Last in the overflowing crowd thinking this is democracy at its best, I realized, however, that that expression of outrage was limited, unless people responded by expressing themselves by voting Tuesday in numbers that reflect that outrage.

The local GOP defends its actions of placing challengers in predominantly African-American precincts as having nothing to do with race or alleged irregularities. However, a key player in this debacle, Republican Mike Czerwonka, circulated a letter attacking a well-regarded black trade unionist group, the A. Philip Randolph Institute, as encouraging voter fraud in the black community. The issue of race or the question of alleged irregularities raised by Czerwonka cannot be avoided. Former GOP chairman Bill Stone applauded this, at

best, misguided effort.

But even more revealing was the disclosure of that letter by the campaign of U.S. Rep. Ernie Fletcher. Yet, Fletcher unabashedly embraced and endorsed the use of challengers in predominantly African-American precincts, even though the letter was used as a tool for recruiting the very challengers in question. What kind of game is this?

One could legitimately ask, what is the big deal? Standing alone, perhaps, one could conclude this is no big deal. However, when viewed in context, it is a very, very big deal.

First, it has long been observed by civil rights groups that overly aggressive "voting integrity" efforts have tended to intimidate lawful voters and ultimately suppress voter turnout. This is especially true where prospective voters are targeted by race, ethnicity, disability and even when it is concentrated in poor communities.

Second, there is a long history of strife associated with voter intimidation and suppression in the African-American community. This reality necessitated a constitutional amendment to ban the racist poll tax, the Voting Rights Act of 1965 and the extension of the 1965 voter rights act in 1982. There is no need to list those who fought and some who died to ensure this right. There is no need to list the continuing problems in this arena. They are well documented.

Third, the law that permits challengers is not only seldom used, but its use is clearly not called for. How do you challenge any of hundreds of people who come to vote on election day? Do you challenge every one? Or do you pick and choose randomly? At best, it is an arbitrary and marginal process that, if used in this fashion, is unwarranted. What do these unqualified voters look like? Clearly, it is reasonable to conclude that the challengers focusing on the African-American precincts have some other purpose.

Fourth, there is no evidence of "encouraging people sometimes who aren't registered voters to vote . . . or sometimes engaging in illegal practices, i.e., vote buying, etc." as Czerwonka's letter states as reported in *The Courier-Journal*. None! Zip! Zero! In fact, where there have been complaints (al-

belt politically motivated), there has been a finding of no wrongdoing, or, as in the recent FBI investigation prompted by Czerwonka, no violation of federal or state law.

Fifth, former Sen. Georgia Powers said it best. This is an insult to the African-American community in that it implies that in some way the African-American community is dishonest and lacks integrity.

I will take this a step further. This is an insult to the entire community, white and black, Republican, Democrat and Independent, young and old. This should be unacceptable to all.

Finally, this is an assault not only on this community, it is an assault on the democratic principles that make this country great. Some of the people involved I have always regarded highly. Perhaps they are not thinking—in their zeal to be troopers for the party or in the heat of political battle. But, I implore them to rethink what they are doing. This is beneath well-meaning Americans and Kentuckians. You are better than this.

We must strive for unity for this community and state to prosper. This GOP tactic is divisive. Why do some of us continue to let our narrow interests supersede the common good when we know we can and must do better?

I will never forget my experience as a United Nations monitor of the 1994 free elections in South Africa. People who had been denied the right to vote for the first time ebullished that right. Long lines of people came over hills, through valleys and down roads, not to be denied. They came on foot, by cart, and the disabled were carried. Young and old came with one purpose and with determination. At the end of the day, the eligible voters voted in the high 90s percentage.

In contrast, this democracy cries for participation. Every person of good will in this community, regardless of race or station, can not only repudiate these unwise, insensitive and cynical tactics, but can also can strengthen this precious right by voting on Tuesday—and every opportunity thereafter. Our democracy literally depends on it.

Special to The Courier-Journal

FORUM

SUNDAY, NOVEMBER 2, 2003

LOUISVILLE DEFENDER

WEEKLY NEWSPAPER

Publishing Division of Consumer Communication Industries Corporation

September 6, 2003

Coalition voiced concerns against Poll Challengers

By Yvonne Coleman Bach
Editor

A group consisting of civil rights and labor leaders, elected officials and others including area residents, last week spoke out against what they called an attempt by the Republican Party to intimidate African American Voters by placing challengers in predominantly black precincts, a charge that the republican party denied. The group that said they were non-partisan also announced efforts to reach a goal

to get 60 percent of African Americans to vote in 59 precincts.

At a press conference, various speakers voiced their concern about the effects the challengers would have on voters.

Raoul Cunningham, former coordinator of the NAACP's Voter Empowerment Project, called the press conference, held last Thursday, to order. He called the placing of challengers in the precincts "voter suppression and voter intimidation." He said, "We are outraged that

they (republicans) would dare put poll challengers in 59 (African American) precincts.

Republican Chairman Jack Richardson, IV, said the decision to put challengers in precincts was made locally without consulting the state party office or Republican gubernatorial Candidate Ernie Fletcher. He said, however, no one with the right to vote would

See Coalition, page 3

Coalition continued from front

be denied that right. He said the only people who should be intimidated are those who had intentions of doing something wrong.

Beth Wilson of the American Civil Liberties Union called the poll challengers voter intimidation. She said the practice is what was seen in the Florida election in 2000. She said "the right to vote should not be trifled with."

Former state senator Georgia Davis Powers also called the poll challengers voter intimidation. "We will not let you (republicans) turn back the clock with such tactics to intimidate black voters," Powers said she marched for the right to vote in Selma, Ala. in 1965. Speaking to the GOP she said, "GOP, you have turned up the hostility in this community." She called for the community to go to the polls and vote. "I am not only angry, but I am mad as hell and you (community) ought to be too."

Representing the young professionals organization, Attorney James Beckett said voters should not stand quietly and hear the wake up call to vote. He said voters should vote because they are being challenged and make this an election to remember.

Businessman Charlie Johnson said he grew up in Columbus, GA and he knew what it was to be denied to vote. He said when you single out a segment of people, you are saying you are not all equal. "We should get out and vote, because we are somebody," he said passionately. "Get up off your knees and tell the world we are somebody." He said to a cheering crowd of about 100.

Rev. Alex Moses, pastor of Eastern Star Baptist Church, representing the Min-

isterial Coalition also voiced his concerns about what was called voter intimidation. He said, "If we strive together, we will arrive together." He said the situation had great potential to bring African Americans to the polls.

Bill Londrigan, President of the AFL-CIO, said the issue was not just an African American concern. "We all stand together in this battle," he said.

New Louis Coleman, Executive Director of the Justice Resource Center, said the environment in Louisville was conducive for voter intimidation to happen. He said he was pleased to see so many people represented in the coalition. "We have to challenge the challenger," he said.

Richardson, the polls in west Louisville that would have challengers were not chosen because they were African American, but because they were precincts that were traditionally democratic. He said the role of the challengers would be one of observation and to report any irregularities to the Board of Elections.

The issue also reached as far as Washington, D. C. Congressional Black Caucus Chairman U. S. Rep. Elijah E. Cummings, D-MD issued the following statement. "In the wake of the 2000 elections, it is unconscionable that Republicans would continue to harass and intimidate voters from participating in our electoral process. I have a strong feeling that these tactics will backfire. We need to work on ways to expand the electorate, not suppress it. I call on President Bush, as the leader of his

party, and someone who campaigned against voter intimidation, to tell the ten...

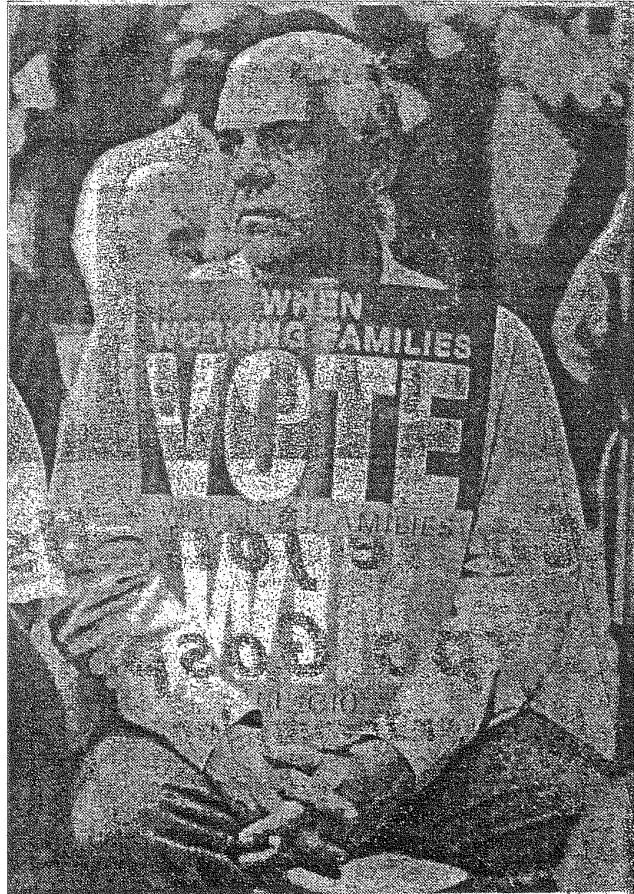
Rally was held in Louisville... President of the... Leach said the... raised... Thirteen... of \$300,000

and door to door canvassing...

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Members of the Fairness Campaign and other area groups were part of the coalition that came together to voice their concerns on "Poll Challengers," what many said was a way to intimidate west Louisville voters. The groups gathered at the Louisville Urban League Headquarters last Thursday for a press conference/rally. Plans were announced to reach a goal of getting 60 percent of African Americans and others in the precincts to be challenged out to vote. *Photo by Bud Dorsey.*



Members of the AFLCIO were in the diverse groups who came together to voice their concerns about "Poll Challengers." The coalition consisted of civil rights leaders, labor leaders, elected officials and various other local groups individuals.

Louisville Defender

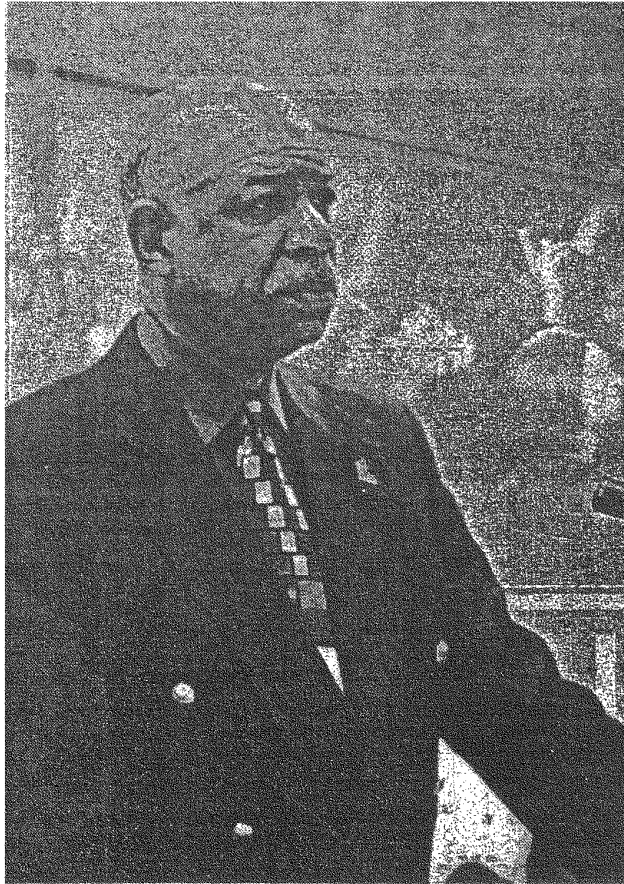
11-06-03



Rev. Alex Moses, pastor of Eastern Star Baptist Church, represented the Ministerial Coalition. He said the churches would work with their congregations to get people out to the polls. "If we strive together, we will arrive together."

Louisville Defender

11-06-83



Raoul Cunningham, former coordinator of the NAACP Voter Empowerment Project, organized the coalition and led the press conference/rally held at the Louisville Urban League Headquarters. He announced the groups goal to get 60 percent of African Americans out to vote.

Louisville Defender

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Business leader Charlie Johnson said he grew up in Columbus, GA and he knew what it was like to be turned down to vote. "We should get out and vote, because we are somebody."

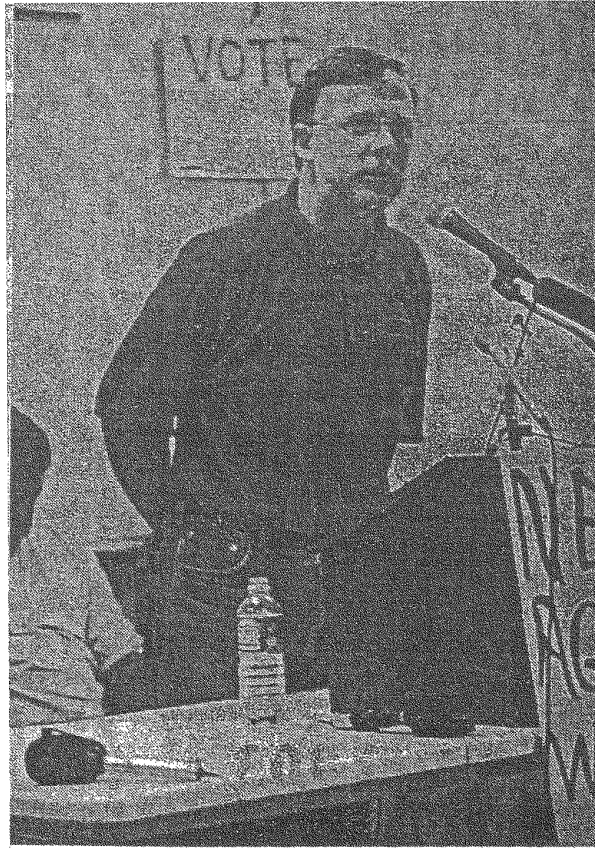
The Republican Party denied they voters would be intimidated. They said only persons with intentions to do wrong should be intimidated by the Challengers. The role of the challengers were to observe and report any irregularities to the Board of Elections.

**"Never Again
will we Turn
Back"**

3201

Louisville Defender

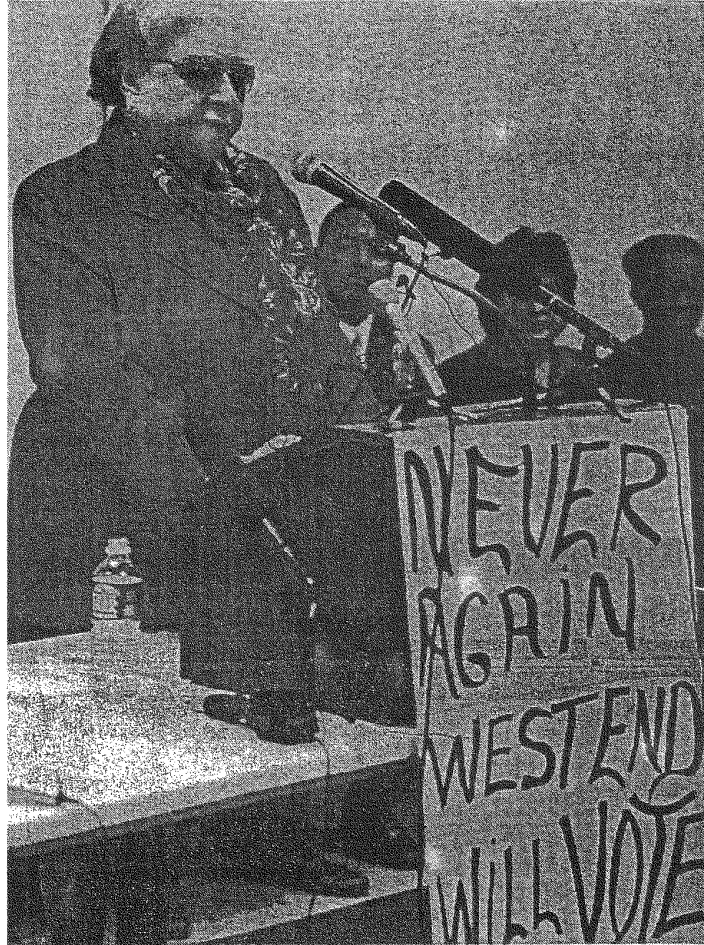
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Bill Londrigen, president of the AFL-CIO said the voting issue was not just an African American issue. "We all stand together in this battle." He said he was dead set against challengers in the polls.

Louisville Defender

11-06-03



Former State Senator Georgia Davis Powers voiced her strong concerns about the allegations of white Poll Challengers to be assigned to precincts in the predominantly African American community by the Republican Party. She was one of the various speakers, representing civil rights, labor and business leaders and other groups, who spoke at a press conference/rally last week. The group announced efforts to reach goal of getting 60 percent of African Americans out to vote. Photo by Bud Dorsy (See other photos on page 10)

Louisville Defender

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Executive Vice President

TYONNE COLEMAN BACH
Editor

FOUNDED

1933

"Voice of African American Affairs"

Dedicated to the life and memory of Frank L. Stanley Sr.

It's a matter of respect

The Jefferson County Republican Party carried through on its promise to place poll challengers at predominately African American precincts during this week's election.

Even though the American Civil Liberties Union and NAACP opposed the practice, a Jefferson County Circuit judge refused to grant a restraining order to stop the GOP. The ACLU and NAACP both claim that the presence of these challengers intimidated black voters.

The NAACP went further to help mobilize African Americans to go to the polls in spite of GOP actions. These repeated calls for mobilization was effective in increasing black voter turnout over normal levels.

Traditionally, black voters selected Democrats over Republicans at the polls. By placing challengers at predominately African American precincts, the GOP's notion, we assume, was to maximize black voter impact. However, by disrespecting black voters, the Republicans might have accomplished just the opposite of their intention.

Yes, the Republicans disrespected black voters. But so have the Democrats.

By taking the black vote for granted, Democrats have ignored African American community needs, failed to address educational and economic concerns and have provided few opportunities for blacks to positively impact the current administration.

In fact, about the only time many Democrats venture into the black community is just before an election to ask for votes. This is an affront to African Americans and has occurred election after election.

Instead of just asking for votes on 'faith' and recollections of support from years gone by, Democrats should invite African Americans in as full partners in developing the platform, messages and programs to help government meet the needs of all the people.

Instead of threatening African American voters, Republicans should take the time and make the effort to explain how their platform could possibly help the black community. The GOP may actually find some sympathetic listeners among African Americans. After all, there are more than 5,000 registered black Republicans in Kentucky.

Whether Democrat or Republican, both major parties need to exhibit some new found respect for African American voters. By asking black voters to actively participate in the process, candidates of every political stripe could have innovative and clear guidance to help them govern more effectively.

Yes, it is a matter of respect and those who respect African American voters will likely win and keep their loyalty.

Louisville Defender 11-06-03



Elected officials, Councilwoman Giffert Brydell Hamilton and State Rep. Johnnie Williams, along with other community leaders, gathered for a public hearing on Tuesday, Nov. 4, 2003, at the Louisville Convention Center. The hearing was held to discuss the proposed changes to the Louisville Urban Renewal Authority's (LURA) plan to redevelop the downtown area. The hearing was held in the presence of Mayor G. G. Evers and other city officials. The hearing was held in the presence of Mayor G. G. Evers and other city officials.



JEFFERSON TURNOUT

Challengers likely raised black vote, observers say

By JOSEPH GERTH
gerth@courier-journal.com
The Courier-Journal

Republican plan to place challengers in 59 Jefferson County precincts likely helped raise voter turnout among African Americans in Tuesday's election, according to a civil rights leader and University of Louisville professor.

Turnout in predominantly black precincts was nearly identical to last year's election, while voting in white-majority precincts fell 7 percent.

The only precincts that saw higher turnout this year were 21 precincts that were among the 59 targeted by Republicans for poll watchers.

Paul Laermle, a political science professor at the University of Louisville, said he was "quite bullish" about the Republican challengers' effect on turnout.

"What else could it be?" he said. "Did it do the reverse of what it was supposed to do? Probably."

Republicans filed a list Oct. 20 of 59 precincts they planned to send poll watchers to in predominantly black neighborhoods on Election Day. They

said they were targeting precincts with high numbers of Democrats and said race wasn't a factor.

But Democrats and African-American activists immediately denounced the plan, calling it racist. The NAACP and black activists redoubled their efforts to get voters in challenged precincts to the polls.

Republicans fielded challengers in only 18 precincts on Election Day, after some challengers were reassigned as polling officers or failed to attend mandatory training sessions.

Ralph Cunningham, former head of voter empowerment project for the National Association for the Advancement of Colored People, said the controversy concerning the poll watchers targeted black voters — to a point. Cunningham said none of the candidates on yesterday's ballot sparked significant interest to get black

One national black majority precinct in Jefferson County, said Cunningham, had a turnout of 65 percent in the 2000 election, but that number fell to 58 percent in the 2002 election.

That turnout was challenged by a Republican challenger who increased by 500 votes from last year's election, while the number of voters in the rest of Jefferson County fell by 27,000.

Jack Richardson, chairman of the Jefferson County Republican Party, said he believes the public questionnaires challengers submitted in their home precincts were the primary reason for the turnout increase in other parts of the county, even though turnout in white-majority precincts dropped from last year.

"I think if the Democratic candidates had a negative effect in other parts of the county," Richardson said, "people talked to were glad to have had a challenge and I think it was a net increase to the polls."

He said he intends to send more poll watchers out next year.

Although 21 precincts reported higher voter turnout this year, most of those increases were small — 25 voters or less. For example, the W-14 precinct with its polling place at Southside Black Community Center in Louisville's West End saw voter turnout climb 3.5 percent over last year's election. But there were only 14 additional voters.

Voters in challenged precincts supported Democratic candidate Ben Chandler in the governor's race by an 8-1 margin over Republican Ernie Fletcher. That helped Chandler narrowly carry Jefferson County.

Cunningham and Leonard Gray, 42nd Legislative District chairman and an aid to Gov. Paul Patton, said black voters won't show up at the polls in force until candidates are more willing to discuss and endorse issues that affect African Americans.

They also said that the turnout increase in black majority precincts was not due to the presence of poll watchers, but rather to the fact that the Democratic candidates were more willing to discuss and endorse issues that affect African Americans.

Chandler said yesterday that any one wanting to win Kentucky's election in Kentucky must be able to talk to the conservative, making it difficult to attract more liberal black voters.

"I don't think anybody has figured out how to find that middle ground," he said. "We were trying to find it in this race, and obviously we didn't. It's a very difficult thing to do."

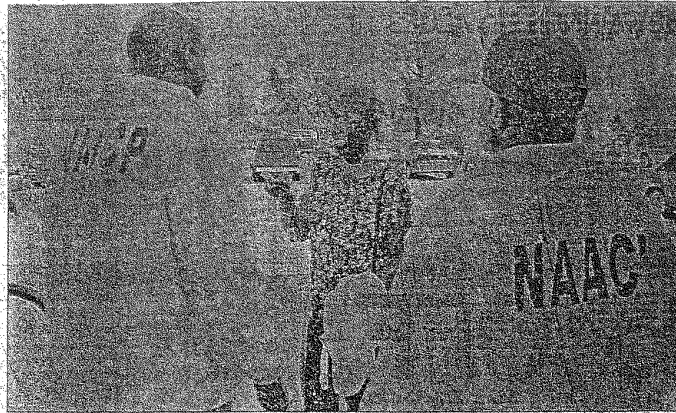
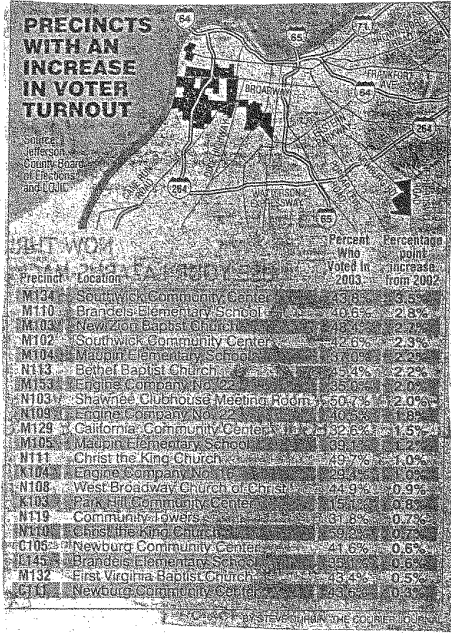
Gray said Chandler might have had problems attracting more black voters in Louisville's West End because of the indictments he obtained against Patton staffers and labor leaders following a get-out-the-vote campaign in western Louisville during the 1995 election.

He said the black community must do a better job teaching voters people who didn't live through the 1960s or civil rights, how important it is to get to the polls on Election Day.

They have other things on their mind.

COURIER-JOURNAL

11-06-03



NAACP monitors Kenneth Barnes, left, and Lee Bowman spoke with Stella Miller at Louisville's Newburg Community Center.

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 6966

PENDER COUNTY, *et al.*)
Plaintiffs,)
)
v.)
)
GARY O. BARTLETT, as Executive Director)
of the State Board of Elections, *et al.*)
)
Defendants.)

**AFFIDAVIT OF REPRESENTATIVE
THOMAS E. WRIGHT**

Representative Thomas E. Wright, being first sworn, deposes and says:

1. I am the duly elected Representative from House District 18 in New Hanover and Pender Counties. I am a registered Democrat. I was born, raised and educated in Wilmington and am serving my sixth term in the North Carolina House of Representatives. At the current time I am a Chairman of the House Appropriations Committee and a member of the House Health, Insurance, Public Utilities and Transportation Committees.

2. As I have gained seniority in my years in the legislature, I have served in leadership roles of increasing significance in the House. In 1999, I was Chairman of the House Appropriations Subcommittee on Capital and several other House Committees. I was also Chairman of the Legislative Black Caucus for the 1999-2000 term. A list of my committee assignments from 1993 to the present is attached as Attachment A. I have also served on numerous boards, committees and commissions, including the Joint Legislative Commission on Governmental Operations on which I have served continuously since 1999. Other committees of particular note on which I serve are the Cancer Coordination and Control Advisory Committee (since 1994); the Committee on Employee Hospital and Medical Benefits (since 1999); and the Minority Health Advisory Council (since 1993). A list of my appointments from 1993 to the present is attached as Attachment B.

3. I was first elected to the North Carolina House in 1992 from House District 98, which was drawn by the legislature in the 1992 Plan to create a majority-minority district in the southeastern corner of the State. District 98 was created after the United States Department of Justice raised objections during their § 5 Voting Rights Act review of the 1991 House Plan based on the legislature's failure to draw single-member districts with minority populations sufficient to enable minority voters in the southeastern counties to elect candidates of their choice despite requests made at hearings and committees meetings for additional minority districts in this area. District 98 in the 1992 Plan included portions of Columbus, Brunswick, New Hanover and Pender Counties.

4. I am now serving my sixth term in the North Carolina House, having won elections in District 98 in 1992, 1994, 1996, 1998 and 2000. I was also re-elected in 2002 after the district was redrawn by the trial court as District 18 in the Interim Plan. The Interim Plan drew District 18 along the northern portions of Columbus, Brunswick and New Hanover Counties, but did not extend the district into Pender County. My personal experience with politics in the southeastern counties and New Hanover area has convinced me that it is necessary to maintain an effective minority district if black voters are to have the opportunity to elect their candidate of choice. I would never have had the opportunity in the first place to serve as a member of the North Carolina General Assembly and to demonstrate to the voters my ability to serve all the citizens in the area if the United States Department of Justice had not required that District 98 be created after the 1990 Decennial Census.

5. In the 1992 Plan based on the 1990 Decennial Census, District 98 was majority-black with a total black population ("BPOP") of 59.26% and a black voting age population ("BVAP") of 55.72%. Based on the 2000 Decennial Census, the district's BPOP was 50.70%, the BVAP was

47.07%, and the black Democratic voter registration (“BDR”) was 53.37%. That district was drawn so that it stretched across four counties. I am aware that with recent federal and state court decisions the General Assembly has been required to draw districts to include fewer counties and to make the boundaries more regular in shape. The 2002 Sutton 5 House Plan drew the new District 18 so it included portions of Columbus, Brunswick and New Hanover counties. It had a BPOP of 44.59%, BVAP of 40.73% and BDR of 51.35%. The Interim Plan drawn by the court was similar in shape and geography, although it raised the black population percentages slightly to a BPOP of 47.52%, BVAP of 43.72%, and BDR of 52.58%. I understand the courts considered the configuration of District 18 in the 2002 Plan, which crossed three counties, to be non-compact. In the 2003 Plan, District 18 has a BPOP of 42.89%, BVAP of 39.36% and BDR of 53.72%.

6. When the General Assembly was required to redraw its legislative districts in 2003, I had several discussions with Speaker James Black and Representative Martha Alexander, the Democratic Co-Chair of the House Legislative Redistricting Committee, about preserving an effective minority district for the black voters in and around the New Hanover County area. I was concerned that the percentage of minorities in the district would drop to a point where the black voters in the area would no longer be able to elect their candidate of choice. I am especially concerned that minorities in Columbus and Brunswick Counties feel disenfranchised by the 2003 Plan in which the effectiveness of their vote and their influence has been diminished. As an incumbent, I have always worked hard to cultivate multi-racial and bi-partisan relationships and to serve all the citizens in the area regardless of their race, so my concern is not so much for my own election chances but for whoever will come after me. It is important for the black citizens in the southeastern corner of the State around my home county of New Hanover to have a fair opportunity to elect a candidate of their choice to serve them in the General Assembly.

7. Because I was re-elected by the voters of Columbus and Brunswick Counties to serve six terms in the House, it is difficult for me to see District 18 drawn so it no longer includes portions of these counties in the 2003 Plan. I am of course delighted to have the opportunity to again represent voters from Pender County which is included in District 18 in the 2003 Plan. The reasons expressed to me for drawing District 18 solely within Pender and New Hanover Counties were to achieve greater compliance with the requirements of the *Stephenson* opinion, while at the same time attempting to maintain an effective minority district for black voters.

8. The demographic trends I see in the southeastern area of the State where I have run all my campaigns include a decreasing minority population and an increasing Republican and unaffiliated voter registration. For this reason Democratic and Republican races are very competitive. These trends make it increasingly important for me to continue my efforts to seek multi-racial and bi-partisan support from the voters.

9. I have never considered statewide election data in analyzing my district. Re-aggregations of statewide general election data - - such as the 2000 Justice Henry Frye and State Auditor Ralph Campbell elections, and the 2002 Justice G. K. Butterfield election - - are not good predictors of elections at the local level, such as a House district. That data comes from low profile races and tends to reflect partisan trends based on straight ticket voting. The total black population, black voting age population and black democratic voter registration of a legislative district must all be at levels that allow minorities to have an equal opportunity to elect minority candidates of choice.

10. Because of demographic trends and voting patterns, there is currently no minority serving on the current New Hanover Board of County Commissioners (which is elected at large) or the Pender Board of County Commissioners (in which members reside in districts but are elected at large). In the past, one minority, Jonathan Barfield, Sr., a black Democrat, won election to the

New Hanover Board. He served three terms and left office in 1992. In Pender County several black Democrats served on the Board at different times until 2000, when Cleveland Simpson resigned to take a job in the Department of Commerce and his appointed successor, James Faison, Jr., lost in the 2000 election.

11. Based on my knowledge of New Hanover County and various maps I have seen, it is not possible to draw a House district that keeps Pender County whole or that is wholly within New Hanover County which will have a minority population sufficient to allow minority voters to elect their candidate of choice. The best map for minorities offered by Carl Thurman, III, which keeps Pender County whole and reaches into New Hanover County and Wilmington, joins the heart of my district with Representative Carolyn Justice's district and is significantly lower than the 2003 Plan in BPOP (38.77 vs. 42.89) and BVAP (35.33 vs. 39.36). It is slightly lower in BDR (52.76 vs. 53.72). That plan also would pit the incumbent white Republican against the incumbent black Democrat. The black population numbers in District 18 as now drawn show that the black democratic registration numbers for the district in the 2003 Plan can be meaningfully improved before the election with voter registration efforts. For this reason District 18 in the 2003 Plan provides an equal opportunity for black voters to elect their candidate of choice in the primary and general election, while Thurman's proposal would appear to significantly reduce my chances for re-election even as an incumbent and clearly creates a barrier for any other black candidate to compete successfully. Because an effective minority district can be drawn by dividing one or more counties in the area, I believe that the legislature is required by the Voting Rights Act to continue to draw a district which contains a black population sufficient to provide an equal opportunity for black voters to elect a Representative of their choice.

12. During the 2003 redistricting process, the Legislative Black Caucus consulted independently with experienced voting rights attorneys regarding the proposed 2003 plan. The Caucus wanted to assure that the plan fully complied with §§ 2 and 5 of the Voting Rights Act in order to provide an equal opportunity to black voters to effectively exercise their right to vote. Although there were concerns about several of the minority districts in the plan, including District 18, the Caucus did decide to support the 2003 Plan, primarily because it appeared to satisfy all technical legal requirements and overall appeared to be in the best interests of minority voters statewide. With two or three exceptions, all of the black Representatives voted for the 2003 Plan when it came up for vote on the House floor. I also voted for the plan.

13. Based on my political experience, I do not think that Pender County and its citizens will be harmed by being included in Districts 16 and 18 under the 2003 Plan. The county will have the advantage of two Representatives working on their behalf in the General Assembly. Assuming the current incumbents are re-elected, Pender County also would have bi-partisan representation. Although I have resided in New Hanover County throughout my years as an elected Representative, I have always represented the interests of all the voters in my district, regardless of their county of residence. This is true of all legislators who are elected from districts which include all or portions of counties where they do not personally reside. I particularly remember the aftermath of Hurricane Floyd in September, 1999, when Pender County suffered terrible flooding. I received numerous calls from Pender County seeking assistance, even from areas not in my district. Because of my 20- year background in Emergency Medical Services, I was reviewing the situation reports which were being faxed daily by the Office of Emergency Management and which did not list Pender County or corroborate all the telephone calls I was receiving expressing a need for assistance. When I went to Pender County, I found the water still rising and many areas impassible. People in northeastern

Pender County along the Cape Fear River were packing their possessions in john-boats and small row boats to escape the flooding. Highways 53 and 210 were impassable. I talked with the County Commissioners and worked to get this information to the Governor and his administration so that Pender County was added to the list of declared disaster areas and the Office of Emergency Management added the County to its situation reports so that much needed aid could reach the County.

14. The delay of the primary from May to July has already adversely affected the 2004 elections. As an incumbent, the primary is usually over before the General Assembly convenes for the short session. I cannot raise money and campaign effectively in my district while the legislature is working on the budget. The threatened disruption of the 2004 election process which began in earnest in April with candidate filing, makes it difficult to cultivate relationships with voters in my new district. It also negatively impacts voter registration efforts and candidates' ability to educate the voters on issues, especially when there is a threat that election districts could change again at this late date. It is difficult to make decisions about spending campaign funds to get my message out to the voters when it is uncertain when the election will be held and in what district. There is a lot of time, hard work and organizational effort that goes into running an effective campaign, none of which can be accomplished overnight. Candidates and voters alike lose out when the election process is disrupted. Voter turnout is reduced when there is confusion about election dates. If the Court should require new districts to be drawn in the Pender, New Hanover, Columbus and Brunswick areas so that legislative primary elections are held separate from the other primaries, voter turnout would be drastically reduced and voter confusion would be dramatically increased. These are not good conditions for something as important as the election of Representatives to the North Carolina General Assembly.

3214

This the ___ day of June, 2004.

Representative Thomas E. Wright

Sworn to and subscribed before me this

_____ day of _____, 2004.

Notary Public

My commission expires: _____

Anita Earls
Exhibit 2

Black Population, Black Voting Age Population, Black Democratic Registration in 2003 House Plan

Total Black Pop		Black Voting Age Pop		Black Dem. Registration	
Dist.	% Black Pop	Dist.	% Black VAP	Dist.	% Black Dem
7	59.77%	7	58.03%	58	75.74%
24	56.47%	24	54.76%	43	74.89%
27	55.98%	59	53.35%	42	72.72%
71	54.79%	27	52.93%	107	72.29%
60	54.54%	71	51.57%	101	71.82%
58	54.49%	101	50.60%	80	70.77%
107	54.07%	60	50.59%	33	70.07%
8	53.97%	107	50.48%	24	69.80%
101	53.46%	8	50.36%	71	69.65%
33	52.85%	33	49.57%	72	67.37%
5	51.87%	5	49.02%	21	65.97%
43	51.52%	43	48.89%	102	65.14%
102	51.04%	21	48.35%	77	63.58%
12	50.95%	12	47.51%	31	63.00%
21	50.64%	102	46.11%	12	62.49%
31	46.77%	44	45.45%	27	60.40%
48	46.14%	42	45.11%	54	58.80%
20	47.67%	31	44.71%	8	58.61%
42	47.39%	29	44.71%	99	57.65%
72	47.33%	72	43.40%	29	57.12%
18	42.89%	18	39.35%	48	53.99%
32	37.36%	32	36.22%	16	53.72%
23	36.54%	23	34.12%	100	50.34%
38	35.11%	55	31.99%	38	47.46%
55	34.77%	38	31.63%	39	46.53%
100	34.11%	100	30.97%	106	46.21%
69	33.41%	69	30.73%	23	46.21%
99	31.01%	49	28.49%	32	45.35%
20	30.87%	99	28.29%	69	45.02%
44	30.71%	20	28.29%	63	44.14%
49	29.90%	63	27.86%	77	42.74%
63	29.73%	1	27.49%	44	42.06%
34	29.53%	44	27.45%	55	41.82%
66	28.84%	39	27.37%	4	40.76%
106	28.75%	22	26.78%	49	40.09%
1	28.69%	66	26.61%	22	39.02%
22	28.31%	10	26.01%	45	38.91%
10	27.73%	25	25.87%	14	38.55%
25	27.26%	106	25.50%	1	37.77%
6	27.03%	4	24.86%	25	37.72%
45	26.69%	50	24.69%	6	36.89%
77	26.50%	77	24.38%	9	36.63%
4	26.02%	6	24.27%	10	36.61%
46	25.74%	45	24.19%	66	36.44%
59	25.73%	46	23.94%	59	36.39%
50	24.98%	59	23.52%	57	36.34%
111	24.16%	65	22.18%	20	36.01%
14	24.06%	53	21.75%	109	35.98%
53	23.92%	14	21.75%	50	34.65%

3216

Black Population, Black Voting Age Population, Black Democratic Registration in 2003 House Plan

Dist.	% Black Pop.
2	23.74%
65	23.58%
30	23.35%
9	23.12%
57	22.84%
109	22.29%
11	21.93%
51	20.71%
26	20.26%
81	17.15%
47	16.46%
15	16.42%
54	16.02%
52	15.91%
3	15.81%
37	15.45%
95	14.87%
103	14.47%
34	14.30%
82	14.09%
61	13.40%
79	12.94%
17	12.85%
56	12.70%
112	12.08%
13	11.62%
35	11.49%
115	11.14%
110	11.12%
83	10.91%
28	10.82%
98	10.31%
67	10.15%
88	10.00%
75	9.33%
114	9.22%
108	8.88%
40	8.86%
62	8.81%
64	8.77%
74	8.74%
41	8.70%
16	8.63%
86	8.29%
70	7.83%
89	6.88%
96	6.77%
91	6.74%
97	6.69%
68	6.43%
19	6.33%

Dist.	% Black VAP
111	21.71%
30	21.70%
2	21.46%
57	21.38%
9	21.18%
11	20.58%
109	19.62%
51	19.18%
26	18.83%
47	15.66%
81	15.64%
54	15.49%
37	14.96%
15	14.91%
3	14.77%
52	13.98%
95	13.39%
34	13.19%
103	13.03%
82	13.00%
79	11.96%
61	11.76%
56	11.72%
17	11.18%
112	10.78%
13	10.47%
35	10.39%
110	10.05%
115	9.96%
83	9.91%
28	9.80%
98	9.64%
67	9.24%
88	8.89%
62	8.63%
41	8.54%
40	8.49%
75	8.35%
64	8.24%
108	8.19%
114	8.07%
74	7.99%
86	7.64%
16	7.59%
70	7.06%
91	6.52%
89	6.39%
97	5.98%
96	5.93%
68	5.92%
73	5.70%

Dist.	% Black Dema
65	34.20%
111	34.10%
11	33.20%
53	32.70%
52	32.69%
103	30.40%
26	30.04%
46	29.98%
3	29.57%
51	29.45%
37	29.34%
2	29.04%
82	28.88%
81	28.86%
30	27.73%
61	27.15%
79	26.17%
95	26.07%
98	26.01%
54	23.77%
15	22.18%
83	21.75%
28	21.21%
34	19.67%
17	19.36%
75	19.22%
41	18.89%
13	18.86%
62	18.73%
40	18.19%
16	18.14%
70	18.01%
88	17.90%
110	17.61%
35	17.12%
112	16.95%
67	16.65%
74	16.62%
56	16.60%
73	16.16%
47	15.76%
68	15.68%
64	15.29%
108	15.29%
115	15.11%
96	14.45%
89	14.35%
105	13.61%
86	13.57%
91	12.91%
76	12.64%


3217

Black Population, Black Voting Age Population, Black Democratic Registration in 2003 House Plan

Dist.	% Black Pop
73	6.14%
76	5.98%
36	5.80%
87	4.93%
104	4.84%
105	4.77%
94	4.40%
90	4.27%
113	4.17%
85	4.12%
78	4.01%
117	3.83%
80	3.63%
92	3.45%
116	3.24%
84	3.20%
119	1.44%
93	1.39%
118	1.38%
120	1.38%

Dist.	% Black VAP
36	5.60%
19	5.51%
76	5.38%
105	4.48%
85	4.35%
87	4.32%
104	4.22%
94	4.12%
90	3.89%
78	3.84%
113	3.50%
80	3.37%
92	3.31%
117	3.26%
84	3.14%
116	2.65%
119	1.45%
118	1.34%
93	1.34%
120	1.15%

Dist.	% Black Dema
97	11.59%
114	11.56%
36	11.55%
19	10.39%
87	10.05%
104	9.92%
94	9.58%
78	9.33%
80	9.15%
113	8.13%
92	7.61%
117	7.13%
90	6.15%
84	5.43%
85	5.39%
116	3.81%
93	2.16%
119	1.72%
118	1.43%
120	1.42%

 Shading indicates an African-American was elected to district in 2004 Election

3218

Harnett, NC, July 23, 2002

Anita Earls
Exhibit 3

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, DC 20530

July 23, 2002

Dwight W. Snow, Esquire
Post Office Box 397
Dunn, North Carolina 28335

Duncan B. McCormick, Esquire
Post Office Box 1629
Lillington, North Carolina 27546

Dear Messrs. Snow and McCormick:

This refers to the 2001 redistricting plans for the board of commissioners and board of education in Harnett County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your initial response to our May 14, 2002, follow-up request for additional information on May 24, 2002; supplemental information was received through July 16, 2002.

We have carefully considered the information you have provided, as well as information in our files, Census data, and information and comments from other interested persons. In light of the considerations discussed below, I cannot conclude that your burden under Section 5 of the Voting Rights Act has been sustained in this instance. Therefore, on behalf of the Attorney General, I am compelled to object to the county's 2001 redistricting plan.

According to the 2000 Census, black persons represent 22.6 percent of the county's total population and 20.7 percent of its voting age population. The county's current method of electing the five members of both the board of commissioners and board of education from five single-member districts resulted from a 1989 consent decree entered in Porter v. Stewart, No. 89-950 (E.D.N.C.), which alleged that the county's then-existing at-large methods of election violated Section 2 of the Voting Rights Act. Under the plans used by the county since 1989, black persons constituted a majority of both the total and the voting age population in one of the five districts, District 1. According to your submission, under 2000 Census data, District 1 in the 1992 plan is 52.7 percent black in total population and 50.8 percent black in voting age population and is underpopulated by 20.4 percent. This plan serves as the benchmark for our

Harnett, NC, July 23, 2002

analysis.

In contrast to the benchmark plan, the proposed 2001 redistricting plan contains no district in which black persons are a majority, in either total or voting age population. According to the information you provided, the black population percentage of the total population in proposed District 1 drops six percentage points to 46.6 percent, and the voting age population by seven points to 43.9 percent. For the reasons set forth below, we believe that, within the context of electoral behavior in the county and the availability of alternative redistricting plans, the county has not established that this reduction will not result in a retrogression in the ability of minority voters to exercise their electoral franchise.

The election returns provided by the county suggest that since 1990 the candidates elected in District 1 to both boards have received strong cohesive support from black voters as well as support from white voters. The county has held elections in 1990, 1994, and 1998 in District 1; each of these elections resulted in black candidates being elected to both boards from District 1. Our review also shows that some interracial elections were closely contested. For example, in 1990 and 1994, two of the three years in which the District 1 seat for the board of commissioners was up for election, a black candidate won the Democratic primary election with 54 to 55 percent of the vote, at a time when District 1 was roughly 54 percent black in voting age population. As a result, the proposed seven point reduction in the black voting age percentage in District 1 casts significant doubt as to whether, in similar, closely-contested elections over the next decade, black voters would retain the same electoral ability that they do in the benchmark plan, particularly if the current incumbents in District 1 decline to run again for office.

Moreover, during the redistricting process neither board considered any redistricting plan in which black persons would remain a majority of either the total or voting age populations in District 1. We understand that counsel for the Porter plaintiffs, however, subsequently provided county officials with two alternative plans. In the second of these plans, blacks persons remain a majority of both the total and voting age populations, while also complying with one-person, one-vote requirements and other constitutional restrictions. That plan also maintains all present incumbents in their districts, is not dramatically different from the existing plan, and appears to be less unusual in overall design than the proposed plan.

In short, the retrogression in proposed District 1 was not unavoidable. Our review of the county's benchmark and proposed plans, as well as the alternative plans provided by the Porter plaintiffs, suggests that the significant reduction in black voting age population percentage in District 1 in the proposed plan and the likely resulting retrogressive effect on the ability of black voters to elect candidates of choice, was neither inevitable nor was it required by any constitutional or legal imperative. In saying this we recognize that, in revising the benchmark plan to bring it into compliance with the one-person, one-vote requirement, the county took steps to mitigate the reduction in black percentage in District 1, such as including the Campbell University area in the district, and leaving the district relatively underpopulated as redrawn.

We believe that alternative redistricting approaches available to the county would not result in any

Harnett, NC, July 23, 2002

retrogression in black voting strength, or occasion a significant conflict with the county's redistricting goals as they have been presented to us in your submission, or as they are reflected in the county's existing redistricting plan. Further, should the county believe that such an altered plan conflicts with the county's redistricting goals, we note that "compliance with Section 5 of the Voting Rights Act may require the jurisdiction to depart from strict adherence to certain of its redistricting criteria." Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 66 Fed. Reg. 5412 (Jan. 18, 2001).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I am compelled to object to the 2001 redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Harnett County plans to take concerning this matter. If you have any questions, you should call Chris Herren (202-514-1416), an attorney in the Voting Section.

Sincerely,

J. Michael Wiggins
Acting Assistant Attorney General



U.S. Department of Justice

Civil Rights Division

*Attorney General of the United States**Washington, D.C. 20535*

February 3, 1997

Susan K. Nichols, Esq.
Special Deputy Attorney General
P.O. Box 629
Raleigh, North Carolina 27602-0629

Dear Ms. Nichols:

This refers to Chapter 667 (1996), which creates the Butner Advisory Council for the Camp Butner Reservation, consisting of seven members, elected at large to four-year, staggered terms in nonpartisan elections, and designates the implementation schedule, the candidate filing period, the general election date, and the method of selecting the chair of the council for the reservation located partly in Granville County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our September 30, 1996, request for additional information on December 3, 1996; supplemental information was received on January 16, 1997.

We have carefully considered the information that you have provided, as well as Census data and information from other interested persons. As a result, the Attorney General does not interpose any objection to the creation of the Camp Butner Reservation, the establishment of the elected Advisory Council, the number of officials, the term of office, the adoption of nonpartisan elections, the candidate filing period, the general election date, and the method of selecting the chair of the council. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

We cannot reach the same conclusion, however, regarding the proposed at-large method of election and the use of staggered terms in that context. According to 1990 Census data and the submitted map of the area, the population of the Camp Butner Reservation (hereinafter "the reservation") includes approximately 6,472 persons, of whom 2,471 (38.2 percent) are black. As of November 1996, the reservation has 2,063 registered voters, of whom 700 (33.9 percent) are black. Most of the reservation's population is located in Granville County, North Carolina. The reservation's councilmembers will be elected at large to staggered (4-3) terms.

As of 1987 no black candidate had ever been elected to the at-large elected Granville County Commission or School Board, despite the fact that the black percentage of the county's total population had grown to 43 percent and multiple black candidates had run for office. Private plaintiffs sued the county commission alleging vote dilution, McGhee v. Granville County, Civil Action No. 87-29-CIV-5 (E.D.N.C.), and three months later, the United States Department of Justice sued the county school board, United States v. Granville County Board of Education, No. 87-153-CIV-5 (E.D.N.C.). Both lawsuits were filed on the premise that the at-large method of election for the respective governing bodies did not provide black voters with an equal opportunity to elect candidates of choice. In response to each lawsuit, the county entered into consent agreements, with private plaintiffs as to the county commission and with the Department as to the school board, which included stipulations that the at-large method of election violated Section 2 of the Voting Rights Act; ultimately, single-member districts were implemented to cure the violations.

Implicit in these stipulations that the at-large method of election violates Section 2 was an admission that voting in the county was racially polarized. Our analysis of at-large elections for county offices since this time indicates that the pattern of racially polarized voting has not changed. While black-supported candidates have had some limited success in at-large and double-member district elections for state offices, they continue to be plagued by defeat in more local elections conducted on a countywide basis.

Despite this well-documented pattern of racially polarized voting for at-large elected county offices, an election system was selected for the reservation's Advisory Council that has impeded the ability of black voters to elect their candidates of choice. Alternative election systems, such as single-member

districts, that would allow black voters an equal opportunity to participate in the electoral process and to elect candidates of their choice do not appear to have been given serious consideration in the decision-making process. Our analysis revealed that it is relatively simple, for example, to create a seven single-member district plan with two naturally occurring, compact districts that have black voting age population majorities.

The election of a single black candidate in an unprecleared election for the Advisory Council conducted in November 1996 in which all seven council positions were elected and the number of candidates was double the number of positions to be filled does not compel a different conclusion regarding the impact of an at-large election system on the opportunity of minority voters to elect their candidates of choice. Nor is this election sufficient to counter the well established pattern of racially polarized voting observed in county elections conducted on a countywide basis or to allow us to conclude that an at-large election system with staggered terms (4-3) will enable black voters to elect candidates of choice in future Advisory Council elections.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, an objection must be interposed where there is a clear violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973; see also 28 C.F.R. 51.55(b)(2). In light of the considerations discussed above, I cannot conclude as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the at-large method of election and staggered terms for the Camp Butner Reservation.

We note under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the at-large method of election and staggered terms have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the at-large method of election and staggered terms continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

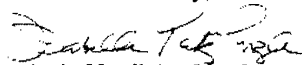
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- 4 -

The Attorney General will make no determination with regard to the implementation schedule as it is directly related to the objected-to staggered terms. See 28 C.F.R. 51.22(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the action the State of North Carolina plans to take concerning this matter. If you have any questions, you should call Ms. Colleen Kane-Dabu (213-894-2931), an attorney in the Voting Section.

Sincerely,



Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

DRAFT REPORT OF THE UNC CENTER FOR CIVIL RIGHTS
March, 2005

I. INTRODUCTION

Purpose of Election Protection Program

North Carolina has a history of voter disenfranchisement, both intentional and inadvertent. Voters being turned away or given false information results in the loss of votes. Vote loss can occur for a range of reasons, from unsuccessful attempts to register, to long lines that deter potential voters, to police intimidation. None of these problems should occur, but all of them can be remedied. In no situation should a person who believes they are registered be unable to cast a vote or deterred from doing so. This project was designed to protect voters' rights.

Election Protection ensured voter success by recruiting and training volunteers and placing them either at precincts or on a statewide hotline. Precinct volunteers monitored polls, answering voter questions, recorded observations, and notified cooperating attorneys as necessary. Hotline volunteers answered voter calls and contacted local organizers to send help as needed.

Our volunteers worked to protect every vote, regardless of the political orientation of voters. Election Protection participants answered questions, educated poll workers, took complaints, collected data, and investigated all manner of problems. Volunteer attorneys stood ready to fight for the vote, from extended polling hours to exploring legal action for disenfranchised voters. The success of this project was due to every participant's dedication to democracy.

Need for Nonpartisan Effort

The nonpartisan nature of this project was very important. At no time was a participant allowed to express support, verbally or otherwise, for any candidate or party. Even if a voter asked for an opinion, none was given. All participants wore t-shirts designating them as nonpartisan Election Protection volunteers.

Nonpartisanship is necessary "to guarantee the integrity of the voting process".¹ Partisan efforts fail to comprehensively protect voter's rights for two reasons. First, a partisan volunteer may be interested only in the concerns of those who are voting for their candidate. Incomplete or incorrect information may be given to those who say they are voting for the opposing party. Second, voters are less likely to ask for or rely on information from those who are advocating for a particular candidate, whether it is the voter's candidate or not. A nonpartisan volunteer's purpose is only to answer questions and give assistance if the process goes awry.

Partners

Many groups came together to make this project a reality, including: The University of North Carolina Center for Civil Rights, The Institute for Southern Studies, Just Democracy, El Pueblo, North Carolina Fair Share, the NAACP of Charlotte-Mecklenburg and Wendell-Wake

¹ Robert Richie, Executive Director of FairVote – The Center for Voting and Democracy, November 29, 2004 email to voting related organizations including the UNC Center for Civil Rights.

Counties, Election Protection, Working Assets, numerous community-level voter education groups, and several law schools across the state. Please see Appendix A for more details about our Election Protection partners.

Past Voting problems in North Carolina

In 2000 and 2002: Many states have experienced election difficulty, and North Carolina is no exception. In 2002, North Carolina did not count 3.3% of its votes, while on average states left 2.0% uncounted.² Polling officials have refused to provide provisional ballots and have even destroyed completed provisional ballots so they could not be counted.³ Polling places have been changed without notice;⁴ ex-felons have been given incorrect information regarding their ability to vote;⁵ and registration rolls have been purged of those not voting since 1998 (including 60,000 African Americans).⁵ Despite these regular instances of voter disenfranchisement, there is no formal complaint system in place.⁷ Irregularities often go undocumented, meaning that the State Board of Elections has no opportunity to investigate and correct recurring problems.

After the 2000 election, the Boards of Elections in two North Carolina counties, Harnett and Duplin, were fired after a State Board of Elections investigation found serious voting procedure discrepancies.^{8,9} Similar misconduct led to the dismissal of the Robeson County Elections Director – as well as two Robeson County elections being repeated – in 2002.¹⁰

North Carolina has often used machinery that is known to have a history of past malfunctions, but has not provided resources to improve voting equipment.¹¹ This is not to suggest that electronic voting machines are the better choice. Caution must be exercised so that a voting method always involves paper votes that can be counted by hand if a machine fails.¹²

² Kris Cromme, "The State of Voting," *Southern Exposure*, 53 (Winter 2002-2003).

³ Memorandum from Voter Task Force, Mecklenberg Voter Coalition. "Recommendations to correct irregularities and confusion in the voting process in the November 2000 General Election." March 28, 2001.

⁴ Memorandum from Voter Task Force, Mecklenberg Voter Coalition. "Recommendations to correct irregularities and confusion in the voting process in the November 2000 General Election." March 28, 2001.

⁵ Institute for Southern Studies. "Protecting the Integrity of North Carolina Elections: Top Ten Breakdowns and the Need for Election Protection."

⁶ Anita Earls and Sarah Zambon, *Proposal for North Carolina Election Protection Campaign* (July 15, 2004).

⁷ Institute for Southern Studies, Voting Rights Project. "Protecting the Integrity of North Carolina Elections: Top 10 Breakdowns and the Need for Election Protection."

⁸ Institute for Southern Studies, "Ballot Box Justice: How Selective Enforcement of NC's Voting Laws Threatens the Integrity of State Elections," (March 2002).

⁹ Democracy South, "Voting Rights in the South," <<http://www.democracysouth.org/improving/rights-disenfranchisement.html>> (web page last modified November 2003).

¹⁰ <http://www.pfaw.org/pfaw/general/default.aspx?oid=6456>

¹¹ Institute for Southern Studies, Voting Rights Project. "Protecting the Integrity of North Carolina Elections: Top 10 Breakdowns and the Need for Election Protection."

¹² For a summary of the issues see Ellen Theisen at VotersUnite!, *Myth Breakers: Facts About Electronic Elections, Essential Information for Those Entrusted with Making Decisions about Election Systems in the United States*, <<http://www.votersunite.org/MB2.pdf>> (2d Ed version 1.2, 2005). See also Electronic Frontier Foundation, *EFF E-voting*, <<http://www.eff.org/Activism/E-voting/>> (page not dated).

One-stop, no questions absentee voting

While one-stop voting was overall a resounding success, some voters discovered after the election that their properly voted one-stop provisional ballots were not considered valid. In other words, they voted correctly but their votes were taken away after the fact. The basis for one-stop voting is that a voter from any precinct in a given county could vote prior to the election at the one-stop precinct in their county, even if that was not their home precinct. However, if a one-stop voter's name did not appear on the rolls but the voter knew she was entitled to vote in that county, she was entitled to vote a provisional ballot. After the elections, these one-stop provisional ballots were unaccountably stored with provisional ballots from Election Day. After the election, when the North Carolina Supreme Court ruled that out of precinct provisional ballots were not valid, these one-stop provisional voters' ballots were discarded while the votes of out of precinct one-stop voters using a traditional ballot were counted. The courts have not resolved this obvious inequity at the time of this writing.

In October of 2004, the Alamance County Sheriff announced he was going to investigate Hispanics who had registered to vote in "suspiciously" high numbers.¹³ He believed that illegal immigrants were using false documents to obtain voter registration. North Carolina election officials said they found little evidence to support this theory.¹⁴ Nonetheless, the Sheriff submitted lists of Hispanic *sounding* names from voter rolls to the U.S. Department of Homeland Security¹⁵ and said he would send his deputies door-to-door to arrest illegal aliens.¹⁶ Days later he changed these plans, citing lack of time and manpower.¹⁷

Paperwork Issues

Voters complained to Election Protection that they had not received their absentee ballots on time, and some were concerned because their party affiliations were listed in plain site on the outer envelope.¹⁸ Other voters registered properly, yet their names did not appear on the rolls when they went to vote.¹⁹

¹³ Associated Press, "N.C. Sheriff to Pursue Illegal Immigrants Who Register to Vote," <http://abclocal.go.com/wtvd/news/100704_APstate_illegalimmigrants.html> (October 7, 2004).

¹⁴ Scott Dodd and Ted Mellnik, "Voters found on both N.C., S.C. rolls," The Charlotte Observer <<http://www.charlotte.com/mld/charlotte/news/politics/10001227.htm?1c>> (October 24, 2004).

¹⁵ Jon Elliston, "El Pueblo votes!," <<http://www.elpueblo.org/whatsnew/indyweekawards.html>>, (November 24, 2004).

¹⁶ U.S. Border Control, "North Carolina sheriff calls off search for illegal voters," <<http://www.usbc.org/info/2004/oct/ncsheriff.htm>> (October 12, 2004).

¹⁷ *Id.*

¹⁸ Election Protection, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections", 57 (December 2004).

¹⁹ *Id.* at 58.

Background on Election Law²⁰

Federal Law: There are several sources of federal law governing voting rights in the United States:

Voting Rights Act of 1965: Intended to bolster the power of the 15th Amendment to the Constitution, the Voting Rights Act of 1965 (V.R.A.) provides federal enforcement for African Americans' voting rights. Legislators amended the V.R.A. in 1970, 1975, and 1982. Re-authorization takes place in 2007. An example of the V.R.A.'s impact on North Carolina is that federal observers have monitored elections in Edgecombe County, North Carolina, since 1984.

National Voter Registration Act of 1993 (N.V.R.A.): Often known as the "motor voter" act, the goal of the N.V.R.A. was to improve voter turnout and eliminate lingering discrimination that lowered minority voter registration rates. The N.V.R.A. allows people to register to vote (1) while filing driver's license application or renewals, (2) while applying for public assistance, or (3) by mail. The N.V.R.A. limits the removal of voters from registration rolls.²¹

Help America Vote Act of 2002 (H.A.V.A.): Created in response to problems in the 2000 election, H.A.V.A. provides states with federal funding to provide provisional ballots, amend voter registration law, train poll workers, and improve voting equipment.²² Most H.A.V.A. provisions, such as handicap access and provisional voting availability, were in place for the 2004 election.²³ The deadline for full implementation of H.A.V.A. is January 2006.

North Carolina Law: North Carolina has several statutes explaining the voting rights of North Carolina voters:

General voting procedures and registration: Most of the voting and election laws, with the exception of the disenfranchisement provision, are covered under Chapter 163 of the North Carolina General Statutes.

Right to a Provisional Ballot: Provisional ballots in North Carolina are given by law with an affidavit by the voter. The ballot is not counted until proper registration is verified.²⁴

Assistance to voters: Those who are physically disabled, blind, or illiterate can bring someone of their choosing into the voting booth with them to assist them in voting.²⁵

²⁰ This section has been reformatted but otherwise taken directly from the Anita Earls and Sarah Zambon, *Proposal for North Carolina Election Protection Campaign*, (July 15, 2004).

²¹ "About the National Voter Registration Act" U.S. Department of Justice, Civil Rights Division, Voting Section.

²² "History and Legislation". Just Democracy. www.justdemocracy.org

²³ *Id.*

²⁴ Chris Kromm. "The State of Voting." *Southern Exposure*. Winter 2002/2003, pg 53. (Based on N.C. Gen. Stat. §163-166.11(2004).

²⁵ N.C. Gen. Stat. § 163-166.8(2) (2004).

Disabled or elderly people who are unable to get out of their cars are allowed to vote curbside.²⁶

Voter education: Polling places must display a sample ballot and provide voters information about how to obtain a provisional ballot, how to use voting equipment, and what identification first-time voters need to provide.²⁷

Translation issues: Every county or municipality whose population is 6% or more Hispanic must print voting instructions in Spanish and English.²⁸

Ex-felon rights: Once a felon has completed their sentence, including parole and/or probation, voting rights are automatically restored. He or she can then re-register and vote.²⁹

ELECTION PROTECTION-NC METHODOLOGY

Volunteer assignment selection

Counties and precincts were selected based on the frequency and severity of past problems, minority proportion of the population, proportion of new voters, and suggestions from collaborating voter's rights groups. The number of counties and precincts staffed was limited only by the number of volunteers available.

Volunteers

Recruitment: Election Protection volunteers were trained to intervene in many types of anticipated problems. Although many county poll workers were experienced, most were poorly trained on changes in election laws.³⁰ For example, the Help America Vote Act (HAVA) went into effect in 2002 and requires first-time voters to show identification before they can receive a ballot.³¹ Many voters were not aware of this requirement, or were not aware of which forms of identification would be sufficient. Many poll workers were requiring identification from voters not required to present identification under the new law.

Volunteers were also trained to respond to issues such as poll worker refusal to provide provisional ballots,³² voters not knowing where to vote (especially after the 2000 Census resulted in re-districting),³³ and polling places opening late or closing early.

²⁶ N.C. Gen. Stat. § 163-166.9 (2004).

²⁷ N.C. Gen. Stat. § 163-166.7A (2004).

²⁸ N.C. Gen. Stat. § 163-165.5a (2004).

²⁹ North Carolina General Statute 13-1 (2004).

³⁰ Institute for Southern Studies, Voting Rights Project. "Protecting the Integrity of North Carolina Elections: Top 10 Breakdowns and the Need for Election Protection."

³¹ "N.C. Senate panel passes changes to election laws." Associate Press State & Local Wire. June 10, 2003.

³² Memorandum from Voter Task Force, Mecklenberg Voter Coalition. "Recommendations to correct irregularities and confusion in the voting process in the November 2000 General Election." March 28, 2001.

³³ Institute for Southern Studies, Voting Rights Project. "Protecting the Integrity of North Carolina Elections: Top 10 Breakdowns and the Need for Election Protection."

Volunteers included non-legal community volunteers, law students, and attorneys. Volunteers chose whether to work the hotline phone bank or monitor a polling site. Election Protection assigned poll monitor volunteers to pre-selected polling places based on how far the volunteers were willing to travel. Once volunteers chose what they wanted to do, they attended a training meeting. Three types of training were offered: one for the hotline volunteers, one for poll monitors, and one for volunteering attorneys. Training was primarily in person and consisted of a lecture accompanied by instructional handouts and a question-and-answer session.³⁴

Poll Monitors: The purpose of poll monitors was to answer voter questions, observe the polling places for abnormalities (long lines, voter coercion or intimidation, voter complaints, etc.), and alert attorneys if something went go wrong that could be corrected (poll closing early, voter denied provisional ballot, ballots being fed into a counting machine that was not working, etc.). Poll monitors wore Election Protection t-shirts to identify them and to indicate their non-partisan status.³⁵

Hotline Volunteers: The purpose of hotline volunteers was to answer questions for voters, record the reason for each call, and relay problems to local Election Protection poll monitor volunteers or attorneys when appropriate.

Legal Volunteers: The purpose of legal volunteers was to address any issues that might require legal action. The most common problem of this magnitude was polling places that opened late or closed early.³⁶

Dissemination of Information

Media Outreach

Election Protection released public service announcements, bought newspaper ads, and held a press conference in order to make the Election Protection mission known and publicize the voter hotline.³⁷

Data Collection

One of the primary goals of the 2004 North Carolina Election Protection team was to collect data on common election problems in this state. By analyzing this data, we hope to better understand the challenges facing future North Carolina elections. We hope to use the data to convey voters' concerns to the public and to politicians. We also intend to use this data to build an even better, more targeted Election Protection force for the next election.

³⁴ See Appendix for training documents.

³⁵ Law student volunteers wore Just Democracy t-shirts instead, but for the same reasons.

³⁶ See Appendix for 1996 North Carolina case *Democratic Party of Guilford County v. Guilford County Board of Elections*, 342 N.C. 856, 467 S.E.2d 681, where an injunction was issued to keep the polling places in Guilford County open for an additional hour.

³⁷ See Appendix for copies.

Poll Monitor Data Collection:

Poll monitor volunteers carried three forms to their posts: an observation sheet, a complaint form, and a declaration form.³⁸ Volunteers used to observation sheet to record the general state of the polling place during their shift. Facts such as line length, availability of assistance for disabled voters, and the presence of partisan groups were recorded.

The complaint form was for voters to record specific incidents. Volunteers watched for disgruntled voters exiting the polls and offered these forms. If the complaints were significant and the volunteer thought legal recourse might be available, the voter was asked to complete a declaration form. The declaration form was a sworn statement by the voter detailing any misconduct that might be worthy of legal action.

Hotline: Hotline volunteers completed a complaint form³⁹ for every call received. Information collected on this form included the voter's polling location, time of complaint, nature of complaint, and contact information.

Opportunities for Improvement: This project was an overall success but could be improved in several ways. First, the project was put together over a matter of months. This limited the feasible scope of the project for the 2004 election. Ideally we would have had more training sessions and volunteer recruitment programs. The project objectives were also limited. Rather than attempt a "get-out-the-vote" project, we made the strategic decision to focus on Election Day and leave voter registration programs to other organizations.

We also limited the scope geographically. With the number of available volunteers we could not monitor the entire state, so we focused on a subset of counties and polling places known for recurring problems.⁴⁰ Likewise, limited volunteers meant that the voter hotline was staffed by a single phone bank. This was not a major problem because calls were automatically sent to the national Election Protection hotline if all local lines were already in use. Therefore no voter was denied access to hotline support due to our limited manpower.

Finally, our data collection methods were limited. The primary reasons for this were: (1) the desire not to overwhelm volunteers with paperwork, and (2) a lack of experience with our forms. The information we received from the 2004 election will help us redesign forms to better accommodate the data they are designed to collect.

RESULTS OF 2004 NORTH CAROLINA ELECTION

Types of Challenges Discovered

Between the hotline's 669 recorded incidents and the 149 reports to poll monitors in the field, Election Protection NC collected a total of 818 reports. Some incident reports described more than one problem and these are reflected in the analysis. There were 690 problems

³⁸ See Appendix for copies.

³⁹ See Appendix for copy.

⁴⁰ See the "Location Assignment Selection" above for more information on our selection methods.

reported to the hotline and 139 problems reported to poll monitors. Therefore, the total of all problems for the purpose of the analysis by type is 829.

Table 1: Incidents Reported by Type*

Type of problem	Hotline reports	Poll monitoring reports	% of total reports (n=829)
Registration	84	53	16.52%
Polling place problem	102	0	12.3%
Polling place inquiry	84	15	11.94%
Provisional Ballot	56	16	8.69%
Absentee issues	52	4	6.76%
Voter Intimidation	45	11	6.76%
Machine Problems	44	8	6.27%
Ballot problems	42	1	5.19%
Disability Access	26	9	4.22%
Long Lines	22	10	3.86%
Other	94	5	11.94%

*Percentages do not add up to 100% because other minor categories were omitted

The problems that arose from the 2004 Election were greatly varied, but certain patterns prevailed. Registration problems were the most prevalent at 16.5% of the total reports, and the overwhelming problem was people not being recorded on rolls in precincts where they properly registered. Other registration problems included people who moved and did not re-register, and people not knowing they had to register. Polling place problems ranged from unpleasant interactions with poll workers to people who could not find their precincts because of poor signage.

We had many hotline calls from voters who could not find their precincts. This already high percentage is a gross underestimate because time constraints kept volunteers from recording all precinct-finding calls. This type of problem is an example of where the hotline efforts were the strongest. Volunteers were able to assist voters in finding their precinct through the Internet. The hotline would have been even more efficient if not for delays created by speed of internet connections, as well as websites crashing due to overuse. The system did not anticipate the quantity of hits the sites would receive on Election Day. This problem must be rectified for the next election.

Significant problems arose with provisional ballots. Some of these problems were foreseeable since this is the first election where provisional ballots have been used. Voters did not know what circumstances warranted a provisional ballot. Many were denied a provisional ballot by poll workers, or were concerned about whether their provisional ballots would count.

Voter intimidation and disability access problems are the most disturbing trends noted in North Carolina. Both of these are clearly illegal but were reported by voters across the state. Disability access issues arose regarding curbside voting, assistance to handicapped voters by poll workers, and the ability of family members to assist disabled voters. Voters felt intimidated when partisan observers within the polling precincts assisted voters with ballots or when the 50-foot “no campaigning” barrier around the voting precinct was not respected. Voter intimidation problems arose mainly from encounters with representatives of political parties.

Problems by County

Out of the 818 reports to Election Protection, the majority came from the larger metropolitans, namely Mecklenburg and Wake Counties. These urban areas were the primary focus of Election Protection volunteer and advertising resources. However, problems were reported across the state and significant numbers of incidents were recorded in Guilford and Cumberland Counties.

Table 2: Incidents Reported by County*

County	No. of Hotline Reports	No. of Poll Monitor Reports	Percent of Total Reports (818)
Mecklenburg	146	51	24%
Wake	129	5	16%
Durham	60	47	13%
Forsyth	57	10	8%
Guilford	41	0	5%
Cumberland	25	0	3%

*Percentages do not equal 100% because counties with an insignificant amount of incidents have been omitted

Due to the diligence of State and local election officials, some problems were less prevalent than anticipated.

- **Identification requirement:** This election was the first where first time voters were required under federal HAVA regulations to present identification before voting. While we thought there would be complaints or questions about the identification requirement, none arose.
- **Translation concerns:** Translation issues for the Spanish-speaking community had the potential to disenfranchise voters, but there were few complaints made to Election Protection regarding this issue. The State Board of Elections prevented much of this problem by printing general election materials in English and Spanish for all counties, not just those that were required by law.⁴¹ Also, other Spanish-speaking groups had hotlines available, and those groups may have

⁴¹ Any North Carolina county or town with a Hispanic population of six percent or more is required to have ballot instructions in both English and Spanish.

received the majority of complaints in this area. One remaining concern is that current election law does not specify that Spanish-speaking individuals may bring someone to assist them in voting. Laws allowing disabled and illiterate individuals to have assistances should include those with translation difficulties.⁴²

Overall, voters across the state faced similar obstacles to voting. These problems can be broken down into several broad areas: voter eligibility, voter education and information, election administration, and election malfeasance.

Voter Education and Information

The vast majority of calls made to the hotline were from voters who wanted to know their polling location. Further complaints came from voters who were sent to several different precincts before finding the correct one. The complaints and calls received by Election Protection reflect only a fraction of voters who were confused as to where to vote, doubtlessly discouraging many from voting. Many of these problems may have arisen from redistricting efforts that have changed many precincts since the last major election. Greater efforts need to be taken to educate voters on their correct precinct. There were other complaints of poor signage in several precincts in Durham.

Voter Eligibility

Concerns regarding registration status, inactive voter status, and provisional ballots were the most significant problem in this election and must be addressed for all future elections. These problems represent systemic obstacles to voting. Voters complaining of these complications knew their rights, were prepared to vote and wanted to vote but were prevented because of cracks in the voting system.

- Felon disenfranchisement- Despite automatic restoration of rights in North Carolina for ex-felons, information about this is poor so that many ex-felons, election officials, and those working with ex-felons do not understand the current law. Few ex-felons are informed that they can still vote and fewer still are told that in order to vote they must re-register.
- Provisional ballots- When voters went to the wrong voting precincts, they were inconsistently offered provisional ballots. Voters were concerned about the difference between regular and provisional ballots and whether their votes would count. Confidentiality questions arose because while the provisional ballot itself was anonymous, voters had to write their name, address and sometimes their political affiliation on the envelope the ballot was put in.

Election Administration

- Early voting- While Election Protection did not monitor early voting procedures within the state, we received several complaints from voters about long lines, electioneering outside early voting locations, and poor access for disabled voters. These problems increased greatly as the early vote period neared an end. These problems, especially the long lines to vote, were unforeseeable since the system had never been tried before. Few could

⁴² N.C.G.S. X

anticipate the encouragement of political parties to vote early, or how popular early voting would be with citizens.

- Machine Difficulties- Relatively few machine problems were brought to the attention of Election Protection volunteers on Election Day. Some complaints were made about optical scan machines correctly reading ballots. The most alarming problem was procedures for when machines broke. Concerns arose over votes being lost, election officials "fixing" the machines, and votes being placed in ballot boxes while the machines were broken. Another serious concern with voting technology is that because of the media attention surrounding the machines, voters feel insecure, adding to the public anxiety and leading to further complications.
- Long Lines and Delays- These problems occurred largely in the early morning, lunch hour, and after work. Many people could not wait in the long lines because they had to return to work.
- Incomplete ballots- There was at least one complaint in Charlotte that the paper ballots being distributed were incomplete.
- Voter assistance- In Charlotte, one voter was told that election officials could not assist him in voting. In Robeson County, elections officials "helped" voters by telling them who to vote for in each race.
- Precinct locations- poor signage and confusion prevented many voters from going to their home precinct. While some voters contacted Election Protection volunteers, surely numerous frustrated voters left without voting.
- Election Personnel- Voters complained that precincts were disorganized, and that elections officials were rude, unhelpful, and did not know election law. Further voter concerns were expressed about the accessibility of county boards of election on Election Day. When voters tried to contact county boards, they were met by busy signals. Without guidance from the local boards of elections, voters were sent to another wrong precinct; sometimes citizens had to try four or five precincts before being allowed to vote.

Election Malfeasance and Political Parties

While these problems were rare, hypersensitivity about this election and election practices lead many voters to be very alert to any suspicious behavior. We received complaints regarding political parties pressuring voters and not obeying the 50ft "no campaigning" line around precincts. We received further complaints about political parties marking and distributing ballots. Further problems were noted within the polling precincts where voters wearing political clothing were required to cover it up. Other voters were concerned with the presence of partisan election observers who in several instances would also assist voters. Some complaints were received about election officials being rude or harassing voters. There were also complaints of votes being collected in receptacles other than the counting machines. There

were complaints that not all elected offices had political affiliation listed on the ballots. This may be explained by the fact that certain positions, such as judgeships, are not politically affiliated.

Area Specific Problems

Voters in specific counties or cities had individualized concerns that were not seen in other parts of the state:

- Alamance- Machine problems resulted in over 4,000 votes being lost and a re-election was required in the agricultural commissioner race.⁴³ Before the Election, the County Sheriff intimidated Latino voters by reporting Latino registered voters to the Department of Homeland Security Immigration and Customs Enforcement.⁴⁴
- Carteret- 4,500 votes were lost because of a machine problem requiring a new election in the agricultural commissioner seat.
- Craven- All the screens in electronic machines had to be replaced and a software problem caused a double count in nine precincts.
- Charlotte/ Mecklenburg- Substantial numbers of voters became concerned about signs at the voting precincts that voters would only have five minutes to vote. In some instances, voters were timed upon entering the voting booth. These illegal practices were reported to the State Board of Elections, who contacted the county board to rectify the problem. However, many of the signs remained up the entire day even after efforts to have them removed. During early vote, double counting affected approximately 4,000 ballots.
- Durham- Long lines of over 100 voters delayed or deterred many from voting.
- Forsyth- Complaints were received about precincts opening late or closing in the middle of the day. Winston Salem especially saw miscommunication between voters and election officials.
- Gaston County- Several complaints were received about early voting, where long lines - some requiring 6 hours' wait - plagued voters. In addition, over 13,000 votes were not included in official counts on Election Day. This count was later corrected.
- Guilford- Early voting had computer problems affecting between 6,000 and 20,000 votes.

Problems Emerging Post-Election

In the aftermath of the 2004 Election, a controversy arose regarding provisional ballots. Several losing candidates initiated a lawsuit claiming that out of precinct provisional ballots were unconstitutional and should therefore be subtracted from vote totals. An out of precinct provisional ballot is one that was voted within a voter's home county, but not at their home precinct. If these votes are discarded, over 11,000 North Carolina voters will be disenfranchised.

⁴³ newspaper articles

⁴⁴ El Pueblo press release, "El Pueblo Condemns Efforts to Tain the Electoral Process and Latino Communities" Oct. 7, 2004.

The problem gets worse: out of precinct provisional ballots were cast by a disproportionately high percentage of minorities, meaning that proportionally more African Americans will lose their votes than Caucasians. When a population that already faces so many hurdles to voting follows all the rules and is still disparately impacted, there is clear discrimination.

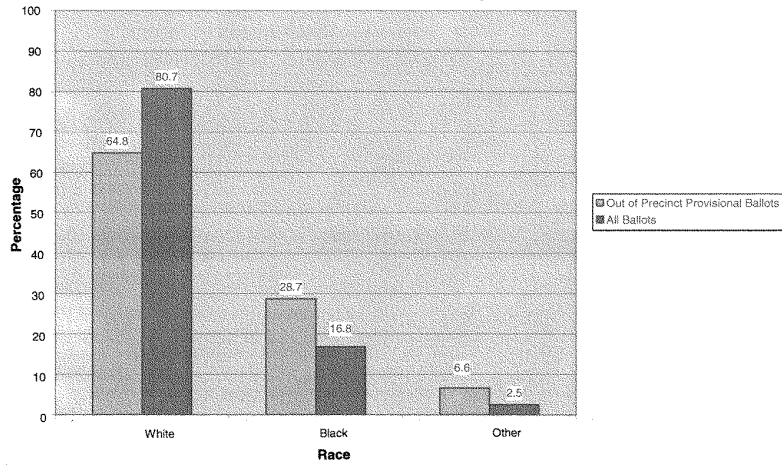
The Data

From 96 counties (excluding the urban areas of Forsyth, Guilford, Wake, and Mecklenburg), data is available for 90% of the 6,504 total out-of-precinct provisional ballots cast. Of these, 64.8% of votes were cast by white voters; 28.7% were cast by black voters, and 6.6% were cast by other races. These numbers vary greatly from the general election data. For all voters in the November 2004 election, 80.7% were white, 16.8% were black, and 2.5% were other races. Minorities cast a substantially larger proportion of provisional out of precinct votes.

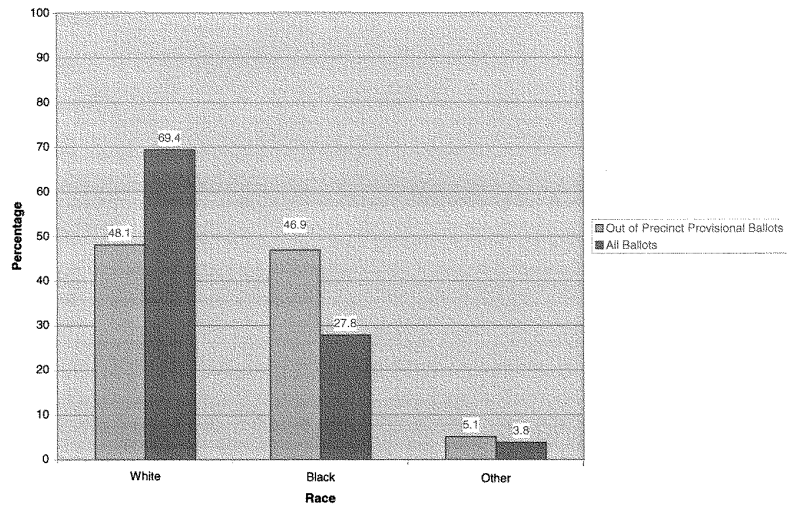
In Mecklenburg County, data is available for 100% of the 1,777 provisional votes cast out of precinct. Of these, 48.1% were white, 46.9% were black, and 5.1% were other. In the Mecklenburg County election as a whole, voters were 69.4% white, 27.8% black, and 3.8% other. Once again the provisional out of precinct votes contained much larger percentages of minority votes than the overall election results.

Wake County has data available on 90% of the 2,120 out of precinct provisional ballots cast. Of these, 53.9% of voters were white, 40.8% were black, and 5.3% were other races. Overall, Wake County voters were 78.2% white, 17.5% black, and 4.3% other races. This is the most graphic illustration of the larger proportion of out of precinct votes cast by minorities than by whites. The percentage of black out of precinct provisional votes is more than twice as high as the percentage of black votes cast in the entire county.

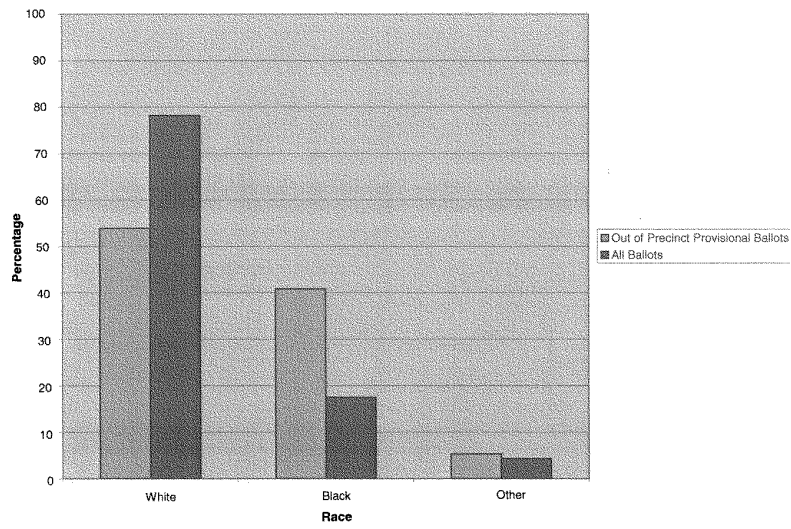
Racial Breakdown of Provisional Ballots Cast Out of Precinct
November 2, 2004
Excludes Forsyth, Guilford, Mecklenburg and Wake



Racial Breakdown of Provisional Ballots Cast Out of Precinct
November 2, 2004
Mecklenburg County



Racial Breakdown of Provisional Ballots Cast Out of Precinct
November 2, 2004
Wake County



POLICY RECOMMENDATIONS

Voter Outreach and Education

One of the more alarming results from the Election Protection effort is the number of citizens who do not vote because of they lack the proper information or are misinformed. What is disturbing is that these problems are preventable. What is good about this finding is that while other problems have more amorphous solutions, voter education is somewhat easier to provide. In addition, it presents an important opportunity for non-governmental organizations to ensure that greater numbers of people have the proper information to vote.

- Polling Precincts Should be Easy to Find- Greater efforts are necessary to ensure that all registered voters know when and where to vote. In every election there must be a hotline that can look up precincts for voters. Election boards must make a more concerted effort to inform voters well in advance of Election Day where they can vote. Further efforts should be made to pick precincts in locations that are easy to find and well known to communities. Where this is not possible, locations and directions to polling precincts should be available to voters online and in hard copy at county board of election locations.
- Make Disability Access a Priority- Voters with physical disabilities continue to have difficulty voting in North Carolina. Both the hotline and poll volunteers received complaints from voters regarding curbside voting facilities and voting machines. This is a clear violation of North Carolina and federal election law. . Election officials must make sure machines can easily be used by those with physical handicaps, and properly educate poll workers to understand the rights of disabled voters.
- Reflect Translation Needs in Election Law- As non-English speaking populations continue to grow in North Carolina, it is important that those who can legally vote are not disenfranchised because of language difficulties. Current election law permitting disabled and illiterate individuals to bring assistances should be expanded to include those with English proficiency concerns.
- Expand Early Voting- Early voting was very popular because of the importance placed on this election, and because the extended hours - including weekend hours - made it easier for people to vote. Early voting should be expanded to include more machines in each polling place and more locations in each county to decrease voter complaints about long lines and delays. Furthermore, the timetable should be moved up by approximately a week so that votes cast in early voting can be counted and voters whose ballots cannot be counted can remedy the problem and vote on Election Day if necessary.
- Ensure Voters Receive Absentee Ballots Prior to Election Day- The largest problem with absentee voting was people who did not receive their ballot before

Election Day. Further problems arose when they then went to cast regular ballots and were told they were ineligible due to their earlier request for an absentee ballot. Election officials must ensure that sure people get their absentee ballots in time to cast them.

- Correct Voting Machine Problems- Voting machines should be standardized across the state. In the 2004 election, North Carolina voters used any of five different voting procedures. By having the same machines across the state, it will be easier to train election officials to fix the machines and prevent problems before they happen. Election officials and state legislators must also be vigilant in addressing concerns about voting technology - regardless of the type of machine used. Without further education, public confidence in elections will be irrevocably shaken. Voters should have more opportunities to practice on the machines before Election Day. One possible solution is to place sample voting machines in public libraries or in county board of election offices for voters to use a month before the general election.
- Permit Same-Day Registration- Potential voters in North Carolina were prevented from voting in this election because they had either never registered or had moved since their last registration. Voters who registered became frustrated at the polls when their names were not on rolls and they were required to cast provisional ballots. Same-day registration would prevent many of these problems and increase the number of North Carolina residents who vote.
- Allow Nonpartisan Observers in Polling Precincts- According to current North Carolina law, the only people allowed inside precincts on Election Day are voters, poll workers and an observer from each party. These observers caused considerable concern this election when they tried to assist voters. While there is no evidence that these observers were directly influencing votes, voters felt intimidated by their presence. This problem needs to be rectified for future elections by allowing nonpartisan observers inside polling precincts who can assist voters and poll workers and who can monitor for any problems. More thought should be given to whether partisan observers should be permitted inside precincts.
- Encourage Employers to Give People Time Off to Vote- The busiest and most problem-laden times of Election Day are before work, during lunch, and after work. To ease the pressure on poll workers, to prevent voters from becoming frustrated by long lines, and to encourage potential voters to vote, people should not have to work on Election Day. If voting is something we value as a civic duty, we should allow people to take the day off.
- Increase pay and training to Election workers- Election officials work long hours, often with cranky voters, and receive very little compensation or training. These factors limit the number and type of people who can be poll workers. Pay scales

should be increased and training, especially on recent changes on election law, enhanced so that poll workers feel confident and informed on Election Day.

- Move from County-focused to Statewide model- Several problems in the North Carolina election, from registration problems, inconsistencies in the distribution of provisional ballots, and the variety of machines used, occur largely because of the disjointed nature of elections in North Carolina. If elections were run on a unified statewide system, several current obstacles in the election process could be remedied. Some interest in this has been shown through the statewide registration system.
- Universal ballot design
- Universal Voter Registration
- Nonpartisan Election Administration

VI. CONCLUSION

The 2004 Election Protection Campaign in North Carolina was a success. Volunteers assisted many voters in determining their correct precinct, worked with election officials to rectify major problems like the five-minute wait rule that was in effect in some jurisdictions, and soothed voter concerns regarding the voting process.

But not all the news is good. A national election expert called the election problems the worst in the nation⁴⁵. Over 4,000 votes were lost to a machine error in Carteret County. Approximately 11,000 provisional ballots were thrown out by the North Carolina courts. These are just some of the serious problems plaguing the electoral process in North Carolina. These and other problems need to be remedied before and further voters in future elections are disenfranchised.

⁴⁵ Electionline weekly newsletter.

APPENDIX A: PARTICIPATING ORGANIZATIONS

Center for Civil Rights: The UNC Center for Civil Rights is committed to the advancement of civil rights and social justice, especially in the American South. It fosters empirical and analytical research, sponsors student inquiry and activities and convenes faculty, visiting scholars, policy advocates, and practicing attorneys to confront legal and social issues of greatest concern to racial and ethnic minorities, to the poor and to other potential beneficiaries of civil rights advances. The Center's work focuses on education, economic justice, employment, health care, housing and community development and voting rights.⁴⁶

Institute for Southern Studies: Since its founding in 1970 by veterans of the civil rights movement, the Institute for Southern Studies has established a national reputation as an essential resource for grassroots activists, community leaders, scholars, policy makers and others working to bring lasting social and economic change to the region. The institute draws attention to the national importance of the South and offers an exciting vision of the region – a place brimming with a capacity for progressive change that challenges its reputation as a monolithic, conservative stronghold.⁴⁷

Just Democracy: Just Democracy is an independent, non-partisan, non-profit organization founded and led by law students, which directs the unique skills and energies of the nation's law students towards the protection of voting rights on Election Day 2004. JD's chapters bring the resources of law schools, students, and faculties to bear in their own communities to strengthen American democracy. Along the way, JD encourages civic and community engagement among its law student volunteers, and instills a sense of responsibility in the next generation of law school graduates for stewardship of the democratic process.⁴⁸ Just Democracy recruited law student volunteers from UNC-Chapel Hill Law School, Wake Forest University School of Law, and Campbell University Wiggins School of Law.

National Election Protection: Election Protection is a coalition of national, state, and local public interest groups. It combines the "expertise, experience, passion and moral leadership of the civil rights community", creating a "new infrastructure to sustain ongoing and future efforts to energize civic participation in America".⁴⁹

Working Assets: "Founded on the belief that building a business and a better world aren't mutually exclusive",⁵⁰ Working Assets offers long-distance, credit card, and wireless services and donates part of the proceeds to causes selected in part by customers.

NAACP of Charlotte-Mecklenburg and Wendell-Wake Counties: The NAACP insures the political, educational, social and economic equality of minority

⁴⁶ <http://www.law.unc.edu/Welcome.aspx?ID=128&PG=CPW>

⁴⁷ <http://www.southernstudies.org/history.asp>

⁴⁸ http://www.law.harvard.edu/news/2004/03/16_democracy.php

⁴⁹ *About Election Protection*, <www.electionprotection.org/about.htm>.

⁵⁰ *About Us*, <www.workingforchange.com/activism/aboutactivism.cfm> (2005).

groups and citizens; achieves equality of rights and eliminates race prejudice among the citizens of the United States; removes all barriers of racial discrimination through the democratic processes; seeks to enact and enforce federal, state, and local laws securing civil rights; informs the public of the adverse effects of racial discrimination and seeks its elimination; educates persons as to their constitutional rights and to take all lawful action in furtherance of these principles.⁵¹

El Pueblo: El Pueblo, Inc. is a North Carolina non-profit statewide advocacy and policy organization dedicated to strengthening the Latino community through leadership development, education, and promotion of cross-cultural understanding in partnerships at the local, state, and national levels.⁵²

North Carolina Fair Share: Established in 1987, North Carolina Fair Share is a statewide advocacy, education, and leadership development membership organization. It works with low-income and working poor North Carolinians on grassroots issues relating to economic justice.⁵³

Community voter education groups: In addition to the groups above, many grassroots voter education groups around the state also provided indispensable support through volunteers and other assistance.

⁵¹ <http://www.manilasites.com/naacpncgreensboro/about>

⁵² <http://www.elpueblo.org/>

⁵³ Lynice R. Williams, North Carolina Fair Share. Email: ncfslrw@aol.com

Equal Effects

The Voting Rights Act helps fulfill the promise of democracy. It's needed today more than ever. **By Anita Earls**

THE CORE OF THE 1965 VOTING RIGHTS ACT IS ITS GUARANTEE that the right of racial minorities to vote will not be abridged by any electoral mechanism or practice—no matter how well-intentioned those implementing the practice may be. The VRA's mandate is fairness, but fairness is in the eye of the beholder, and it is not surprising that the act has frequently been attacked. As the Stanford law professor Pam Karlan observed, the act is "a battleground on which whites, blacks, Latinos, Asians, Democrats, Republicans, federal and state courts, Congress, and the Department of Justice struggle for political power." To suggest that the statute has outlived its usefulness, however, is to misunderstand its purpose and function in our democracy.

The VRA has been the most successful means of incorporating racial and ethnic minorities into the political life of this country at the local, state, and federal levels. It is an accomplishment we should be proud of, not a band-aid we should hope to remove when we think the wound has healed. To be sure, elections and politics have changed since the act was amended in 1982. The black voters who remember having to take a literacy test in order to register to vote are now at least 50 years old; anyone with access to the Internet can download a voter registration application. To qualify to vote, no one has to interpret a section of the U.S. Constitution to the satisfaction of a local voter registrar.

When we think of controversy at the polls today, it's hanging chads, not poll taxes, that come to mind. The racial focus of the act has changed as well: Latinos have become the largest minority group in the country.

But all these changes notwithstanding, it is not time to leave behind Sections 2 and 5 of the VRA or dismiss them as relics of a bygone era. Hanging chads were, after all, just one of the controversies of the 2000 election; the problems went far beyond machine malfunctions and poor ballot design.

In Florida, the NAACP sued the state on behalf of thousands of black voters who were wrongfully removed from the voter registration rolls when that state decided to use various computerized databases to help determine which of its voters, statewide, were no longer qualified to vote because they had

been convicted of a felony. Florida election officials were acting in accordance with state law, but they went about it in such a sloppy way—matching names on felon lists with names on the voter rolls even if only part of a name was the same, and deciding they had a match even when the sex or race differed—that thousands of legitimate voters were disenfranchised. A disproportionate number of those wrongly removed from the voter rolls were black.

The VRA was the only basis for a lawsuit to redress the disproportionate impact of the state's felon purge. Similarly, when it became clear that even punch card machine problems occurred more frequently in black precincts and unduly invalidated the votes of blacks, the VRA was the clearest and most effective basis for redress.

Because of the law, legal liability did not depend on proof that someone intended the purge of felons from the voting list to affect black voters more severely than white voters or that someone knew that the problems with the punch card machines occurred more heavily in black precincts. All that mattered, and all that should have mattered, was that the practices had discriminatory results.

CHANGES IN ELECTION PRACTICES MAKE THE VRA IMPORTANT today in new ways. As the presidential campaign of Howard Dean is demonstrating, the Internet and its linking of virtual communities is changing how America takes part in politics.

In the past, African-American voters were disadvantaged because they disproportionately lacked access to cars that could get them to the polls and lacked telephones that let them call their friends and urge them to vote. Now they may be disadvantaged because of their relative lack of access to e-mail and instant messaging. The VRA is the only law that provides a means of addressing the interplay of election practices with racially disparate social factors that deny a minority group an equal opportunity to participate in elections.

Parts of the VRA are designed to be reevaluated in light of changes over time. There are valid concerns about what Congress should do in 2007 or before, when the preclearance provisions of Section 5, along with several other VRA measures, are

set to expire. The preclearance provisions require covered jurisdictions to submit any changes in election laws or practices to the Justice Department or to the federal district court in Washington, D.C., for review before they can be implemented. All or some jurisdictions within 16 states are currently covered by Section 5. Many covered jurisdictions used literacy tests or similar devices to limit registration of minority voters. Others imposed English-only requirements relating to voting. Any argument in favor of a preclearance requirement must answer why it should still be applied in these particular states and not the country as a whole, since voting problems for minorities increasingly have appeared throughout the nation.

Still, the prophylactic power of Section 5 has never been fully appreciated. Legislators and other policymakers who decide how elections will be run in jurisdictions covered by the section know that any change they seek to implement will be examined with an eye to whether minority voters are made worse off by the change. They frequently adjust their policies and practices accordingly. They also confer with lawyers in the Justice Department's Civil Rights Division who are experts on election laws and practices on how those practices affect minority voters.

This is bad? If we require environmental impact statements from businesses and developers in order to protect our natural resources, surely we can require that election laws not be put into place until it is clear they will not disadvantage minority groups, in order to protect our democracy.

THE BASIC GUARANTEE OF THE VOTING RIGHTS ACT—THAT every voter should have an equal opportunity to participate in the political process—is central to the promise of democracy. The law provides this guarantee without requiring racial majorities, traditionally but not necessarily white voters, to change anything about how they vote.

The remedies contemplated by the act don't disturb any voter's choice at the ballot box. Every voter can vote his secret



ballot, based on any criterion he wishes, whether it's a candidate's age, sex, religion, race, or even his positions on the issues. Every voter can vote his preference. As long as the practices used to screen who qualifies as a voter, how votes are cast, and how votes are counted afford all voters an equal opportunity to participate, the VRA is satisfied.

To address housing discrimination, by contrast, civil rights laws may require that a black family gets to rent an apartment rather than a white family who otherwise would have been the choice of an apartment manager operating from racially biased motives. Laws prohibiting employment discrimination may mean that a Latino with a college degree is hired instead of a white high school graduate when employer bias would have otherwise produced an all-white workforce. The Supreme Court recently ruled that the University of Michigan Law School can take race into account in its admissions decisions even if this results in a qualified white applicant's not being admitted.

What distinguishes the Voting Rights Act is that its remedies do not affect individual outcomes. They don't require any voter to change how or why he votes. They don't allow some voters to vote while prohibiting others from exercising that right. The law simply requires that elections be conducted so that every qualified voter has an equal opportunity to register and to vote, and so that the vote of every voter carries equal weight.

We will never grow out of the need for this requirement. Our political process must be free from discrimination, of course, but it must also go beyond being well-intentioned and be fair in its outcome.

Anita Earls, a former deputy assistant attorney general in the Justice Department's Civil Rights Division, is advocacy director for the UNC Center for Civil Rights in Chapel Hill, N.C. She is currently representing plaintiffs in redistricting cases in Virginia and Rhode Island.

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Anita Earls
Exhibit 7

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

PENDER COUNTY, DWIGHT STRICKLAND,)
 Individually and as a Pender County)
 Commissioner, DAVID WILLIAMS, Individually)
 and as a Pender County Commissioner, F. D.)
 RIVENBARK, Individually and as a Pender)
 County Commissioner, STEPHEN HOLLAND,)
 Individually and as a Pender County)
 Commissioner, and EUGENE MEADOWS,)
 Individually and as Pender County)
 Commissioner,)
)
 Plaintiffs,)
)
 v.) No. 04-CvS-6966
)
 GARY O. BARTLETT, as Executive Director of)
 the State Board of Elections; LARRY LEAKE,)
 ROBERT CORDLE, GENEVIEVE C. SIMS, LORRAINE)
 G. SHINN, and CHARLES WINFREE, In Their)
 Official Capacities as Members of the)
 North Carolina Board of Elections; JAMES B.)
 BLACK, In His Official Capacity as Co-)
 Speaker of the North Carolina House of)
 Representatives; MARC BASNIGHT, In His)
 Official Capacity as President Pro Tempore)
 of the North Carolina Senate; MICHAEL)
 EASLEY, In His Official Capacity as)
 Governor of the State of North Carolina;)
 and ROY COOPER, In His Official Capacity)
 as Attorney General of the State of North)
 Carolina,)
)
 Defendants.)

DEPOSITION OF KERRY L. HAYNIE, Ph.D.

TUESDAY, FEBRUARY 8, 2005

Conference Room 301
 Perkins Library
 Duke University
 Durham, North Carolina
 1:00 p.m.

Volume 1 of 1
 Pages 1 through 81

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A P P E A R A N C E S

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T A B L E O F C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
<u>KERRY L. HAYNIE, Ph.D.</u>			
By Mr. Thurman	6-68		76-79
By Ms. Smiley		68-76	

EXHIBITS

None

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S T I P U L A T I O N S

Prior to examination of the witness, counsel for the parties stipulated and agreed as follows:

1. Said deposition shall be taken for the purpose of discovery or for use as evidence in the above-entitled action or for both purposes, as permitted by the applicable rules of civil procedure;

2. Any objections of any party hereto as to notice of the taking of said deposition or as to the time and place thereof or as to the competency of the person before whom the same shall be taken are hereby waived;

3. Objections to questions and motions to strike answers need not be made during the taking of this deposition, but may be made for the first time during the progress of the trial of this case or any pre-trial hearing held before the judge for the purpose of ruling thereon or at any other hearing of said case at which said deposition might be used, except an objection as to the form of a question must be made at the time such question is asked or objection is waived as to the form of the question;

4. That all formalities and requirements of the statute with respect to any formalities not herein expressly waived are hereby waived, especially including the right to move for the rejection of this deposition before trial for any irregularities in the taking of the same, either in whole or in

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part or for any other cause;

5. That the undersigned notary-reporter shall personally deliver or mail by first class mail the transcript of this deposition to the party taking the deposition or its attorney, who shall preserve it as the court's copy.

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1 P R O C E E D I N G S 1:02 p.m.

2 (Whereupon,

3 **KERRY L. HAYNIE, Ph.D.**

4 was called as a witness, duly sworn, and testified as
5 follows:)

6 D I R E C T E X A M I N A T I O N 1:02 p.m.

7 By Mr. Thurman:

8 Q Dr. Haynie, my name is Trey Thurman, and I am the
9 attorney for Pender County. And if we can, to get some of
10 the formalities out of the way, have you ever had your
11 deposition taken before, sir?

12 A No.

13 Q Okay. Then I will go over just some background about
14 what we're here to do. The purpose of it is I'm going to ask
15 questions, and unless the attorney for the State instructs
16 you not to answer--and she may make objections, but unless
17 she instructs you not to answer, if you would go ahead--she
18 can state her objection, and then you will answer the
19 question. If she does instruct you not to answer, we'll deal
20 with that then. But otherwise--and pardon me; I have a bit
21 of a cold, so I may break down.

22 A Okay.

23 Q But since you haven't had your deposition before, just
24 kind of the background on it.

25 A Okay.

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1 Q I will ask questions. And if for some reason I ask a
2 question that makes no sense, you don't understand, I've been
3 boring you so you've started staring out the window and don't
4 remember what I asked, please ask me to repeat it or to
5 clarify my question, okay?

6 A Okay.

7 Q And you do a better job than I do, but I tend to talk
8 with my hands. We all tend to say uh-huh or nod our head.
9 That can't be transcribed very well, so if your answer is yes
10 or no, if you would say yes or no, and then you can explain
11 all you want, certainly. I'm not trying to limit your
12 answer, but just that we tend to all--you know, we nod our
13 heads. We do the nonverbal, and nonverbal doesn't translate
14 into what gets typed up very well. So if you can, verbalize
15 as we go through, okay?

16 A Okay.

17 Q If at any time you want to take a break for any reason
18 at all, just say so. I will be happy to do it. And we
19 will--again, just any reason, you don't have to have one,
20 just want to stretch--we'll be happy to do that, okay?

21 A Okay.

22 Q All right. Tell me--well, first, you provided a CV or
23 a resume to the State in this case; correct?

24 A Yes, I did.

25 Q And that's true and accurate to the best of your

1 knowledge?

2 A To the best of my knowledge, yes.

3 Q All right. That skips a whole lot of background that
4 otherwise--we can move on to some of the other things. When
5 were you first contacted about giving testimony in this case?

6 A The first discussion was in December of 2004, mid-
7 December. I don't remember the exact date.

8 Q Who did you talk with?

9 A Tiare and--I forget the name of the other person, the
10 woman who works at UNC law school, in the center there.

11 Q Okay. What did you talk about?

12 A Someone had read my book, a book that I published on
13 African-American state legislators. And they were interested
14 in the analysis I did in the book and thought it was relevant
15 to this particular case and wanted to ask me more about that
16 research and my findings in that book.

17 Q Okay. And what was the name of that book? Is that
18 the book that is identified in your CV?

19 A Yes, that's right; *African-American Legislators in the*
20 *American States*.

21 Q Anything else discussed in that initial conversation?

22 A No. Well, there was some discussion that the State
23 may be interested in my considering the possibility of
24 becoming an expert witness on their behalf and that they
25 would read the book and then get back to me whether they

1 thought it would be helpful.

2 Q Okay. Were you contacted later about actually--that
3 they did want you to serve as an expert witness?

4 A Yes.

5 Q And approximately when was that?

6 A Again in December, before Christmas.

7 Q At that time what were you asked to do?

8 A To provide a summary of my research findings that
9 pertained to race and representation in the state legislature
10 and to make some specific comments about North Carolina if I
11 could.

12 Q Okay. And what have you done in that regard to follow
13 through?

14 A I prepared this report that takes from research that I
15 did for the book and an article I did on a similar topic, and
16 this is the report I prepared and submitted it to the State.

17 Q Have you ever reviewed the--what lawyers refer to as
18 the pleadings in this case, the complaint and the answer,
19 that sort of thing?

20 A I have those and skimmed those. There's a lot of
21 legal jargon, so not an in depth--

22 Q Okay. Has anybody ever told you what the lawsuit is
23 about?

24 A Yes.

25 Q And what have they told you?

1 A That--as I understand it, that Pender County is
2 contesting the drawing of legislative districts that the
3 state legislature drew, and particularly contesting the
4 drawing of a majority-minority district that takes a portion
5 of Pender County and cojoins with another county. And the
6 county's opposition has to do with the dividing of the county
7 for the making of this district.

8 Q Okay. When you say "majority-minority," what do you
9 mean by that term?

10 A Majority black in this case, that the State is drawing
11 a district--the majority of this majority--you know, the
12 majority of this majority-minority district I looked at means
13 in social science and political science languages that a
14 district in which you are more likely to have an African-
15 American or other minority elected than not.

16 Q Okay. So when you say "majority-minority," you're not
17 talking about 50 plus 1 minority?

18 A Not necessarily, no; that's correct.

19 Q All right, and--all right. That's part of what I want
20 to go--that's why I want to take your deposition. So it is
21 your opinion that majority-minority means a district what?
22 What does that mean to you?

23 A That it's more likely than not that you would have the
24 representative of choice of the minority--racial minority
25 citizens in that district to elect a representative of their

1 choice than not.

2 Q How would you determine whether a district met that
3 standard?

4 A There are several ways. And one is if you look at the
5 voting patterns of black voters or minority voters and see
6 how those patterns reflect and what the district produces, so
7 the agenda pattern for the voters to see what--how that's
8 reflecting what the district produces.

9 For example, African-Americans are more likely to vote
10 for African-American candidates who share their party, given
11 another choice. So in essence, a district that would yield
12 such a representative would be what I would consider a
13 minority influenced district with minority-majority--a
14 majority-minority district in the way that I described it.

15 Q Okay. Well, do you distinguish between minority
16 influenced district and majority-minority district?

17 A Yes.

18 Q Okay. Well, explain the difference.

19 A Well, that in the sense you could have a minority
20 influenced district in which the population doesn't
21 necessarily yield a black representative with a significant
22 influence in terms of representation of black voters from
23 that representative.

24 Q Okay. And again, how do you--again, what--the
25 distinguishing factor between a majority-minority district

1 and a minority influenced are---

2 A (interposing) In social sciences what I would look
3 at, is what the representative does in the legislature as you
4 can determine it; I mean if you have a non-black representa-
5 tive representing a group of black citizens, how does that
6 representative behave in the legislature. And that would to
7 me yield the differences in the representation you get from
8 majority black and one that you have blacks with a
9 significant influence in that district.

10 Q And by behave, what do you mean?

11 A A number of ways: what bills they introduce in the
12 legislature, symbolic actions that they take, whether they're
13 willing to stand up and be counted for having said or put
14 forth in the legislature or have defended in the legislature.
15 Then you can look at roll call votes, which I think is
16 sometimes a confusing way to look, but look at how they vote
17 on legislation.

18 Q Are there particular types of legislation that you
19 would look at?

20 A Yes. What I find in my research, and it's consistent
21 with what you find in the literature of black interests, the
22 traditional sort of civil rights legislation, voting rights
23 protection, equal protection before the law in general, anti-
24 discrimination legislation. And what I do in my research, I
25 even broaden that definition of black interest to include

1 concern for social service protections and benefits,
2 education rights, health care issues, children's issues, and
3 so on.

4 Q Do you know what the legal standard in court for a
5 majority-minority district is?

6 A No. I mean I remember the court at one point setting
7 the 65 percent rule. But I don't know what the legal
8 standard is now for that.

9 Q What--and we'll come back to some of your opinions and
10 the article a little bit later. What have you done to
11 prepare to render any opinions in this case?

12 A Other than preparing this report?

13 Q Well, and if you would tell me what you did to prepare
14 the report, please?

15 A What I did, I went back to my book and an article that
16 I wrote and pulled what I thought was relevant to this
17 particular case and put it together in this report. And
18 that's it.

19 Q Okay. And again, is there anything that you reviewed
20 that's not referenced in that report?

21 A Not to my knowledge.

22 Q Okay. I take---

23 Ms. Smiley: (interposing) I am going to object.

24 I mean he does--to the extent you're asking him a question
25 that's somewhat unanswerable and overbroad. His academic

1 background--I don't think he can cite in his report his
2 entire academic background, which may have influenced part of
3 his report. So I mean are you asking---

4 Mr. Thurman: (interposing) I didn't ask what
5 influenced--I asked what he reviewed.

6 Ms. Smiley: Okay.

7 Mr. Thurman: And that's--again, I think that's an
8 answerable question.

9 Ms. Smiley: Okay, as long as he--okay, did he
10 understand the question, okay, what he reviewed for this.

11 A Well, my answer was based on what I reviewed. And
12 what I reviewed was my book and article that I wrote that I
13 reference in this report.

14 Q Right. And you have some notes and some tables in
15 your report?

16 A That's correct.

17 Q And that's what--all I'm trying to get. I'm not
18 trying to trick you. I'm just trying to find out that what
19 you relied on is referenced in here one way or another in
20 terms of what you referred to and relied on in preparing this
21 report. And I'll stipulate that you have your academic
22 background. I'm not trying to get into that.

23 Ms. Smiley: That's--the term--

24 Mr. Thurman: (interposing) That's fine.

25 Ms. Smiley: ---"relied on" is what triggered me.

1 I'm sorry.

2 Mr. Thurman: All right.

3 By Mr. Thurman:

4 Q Well, I mean, again, if you want to--we'll stipulate
5 that your academic background was the starting off point for
6 anything that you do in a professional manner; is that
7 correct?

8 A That's correct, if you mean that my knowledge of the
9 literature in general from a person who is an expert and
10 studies this area, yes, because I mean that would be
11 reflected in my report not so--but things actually pulled in
12 my hands or looked at for this report was the book and the
13 article. But the report may in fact be influenced by my
14 general education and experience as an academic in this area.

15 Q Okay. And again, in terms of documents that as you
16 say you held in your hand between mid-December and today,
17 they would be referenced in that report?

18 A That's correct.

19 Q Have you looked at anything relating specifically to
20 voting in Pender County?

21 A No, I have not.

22 Q Have you looked at anything relating specifically to
23 voting in New Hanover County?

24 A No, I have not.

25 Q Have you talked to anybody about preparing this report

1 or the testimony that you're going to be giving?

2 A Other than my wife, no, and my attorney--I mean the
3 attorney for the State.

4 Q And again, that's part of what I was going to. Have
5 you talked with any professional colleagues or other
6 potential witnesses in the case?

7 A Other than to say that I'm involved in the case,
8 that's the extent of the conversation.

9 Q YOU didn't ask anybody to review the report and
10 comment on it?

11 A No.

12 Q In your report you talk about the types of legislation
13 that you looked at; correct?

14 A Yes.

15 Q And you looked largely at bill introduction, or
16 sponsorship, I guess?

17 A That's correct; sponsorship, introduction, correct.

18 Q Right, and sort of--and again, as I understood your
19 report, you focused on someone being more of a primary
20 sponsor as opposed to a bill that there may be--a bill in
21 support of mom and apple pie that everybody in the
22 legislature supports, that may not be one that you looked--
23 you know, that somebody who signs off on that one as one of
24 everybody in the legislature signing off is in support of,
25 that wasn't what you were looking at. Is that fair or not?

1 A Not exactly. I mean that the bills that we looked
2 at--or that I looked at in my study and in the coauthored
3 study, could have more than one sponsor where people signed
4 on. But we were primarily interested in the chief sponsor as
5 the one we credited with having introduced the bill.

6 Q Okay. All right. Let's go into the--try to deal with
7 what is black interest. Is that correct?

8 A That's correct.

9 Q What was it that you relied on to determine what
10 defines black interest?

11 A Yes. You know, there are--in social science, you
12 know, there are two ways to define interest, primarily: the
13 objective interest of the group that's determined--and the
14 way I did it, determined by looking up census data, looking
15 at the economic condition of the group, things like family
16 per capita income, literacy rates, high school graduation,
17 college graduation rates, you know, unemployment, certain
18 healthcare statistics, infant mortality, looking at incidence
19 of say diabetes or something, and determine that, hey, this
20 group objectively, this is their interest, to have policies
21 that address these particular concerns. That's an objective
22 measure. You know, I rely on census data for that.

23 The other way is to ask the group or individuals in
24 that group themselves what's in their interest. And we use
25 public opinion data as social scientists for that. And you

1 look at an array of public opinion data that blacks would
2 articulate a particular view for a position on certain policy
3 issues as in their interest. So my definition takes
4 advantage of both of those ways of constructing black
5 interest. And that's how I define black interest.

6 Q From your report you say--I believe this is on
7 page--wait a minute; page 4, I believe of your report?

8 A Uh-huh.

9 Q "To this end, black interest can be defined as support
10 for social welfare, economic redistributive, and civil rights
11 legislation."

12 A Correct.

13 Q Did I read that correctly?

14 A Yes.

15 Q And again, that's based on, as you say, saying black
16 interest--black Americans are not a monolithic group. I
17 believe you say that in your paper?

18 A Yes, that's correct.

19 Q But you feel that these interests are sufficiently
20 common that they can be defined as the black interest?

21 A Absolutely, if you look objectively at the census
22 data; and we sort of take a group--and you look at blacks in
23 North Carolina, for example, and you compare them to other
24 groups, you can certainly define their interests and
25 objectives in the interest of black citizens. You look at

1 education, high school graduation rates. You look at blacks
2 as a group versus whites or Latinos as a group. I mean you
3 can define educational policies that are more in the interest
4 of blacks than other groups given what they've established
5 they have in education.

6 You can look at a number of health care measures--for
7 example infant mortality, diabetes, obesity--and say, look
8 blacks stand out in one or more of these categories. It's in
9 their interest to have health care policies that address
10 those particular health care concerns.

11 So yes, even though--and the point about blacks not
12 being monolithic, I don't think any group walks lockstep on
13 every issue, but there are certainly some characteristics
14 that you could apply to groups of certainly African-Americans
15 is what I contend and can demonstrate using the kind of data
16 that I cite in the report.

17 Q You go on at the bottom of that page and the top of
18 the next and talk about laws that prohibit discrimination in
19 voting, housing, education, and it says "and unemployment."
20 Is that employment? Did you mean employment there, by the
21 way?

22 (Witness peruses document.)

23 A Employment, yes.

24 Q Okay. What do you mean by "prohibit discrimination"?

25 A The laws that expressly prohibit landlords for

1 discriminating in renting or the selling of housing,
2 education that prohibit, you know, desegregation of students,
3 that limit any employment discrimination based on race or sex
4 or other measures there, just the general discrimination that
5 generally follows some sort of legal guidelines of
6 discrimination.

7 Q Okay. Well, I guess that's--the part I want to get to
8 is are you talking about laws that is a law that says it is
9 illegal to discriminate in hiring based on race? Is that a
10 law that you would say meets your criteria of being in the
11 black interest?

12 A It could. It depends on the context in which that law
13 is offered. So I wouldn't necessarily count that as part of
14 the black interest, because what I did is read the bills,
15 because you would find--in the 1960s for example you would
16 have laws that would say precisely that. And what the intent
17 of it in the context was was to limit certain policies that
18 were intended to benefit certain groups, to benefit blacks,
19 to be precisely.

20 So in reading the actual legislation and often with
21 the legislative record and in the context in which it was
22 offered, the law that you described may or may not be in the
23 black interest.

24 Q And that touches on a point I want to get to, because
25 elsewhere in the report you say that certain bills that if

1 you felt it was contrary to the black interest, then it would
2 not be counted as--I mean, again, you made that
3 determination, whether a bill was or was not in the black
4 interest?

5 A That's correct. Let me say with that that this data
6 was collected with a colleague. We were in graduate school
7 at the time, and the two of us were reading bills. So she
8 would read a certain sample of the bills and code them and
9 then I would read the same bills and code them. Then we
10 would compare our codings. And so that's how we got to these
11 codings.

12 But in particular I mean I remember a bill I think
13 from Arkansas in 1969 that the--you know, it mentioned race
14 and it mentioned blacks in the text of the bill. But the
15 bill called for segregating students on college campuses in
16 Arkansas. I think Arkansas was the state mentioned. That
17 certainly wouldn't be in the black interest. You read that
18 and it certainly mentions blacks, but I wouldn't classify it
19 as that. Bills like that were excluded even though it was
20 about blacks. It was certainly not in the black interest to
21 have on college campuses in Arkansas policies that would
22 segregate the students based on race.

23 Q Well, and you said that a bill that just simply said--
24 and as I recall, the question I asked was a law that says it
25 shall be unlawful to discriminate on the basis of race in

1 making hiring decisions. That's the bill. That's the law.
2 You're saying that depending on the context, that could or
3 could not be in the black interest?

4 A Yes, the context. I mean this is not unlike, you
5 know, some referenda in California, you know, where you would
6 say that the intent of that is to actually prohibit
7 affirmative action, which is in the interest of blacks. So
8 you could have some bill in the context where you have
9 affirmative action or those types of programs in place.

10 So a legislator comes to the floor and says, "I'm
11 going to introduce a bill and we race neutral practices in
12 hiring." And that's in the context of being in opposition to
13 a policy or legislation that is clearly intended to benefit
14 the group. So in that sense, that bill would not be in the
15 black interest.

16 Q Okay. In that manner, then the black interest is--
17 well, let me stop there and use the term "black," use the
18 term "African-American," and you may have heard the same
19 thing. There was an NPR program back during the holidays
20 where--Jesse Jackson was on and they had several other--they
21 had several academics, arguing about what term to use. And
22 in fact, one of the people there was suggesting colored as
23 the term to go back to.

24 And again, that was--but what term--one, what term do
25 you feel--black, African-American--which one do you feel is

1 most appropriate, or do you feel one is more appropriate than
2 the other?

3 A I don't have a strong opinion on that. I mean I use
4 it interchangeably in my writings. You know, it's often--
5 depending on the particular issue you're dealing with, it
6 makes sense to be careful about how you define the term. And
7 so I use them interchangeably in my research, but I have no
8 strong feelings on which term is the most appropriate one to
9 use.

10 Q Okay. How do you define either of the terms?

11 A Either "black" or "African-American"?

12 Q Yes, sir.

13 A Certainly sort of the descriptive characteristics of
14 skin color and hair and texture and indeed what a person him
15 or herself sees himself as being. And then you have the--
16 what's on our birth certificate at birth in this state. And
17 I assume it's still on--race is still on the birth
18 certificate. The State classifies me as black; and so that
19 basic definition.

20 Q Okay. And that's what I'm trying to get to is who
21 fits within--in other words, is--and to use some of the
22 terminology, is a quadroon--does that person qualify as
23 African-American or black?

24 A They could. I mean that person, him or herself, could
25 make that determination. They very well could. If you have

1 a, to use your term, quadroon, and they live in the black
2 community and interact in the black community and their
3 social networks are black, I have no problem with that person
4 being defined as black.

5 Q Well, and I think to use ourselves as examples, I'm
6 pale. Albinos come up on the beach and make fun of me. I'm
7 very pale. You're much darker than I am. Somewhere on the
8 continuum, is there a break point that someone can't be--in
9 other words, if I said I was African-American, am I entitled
10 to say that based on the fact that I am so pale?

11 A You are certainly entitled to say it. I mean the
12 response you get to having said that I mean that's a
13 different matter. And the acceptance you get is a different
14 matter. But you're certainly entitled to say that. You know
15 again, and in my research I don't think the State would
16 consider you on your birth certificate as being African-
17 American in that sense.

18 Q Well, again, I'm just trying to get to what the
19 definition of who falls within the group and who doesn't, and
20 are you saying that it's based on what's on somebody's birth
21 certificate?

22 A What I use is--I mean again, I don't get into how
23 individuals define themselves. I use sort of census level
24 data to determine, you know, the size of black populations
25 and that kind of thing. And so my definition for my research

1 is based on the U.S. Census for the definition and the data
2 they collect in that regard, and in terms of the legislators,
3 like you say the black caucus and how the legislators
4 organize themselves as a group to determine the race of
5 legislators.

6 Q With regards to promoting black interests, you're
7 aware that there are politicians, academics, who contend that
8 continuing classifications of race don't serve the black
9 interest because they continue to divide? Are you familiar
10 with people who have expressed that to you?

11 A Generally so, yes.

12 Q Do you agree or disagree with that opinion?

13 A I disagree with that.

14 Q Why?

15 A You know, I mean it's funny. I was at an event last
16 night here on campus, and it was honoring the first black to
17 be in a regular faculty position at Duke, 1966, in my
18 lifetime. And I'm a young man. I'm 42. And so it's just
19 that long ago. The first black to serve in the North
20 Carolina legislature in 1969 is former Chief Justice of the
21 Supreme Court Henry Frye.

22 So we're talking with, you know, a recent history.
23 And we're talking with--there are problems there. I mean
24 it's hard to deny it, even though some people try. But there
25 are race specific problems that I believe require race

1 specific solutions to address them.

2 And to have problems created by racial divisions, it
3 seems strange to me to argue to let's forget about race to
4 try to deal with these problems when the most appropriate,
5 most direct way may have--may be race specific solutions to
6 race specific problems. And problems that were created by
7 racial classifications now to have solutions to say, "Oh,
8 let's forget about the classification" seems perverse to me.
9 I mean it seems perverse and it also seems offensive to
10 offer that.

11 So I don't subscribe to those particular views, and I
12 debate those with individuals I know who do and have so, I
13 mean so--and one--Carol Swain is the person that I most know,
14 and she's actually a friend of mine, who we disagree on that
15 issue.

16 Q Did that view influence what bills you deem to be in
17 the black interest?

18 A No, that didn't influence it. What I looked at--
19 again, I looked at these objective measures, these
20 socioeconomic conditions of the group, and looked at public
21 opinion data where you find the members of the group
22 articulating particular kind of views. And that was the
23 definition how we--when I constructed the definition of black
24 interest in this study and in the work that I do.

25 Q Reading your report, I believe your conclusion is that

1 a black legislator is more likely to represent the black
2 interest?

3 A That's correct, when compared it to legislators of
4 other races, yes.

5 Q Are you familiar with Congressman J. C. Watts?

6 A Yes.

7 Q Are you saying he's more likely to represent the black
8 interest than say Congressman Barney Frank?

9 A If you look at the analysis, if you hold everything
10 else constant, I mean in this case he is a Republican, but
11 it's also that Democrats may be more likely than Republicans
12 to represent the black interest. But in the case of J. C.
13 Watts and Barney Frank, that's an interesting question.
14 Depending on the nature of the issue, it could go either way.

15 Q So again, I mean you're saying--and have you compared
16 their two voting records?

17 A No, I have not, not in those two cases.

18 Q If it turned out that based on the criteria you
19 establish in your report that Congressman Frank voted more in
20 the black interest, does that affect your opinion about the
21 validity of your conclusion?

22 A Absolutely not, because I mean if you look at
23 whether--you know, again, take Congressman Frank and his
24 particular district, and then what I look at is an African-
25 American coming from that same district. And then that's the

1 nature of my analysis is that, so who in that district would
2 represent the black interest. I mean so you have--you know,
3 you can bring in a couple of things here. I mean you can--I
4 mean in some sense you're comparing apples and oranges in
5 that sense.

6 Q Well, that's--so you're saying that the nature of the
7 district can influence the representative's position?

8 A It can. And in my research in the report that you
9 have, it's the race of the representative in that district
10 that's the most important.

11 Q All right. But I believe what you just said is you
12 would look at the district that Barney Frank represented and
13 in the district that Congressman Watts--and not Mel Watt
14 from--

15 A (interposing) Right; J. C.

16 Q Not from North Carolina, but J. C. from Oklahoma--
17 that you would look at their respective districts; correct?

18 A Correct.

19 Q And that it would be the--well, I won't put--you
20 didn't say, but is it the fact that Representative Frank's
21 district is likely to be more liberal than Representative
22 J. C. Watts' district?

23 A I mean I don't know. I haven't looked at that, but I
24 would guess with what I know about the two individuals that
25 would be true.

1 Q And would in part that be on the basis that
2 Congressman Frank is an openly gay congressman and was able
3 to be elected?

4 A No. The openly gay Republicans are just as
5 conservative as J. C. Watts in the U. S. Congress. My point
6 is this, that in--about the district. Look at the district
7 that J. C. Watts came from or Barney Frank. And I'm saying
8 that if you--whatever that congressional district is, that
9 providing representation to blacks in that district you are
10 better off having a black elected from that district than a
11 white from that district.

12 So take Barney Frank, for example, who has, I imagine,
13 a fairly liberal voting record that would be high on say
14 black interest representation. Let's assume that. What my
15 research shows is that you would have better representation
16 of blacks if there was a black person elected from that
17 district than Barney Frank, rather than Barney Frank.

18 Q Okay. So if the black representative is going to
19 provide better representation of black interests, is the
20 black representative going to provide less representative of
21 white interests?

22 A In my research, it's absolutely not the case that that
23 happens. And what I demonstrate in my research is that what
24 black legislators tend to do--and this is also other research
25 from Congress that is quite consistent with these results,

1 that they do this balancing act providing--what I call in my
2 book they provide race representation, at the same time
3 providing representation to the larger district interest.

4 What I find is that black legislators are the
5 strongest supporters of black interests. That's not the only
6 thing that they do. They represent an array of other
7 interests that would be representative of their district
8 concerns.

9 Q Well, Professor, if you're saying that a bill that is
10 race neutral cannot be in the black interest, that's because
11 it in effect benefits nonblacks--whites, Hispanics, whatever
12 the--Native Americans, whatever the group is; correct?
13 That's why it's---

14 A (interposing) I never said that.

15 Ms. Smiley: I was going to say I'm going to
16 object. That's a hypothetical that he said he--that's not
17 what he said.

18 Mr. Thurman: Okay. Well, I mean you can object
19 all you want, but let's not be telling him what his answer
20 should be.

21 Ms. Smiley: Okay. Well, he already told you
22 that's not what he said.

23 Mr. Thurman: Well, that's fine, but again, just
24 going forward.

25 By Mr. Thurman:

1 Q All right. Well, then what--they why is it that a
2 race neutral bill you said--and you said in the context it
3 may be not in the black interest?

4 A First of all, you classified it as a race neutral
5 bill. And that particular bill was--my comments were in
6 response to the particular scenario you gave of a bill that
7 said there would be--I think it was we would not have hiring
8 decision made on the basis of race. And my response was in
9 the context--in the context in which that bill was offered,
10 that may not be in the black interest. I didn't say race
11 neutral bills are not in the black interest.

12 In the situation and scenario you gave and what you
13 described, that particular bill I argued--I went on to say
14 that, you know, and I used the California example, if that
15 bill was offered in the context of being in opposition to
16 policies or legislation that expressly benefits blacks or
17 some minority group, then that's not a race neutral bill. I
18 mean it's in opposition to the black interest, and I didn't
19 count that as part of black interests. So I never said that
20 that race neutral bills are not in black interests.

21 Q Okay. But you're saying a bill that--and again, if
22 I've misunderstood I want you to correct me. That's why
23 we're here.

24 A Okay.

25 Q My question was about a law that said it shall be

1 unlawful to discriminate on the basis of race in hiring.
2 Those are the words. And you're saying that if that bill was
3 offered to defeat an affirmative action bill of some sort,
4 that then it would not be in the black interest; is that
5 correct?

6 A That's my view, yes.

7 Q Therefore does that not mean that the black interest
8 is being advanced over the interests of all other racial
9 groups?

10 A I wouldn't do that therefore that you just did. I
11 mean I don't know how you can connect those two things.

12 Q Well, explain to me, then, what kind of affirmative
13 action you're talking about in the context of the
14 question--again, I'm not--we're not talking--we're saying
15 that--again, what I wanted to was it shall be unlawful to
16 discriminate on the basis of race in hiring. And you're
17 saying that a bill such as that may not be in the black
18 interest. And I want to understand how---

19 Ms. Smiley: (interposing) Asked and answered.

20 Q ---that that is.

21 A I'll answer it again. I said it may or it may not be.
22 And how it may be in the black interest is if it is a bill
23 that's intended to advance black employment in the context of
24 a history and a legacy of racial discrimination in hiring
25 practices. I mean legislation doesn't take place in a

1 vacuum, I mean, and to just sort of pick out a piece of
2 legislation and say, oh, as you just did, I think is a wrong
3 and backwards way of doing this kind of study.

4 Now, how it may not be in the black interest--and I'll
5 give you the same example I gave before, in the context which
6 you have policies that say there are some history of
7 discrimination in a particular industry and they now are
8 going to remedy that by having some preferential treatment
9 for a certain group, say blacks--let's use blacks for this
10 case--and they would give blacks some extra attention in
11 application, even extra points let's say on the application.

12 And then have a bill introduced to say we're not going
13 to have preferential treatment based on race in the context
14 of a policy like that, then that's not in the black interest.
15 So that's my position on that--on that question.

16 Q Then do you believe that the policy that says blacks
17 will be given extra points--is it your position that that is
18 not against the interest of all other racial groups, the fact
19 that blacks are given extra points?

20 A Not necessarily. It may very well be, but if the
21 intent is to remedy a past wrong, and especially a wrong in
22 which whites were advantaged and gained at the expense of
23 blacks, I mean--so that may very well be in opposition or
24 against the interest of some of the groups, but that's the
25 nature of the world in which we live.

1 Q I'll give you a hypothetical, then. Let's say, oh, I
2 don't know, Duke. We've got two applicants. One is from a
3 poor, rural area, approximately a 25 percent dropout rate in
4 high school, raised on a farm, tends animals before and after
5 school. The other comes from a wealthy northeastern area,
6 father is a doctor, mother is a professor at one of the seven
7 sisters, goes to a prep school.

8 You're saying that because the person from the
9 northeast with the doctor that--the father is a doctor, the
10 mother that's a professor, is African-American, they should
11 get points in admission at Duke over the person from the
12 rural area because that person is white?

13 Ms. Smiley: I'm going to object to the relevance
14 of the question. This is not a political science question at
15 all, what you're asking. You're not asking it in the context
16 of legislation or enactments or what he has studied. If you
17 can answer the question, go ahead, but it's not relevant.

18 A I'll answer the question, and--you know, and again, it
19 is related to my answer I just gave, that, you know, Duke
20 University is very up front about who it discriminated
21 against. And it wasn't the rural, poor dropout historically
22 white person who was discriminated against by Duke.

23 So if there is a--if there is a policy to remedy the
24 past discrimination at Duke, it certainly would be in favor
25 of--Duke didn't make distinctions whether you were a rich,

1 educated black. If you were black, you didn't get in. The
2 State of North Carolina didn't make distinctions whether you
3 were a wealthy black or the son of a professor or a doctor or
4 a lawyer. If you were black, you were discriminated against.

5 So it doesn't matter in that sense, I mean, you know,
6 so the State when it discriminated didn't make those
7 distinctions--"Oh, you're a poor black" and a rich black. If
8 you were black--the fountain said, "Colored Only." It didn't
9 say "Rich Colored" and "Poor Colored."

10 I mean the State didn't say when it had a segregated
11 school systems that my mother went to and my brother went to
12 in the first grade that if you are from a middle class black
13 family or a wealthy black family, you can go to school with
14 the white kids in the superior school with the superior
15 supplies, superior books. It didn't say that, so though who
16 Duke discriminated against and who the State of North
17 Carolina discriminated against were black folk.

18 So yes, I mean if you ask me about how you fashion a
19 policy and a remedy, yes, you fashion it for the group you
20 discriminated against.

21 Q Okay. Just so I'm clear about what your report is
22 saying, you--in terms of this case your opinions are what? I
23 want to know what you're prepared to testify to with regards
24 to the case at hand.

25 A This particular case, my--and with this research, what

1 this report reflects is the view that blacks are better off
2 in terms of having black interests represented having an
3 African-American, black legislator representing those
4 interests. And this is what clearly is demonstrated by my
5 analysis in this report and elsewhere, that blacks are more
6 likely than whites to represent black interest.

7 You can look at the district makeup. You can look at
8 the party affiliation. All those things being equal, a black
9 representative is more likely to represent black interests
10 than other representatives.

11 Q Anything else?

12 A I mean that's the bottom line of my report, but my
13 view on that issue is the question you just gave.

14 Q Well, what I asked is what opinions are you prepared
15 to offer in this case. That's--what I want to find out is
16 what you're going to testify to, because I need to know
17 whether I need to address that or not. So I'm asking what
18 opinions you're prepared to offer.

19 A Well, it's a crazy question. It depends on what I'm
20 asked. I mean I can testify to what's in the report, and
21 that's the bottom line of the report, that blacks are better
22 off--in terms of black interests being represented, they're
23 more than likely to be represented by a black legislator than
24 not. So that's essentially the bottom line from my report
25 and the testimony that I'm prepared to give.

1 Now, I don't know what else I may be asked--what other
2 questions you may have or other questions that may occur that
3 I may have to offer opinions on, but I don't know that, so I
4 can't answer that question other than here is--you have the
5 report.

6 (Pause.)

7 Q Have you reviewed the voting records of any of the
8 legislators from Pender or New Hanover County?

9 A No, I have not.

10 Q The standards--I want to go back to the standards of
11 how you define black interest again, if we may. Are those
12 accepted in the academic community? Do you know? I mean---

13 A Yes, that's a generally accepted standard. In fact,
14 I'll give you--we mentioned Carol Swain, who wrote a book on
15 black interest in Congress, who takes a different view than I
16 do, essentially uses the same definition of black interest in
17 her work. So that's a generally accepted sort of way to
18 define interest.

19 Q Do you have any opinions as to what percentage of a
20 district needs to be black for it to be a minority influenced
21 district?

22 A Yes. And it's based on, you know, social science
23 research. And somewhere between 43 and 45 percent, appears
24 to be the number that--percentage that is important.

25 Q And by that percentage, what are you--I mean is that

1 overall population, voting age? I mean just what---

2 A (interposing) Voting age population.

3 Q So it would be 43 to 45 percent voting age population?

4 A Yes.

5 Q And below that it's not a minority influenced

6 district, in your opinion?

7 A Well, I mean the research shows that that's the number

8 that is important. That's the percentage, that range,

9 somewhere between 43 and 45 percent. And that's as a

10 minimum.

11 Q Okay. And that's what I was--and you don't have any

12 research or opinions that would be contrary to that?

13 A No.

14 Q Is that really your area of expertise?

15 A Not really in that particular---

16 Q And again, I'm just trying to find out. I mean---

17 A (interposing) Right.

18 (Pause.)

19 Q Part of your report deals with some--you use some

20 tables specifically rating the North Carolina---

21 A (interposing) Yes.

22 Q ---is that--I mean is that correct, sir?

23 A That's correct.

24 Ms. Smiley: Trey, could we agree to attach a copy

25 of his report to the deposition as an exhibit?

1 Mr. Thurman: Sure.

2 Ms. Smiley: I mean it might be easier. It makes
3 the deposition---

4 Mr. Thurman: (interposing) Absolutely.

5 Ms. Smiley: We'll provide you a copy to make it--
6 so it would be---

7 Mr. Thurman: Yeah, or we can, yeah, stipulate to
8 it or whatever that this is---

9 Ms. Smiley: (interposing) As Deposition Exhibit
10 whatever?

11 Mr. Thurman: Or if you want to use it as just an
12 exhibit and we'll have it for the trial, and that way it
13 comes in without--I mean we can stipulate it is that exhibit
14 and hand it up to the court. Either way you want to do it is
15 fine with me. I don't care.

16 By Mr. Thurman:

17 Q Tell me what, if anything, is peculiar about North
18 Carolina that was revealed by your research, Doctor.

19 A Well, a couple of things: I mean North Carolina is a
20 state in the general pattern that I report from the five
21 state sampl. And what stands out in that five state sample,
22 as well as the North Carolina--look at Table 4 of the report
23 that looks at the effects of race on bill introductions that
24 it is more likely that African-American--or black Americans
25 are more likely to introduce legislation than representatives

1 who are not black.

2 And that's hoping everything else constant, everything
3 else being equal. And what I mean by everything else, party,
4 gender, the seniority in the legislature, to the extent that
5 a district is black, whether or not the district is majority
6 black, how urban or rural the district is, memberships on
7 some of the black interest or civil rights committee, and the
8 number of bills introduced. All those things being equal, a
9 black interest bill is much more likely to be introduced in
10 the legislature by a black representative than it is by a
11 representative that's not black.

12 And the interesting thing about this is that the--I
13 know some of the literature and legal discussions about
14 redistricting would often point to, well, it's the district
15 that matters. I know in political science it was an argument
16 that if you have a district of a certain percentage of blacks
17 that that would be the most important thing regardless of the
18 race of the representative.

19 What I find is that it's not that the percentage of
20 the blacks in the district doesn't matter. That is
21 important. But the race of the representative is also
22 important, and more so important than the percentage of
23 blacks in the district in terms of introducing black interest
24 issues to the legislative agenda.

25 Q As I understand--and I believe it's Table 4, which is

1 North Carolina specific, where you summarize some findings;
2 is that correct?

3 A That's correct.

4 Q The last time you looked at bills was 1989?

5 A That's correct.

6 Q Have you looked at legislation since that time or at
7 any term since then?

8 A Not in North Carolina, no.

9 Q You've looked at it elsewhere, then?

10 A With some other research projects I'm working on,
11 California, I looked at some legislation since 1989. And let
12 me think in terms of--there's an article that I wrote about
13 the North Carolina legislature. I don't think I looked at
14 any bills. It has some data into the 1990s, but I don't
15 think I looked at any particular bills in that study.

16 Q Going to Table 4, if you would, go down the
17 independent variables and explain that, if you would, please,
18 Dr. Haynie.

19 A Yes. I mean what you do with a study like this--the
20 question I was asking is, okay, does the race of the
21 representative matter in terms of who introduces black
22 interest bills. And to sufficiently answer that question,
23 you need to account for other things that may also matter as
24 to whether or not a representative introduces a black
25 interest bill--party. You could argue--if I said Dan Blue is

1 more likely to introduce a black interest bill, and I told
2 you it was because he's black, you could very easily say no,
3 it's because he's a Democrat.

4 So you include as an independent variable, as I do
5 here, party. And what that does is say regardless of whether
6 they're a Democrat--the party is the same. Everything is the
7 same but race. You know, I'm focusing on race here. So I
8 include party, gender, seniority, and those other independent
9 variables. Now, do you want me to go---

10 Q Yes, sir, if you would, please.

11 A Yes. So it would be logical to include the party so
12 that one could say that, well, Democrats--you're talking
13 about Democrats. It's the fact that they are Democrats and
14 not that they are black is the reason they introduced--more
15 likely introduced black interest bills. So I include party
16 to hold party constant to assume that all the legislators are
17 the same party and they're the same other than race.

18 Gender: in the literature, it has been established
19 that women are more likely than men to introduce black
20 interest legislation or be--in fact, there's a study that I
21 did in 1999 with a coauthor that established that. So you
22 want to make sure that it's not gender influencing the result
23 if you're interested in race, so you hold gender constant.

24 Seniority: there's an argument in the literature that
25 more senior members are more likely to introduce legislation

1 because they have more experience. They know the routine.
2 They know the process. So you don't want it to be seniority
3 that's giving you the result rather than race if you're
4 interested in race, so you hold that constant.

5 Percent black in the district: and that is--that is
6 the argument out there in the social science literature that,
7 you know, it's the district characteristics that matter the
8 most in what a representative does and any representative
9 from a majority black district--from a district with a
10 significant percentage of blacks would behave the same or in
11 a similar fashion regardless of their race.

12 So you want to account for that. So you hold that
13 constant, and you assume that the representatives that I'm
14 looking at are from similar districts with regards to the
15 percentage of blacks in their district. And the reason why
16 it's a logged statistical thing here because it's not a
17 linear relationship and the statistical model assumes that
18 it's linear, so you make it linear by logging it. It's a
19 technical point.

20 Majority black district: it's often the case that
21 black representatives are elected from majority black
22 districts. And again, if you're interested in the race of
23 the representative, you don't want the result to be sort of
24 confounded by the fact that it's a majority black district so
25 one could say well it's not the fact that the representative

1 is black; it's the fact that he or she comes from this
2 majority black district. So you could put a white person in
3 there and they represent that same district and you'll get
4 the same result. I control for that and assume again that
5 all the districts are the same.

6 The size of the largest city is a proxy for how urban
7 the district is, so it's the size of the largest city in the
8 member's district as a proxy for how urban a district is.
9 That's something that is established in the literature as an
10 appropriate measure of urbanness.

11 Membership on civil rights committee: you can argue
12 that the committee that a legislator serves on is important
13 for the bills he or she would introduce. And so I want to
14 make sure that any result I would get, and I'm interested in
15 race, is not the result of the representative being on a
16 particular committee. So I control for memberships on a
17 civil rights committee.

18 And the number of bills introduced: again, you can
19 make an argument that you get this result because these
20 individual legislators introduced X number of bills. They
21 have thrown bills out there, and that's the reason why they
22 look this way.

23 So I control for all the things that the literature
24 suggests are relevant in getting the result in terms of
25 introducing--or representing black interests. And I'm

1 focusing on race, so I want to hold everything else constant
2 and say who is more likely to introduce these black interest
3 bills. And what I find and what these clearly show by far is
4 that the race of the representative matters more than these
5 other variables.

6 Q You get down to--you've got 1979 and 1989. What do
7 those numbers mean?

8 A You want to make sure that it's not--this is a pooled
9 sample with three years. So the accepted statistical
10 practice is you take one year out. 1969 is not mentioned
11 there, and that's sort of the baseline year. You want to
12 make sure that you don't have--I mean the data for 1969 is
13 there but the year 1969 is not included. You want to make
14 sure that the results are not because of something going on
15 in any one particular year when you pool together several
16 years. And so that's why you include those.

17 In fact, I can say in the analysis I did for an
18 article that looked at these results year by year, you know,
19 so I would run 1969 alone, 1979, '89, and the results are
20 similar.

21 Q Okay. But again, what does the negative 2.5--and
22 you've got a double asterisk beside it. What does that mean?

23 A The double asterisk means that it's significant at the
24 .01 level that--and again, it's the same for race, that I'm
25 99 percent sure that the result I got is due to the measure

1 that I have and, you know, just not random.

2 And the particular estimate you asked for about 1979
3 and 1989, in 1979 you were less likely to have a black
4 interest bill introduced in that year for some reason, and I
5 don't know what that is and why that is. That's a
6 significant result. It's similar for 1989.

7 Q Well, again, what is the difference between the
8 negative 2.5 and a negative 1.3?

9 A The difference in what sense?

10 Q I mean what is the--is there a significance to the
11 difference in those numbers?

12 A Well, the magnitude is higher in 1979. So if you look
13 at table--I think the best way to explain these magnitude
14 differences is Table 3. And if you look at--or even look at
15 this table, Table 4, if you look at--race has a 2.2 estimate
16 and compare that, I mean the higher the parameter in a
17 positive direction the more significant it is, I mean again,
18 so race has a--you know, compared to say seniority that's
19 also--I mean gender that's also significant, the race effect
20 is much more powerful than the gender effect, 2.2 versus .7.
21 So it measures the magnitude of the effect of that
22 particular variable on the result.

23 Q But again, I'm trying to understand what is the
24 distinction between '79 and '89, because that's--1.2 is
25 between 2.5 and 1.3; correct?

1 A Right.

2 Q Do you know why there's a difference there?

3 A No. You wouldn't even interpret that in that sense.

4 I mean this is a--when you pool the data, you have to include
5 that year in there to make sure that the data is consistent
6 across years--I mean that the analysis is consistent across
7 years and that one particular year is not confounding the
8 data. But I wouldn't even interpret those in that sense. If
9 you wanted me to talk about 1979, I mean I would use that as
10 a separate set of analyses.

11 Q Well, that's what I'm trying to get to. I mean
12 there's a--'79--2.5 is almost twice 1.3. And you don't
13 consider that to be significant?

14 A Not for what I'm doing in the analysis that I'm doing
15 here, no, because again, as I tell you, if you separate out
16 and take each year separately and look at the bills
17 introduced in 1979 separately that the results with regards
18 to race and party and gender and seniority look similar to
19 the results you get when you put all those years together.

20 Q Well, again, maybe I'm not asking the question
21 properly, but there's almost as much difference between race
22 and gender as there is between 1979 and 1989 in terms of the
23 percentage you've got there, correct, the number you've got
24 there?

25 A I haven't looked at it, but if you---

1 Q (interposing) All right. Gender is 0.7. Race is
2 2.2. That's 1.5; correct?

3 A Right.

4 Q 1979 is 2.5. 1989 is 1.3. That's 1.2. So in other
5 words, one is 1.5 difference and one is 1.2 difference. And
6 you're saying one is significant and the other is not?

7 A No. No, no, no, no, no, no, no. I'm not saying that.
8 What I'm saying is that if you look at--you know, if you
9 want to explain the effects of race, and as I do here, or
10 what affects the introduction of black interest bills, and
11 the significant variables are race, party. And in the party,
12 Republicans are less likely--to interpret this, race,
13 African-Americans or black legislators are much more likely
14 than whites to introduce black interest bills. Party, what
15 this--the way the variable is coded, Republicans are less
16 likely than Democrats to introduce black interest bills, and
17 that's statistically significant.

18 Gender, women are more likely than men to introduce
19 black interest bills--again, statistically significant.
20 Seniority, you don't see any zero, and it's not significant,
21 so I wouldn't even make anything of that. And the other
22 variables are not statistically significant. The impact on
23 whether or not a representative introduces black interest
24 bills is not significant.

25 But you get down to 1979 and 1989 and if you want to

1 interpret that, I mean it seems like it was less likely to
2 have a black interest bill introduced in 1979 than it was in
3 1989. I don't know why that is. But when you start adding
4 and subtracting the way you did, I don't know how to inter-
5 pret that.

6 Q Well, again, that's why I'm trying to go over the data
7 with you is to understand. And you previously said that
8 there is a link between gender and black interest bills, did
9 you not?

10 A That women are more likely than men to introduce black
11 interest bills.

12 Q Yes. That's a gender difference, yes?

13 A Yes.

14 Q All right. And that is .7?

15 A I mean that's not the--the .7 is not the difference
16 between men and women in that sense. I mean the .7--I mean I
17 wouldn't interpret it that way. I mean the .7 is the effect
18 that gender has on the likelihood of introducing a bill. I
19 mean it's not a measure of--you know, in this case the way
20 it's coded is that women are more likely than men.

21 Q All right. Well, then, again, that's what I'm trying
22 to get--but you say that a .7 matters but a 1.2 doesn't?

23 A I don't say that. Regression statistical analysis
24 says that. Here you have--I mean this is sort of standard
25 regression analysis. It's significant at the--you typically

1 use the .05 measure as the bottom line. And that's saying
2 that this result--you're 95 percent sure that that result is
3 due to what you're measuring and not some error. I mean
4 that's what is general, basic statistical regression
5 analysis.

6 I mean the 1.2, if you subtract it, what--the 1979 and
7 1989, the only way I would interpret that is that you were--
8 it was less likely to have a black interest bill introduced
9 in 1979 than you were in 1989, because the 2.5 is a greater
10 number than the 1.3. But I wouldn't go and track '89 through
11 '79 and then make--I don't know what you would make out of
12 that statistic.

13 Q Well, again, I mean you put it in the table, and so
14 I'm trying to figure out what it--I didn't create the table,
15 Doctor. I'm assuming you did.

16 A I did not put what you said in the table. I don't see
17 1.2 in the table. I have 1979, and the result is negative
18 2.5; 1989, negative 1.3. Now, you're the one that wants to
19 subtract 1.3 from 2.5 to make something of that. I don't
20 know how you can do that statistically.

21 What I'm saying is if you look at the negative 2.5 and
22 the negative 1.3, the negative 2.5 indicates that it was less
23 likely to have a black interest bill introduced in that year
24 than in the other year, in 1989. But then when you--I don't
25 see 1.2 in the table at all. And you want to put 1.2 in the

1 table and make something of that. I don't know what you do
2 with that statistic. I can't help you there.

3 Q Okay. Well, again, so you're saying there's no
4 statistical significance between the negative 2.5 in 1979 and
5 the negative 1.3 in 1989?

6 Ms. Smiley: Objection; that's not what he said at
7 all. Don't put words in his mouth.

8 A And the only difference--the difference that it is is
9 that if you look at these--again, these just--this data
10 includes bills introduced in 1969, 1979, 1989, in the lower
11 house of the North Carolina legislature. And what the
12 numbers--the estimate for 1979 and 1989 indicate that you
13 were less likely to have a black interest bill introduced in
14 1979 than you were in 1989. That's all I can say from that.
15 That's all that I think any statistician can say from that.

16 And I don't know what they would make out of that otherwise.
17 Q So again, all you can say from that data is it was
18 less likely for one to be introduced--for a black interest
19 bill to be introduced in 1979?

20 A Than it was in 1989.

21 Q Does that apply to black legislators as well as non-
22 black legislators?

23 A That's all legislators.

24 Q Did you attempt to do anything in your study to
25 control for economic conditions?

1 A No, and I don't know what you mean by economic
2 conditions.

3 Q Well, some government programs cost money; is that
4 correct?

5 A Correct.

6 Q If the legislature has more or less money to spend
7 without raising taxes, is that a factor that you think is
8 potentially significant?

9 A Absolutely not in terms of whether a legislator would
10 introduce a black interest bill; it never stopped legislators
11 before. I mean there's no record of that ever being
12 important for legislators in terms of what they introduce.

13 Q It is your opinion that legislators don't take into
14 account the possibility of funding actually existing for a
15 bill and deciding whether to introduce it or not?

16 A I mean I can't speak to what legislators take into
17 account. What I'm telling you, look at the outputs
18 legislators and the bills that are--you see on the floor of
19 the legislatures that they often appear not to matter as to
20 what money is available. But as to what an individual
21 legislator takes into account, I can't go there. I don't
22 know--I can't speak to that.

23 Q Does your research have any reference as to what bills
24 were enacted as opposed to what were introduced?

25 A Not the particular bills that were enacted, not

1 specifically. I mean in the article that I wrote that's
2 referenced in this report, you looked at passage rates based
3 on the race of the introducer of the bill. But in terms of a
4 particular bill, I found that blacks were in some cases less
5 likely to have that bill passed than whites, but in terms of
6 specific bills that were enacted, no.

7 Q Is it correct to say that your research did not
8 indicate any statistically significant difference between the
9 states that you examined with regards to black legislators
10 better representing black interests?

11 A I don't understand your question.

12 Q Was there differences--were there significant---
13 statistically significant differences between the states that
14 you looked at that is referenced in your book?

15 A Not with regards to black interests is my recollection
16 in the data in the book. I didn't look at that particular
17 question for this purpose, but I don't recall there being any
18 differences.

19 Q And again, it didn't appear that way from a review,
20 but I wanted to be sure, again, that there were--you're not
21 saying that North Carolina is different than--with regards to
22 statistical significance of black legislators providing
23 better representation of black interests than the other
24 states you looked at?

25 A No, that's not what I'm saying.

1 Q Substantive bill; read your note, but--I've read your
2 note I want to be sure I--tell me what you mean by substan-
3 tive bill.

4 A We wanted to make sure that we didn't--that I didn't
5 when we coded this data include bills that--there are bills
6 that are sort of symbolic where you have, I don't know,
7 National Tobacco Day or Statewide Tobacco Day. It's a
8 symbolic issue. There's no policy that has been debated--
9 commemorations, we want to honor--Jesse Helms Day.

10 And so those things will be introduced in the
11 legislature, but there's no vote that--a recorded vote that
12 the legislature would take on that. So those kind of
13 symbolic measures we wouldn't--I didn't include the
14 introduction.

15 Q I'm not sure about honoring Jesse Helms, having worked
16 right here for his opponent a couple of times, but I'll defer
17 to you. So again, those kind of bills where you honor, or
18 it's somebody 100th birthday, the Willard Scott type things,
19 just weren't considered at all? You didn't look at the race
20 of whoever was being honored? Those were just out?

21 A Those are just out. That's correct.

22 Q Did you review race with regards to voting support for
23 bills that were black interest bills?

24 A I don't understand the question.

25 Q Okay. Well, let me try to clarify, then. Let's say

1 Representative Blue introduced a bill that you deemed to be a
2 black interest bill and he is listed as the primary sponsor.
3 Would you look at race to see who voted in support or
4 opposi-tion to the bill that Representative Blue had
5 introduced, either in committee or on the floor as a whole?

6 A Not in the sense that you describe that. I mean in
7 the article study that I did as referenced in the report, we
8 looked at passage rates. And the introducer, it's not intro-
9 duced by--in the case of Dan Blue, it would be whether it was
10 an African-American or a black legislator who introduced the
11 bill, so based on race of the legislator rather than the
12 specific legislator him or herself. So yes, we analyze
13 passage rates based on the race of the introducer of the bill
14 and not the individual legislator.

15 Q And what did your research show?

16 A In general, you find that blacks were less likely to
17 have bills passed than white legislators. And that varies
18 sometimes depending on the particular issue of the bill, the
19 substance of the bill.

20 Q Did you control for what you define as black interest
21 bills versus non-black interest bills?

22 A Inherently so in the nature of the research, yes, so
23 the black interest bills as I define them in the definition
24 laid out in the study.

25 Q All right. Let me try to rephrase. To use again

1 Representative Blue, Speaker Blue, or I guess he didn't--when
2 he was speaker he may not have introduced bills. I'm not
3 sure how that worked at his time.

4 But if an African-American legislator introduces a
5 bill and it is a black interest bill as you defined it and
6 that same legislator introduces another bill which deals with
7 something that is not within your categories of being a black
8 interest bill, did you study to see if there was a difference
9 in the passage rate between those two?

10 A Yes. We controlled for whether the bill was a black
11 interest bill or not. So if you hold those constant, I mean
12 where it's a black interest bill constant, you still get the
13 result that I mentioned that blacks were in most cases less
14 likely to have their bill introduced regardless whether it
15 was a black interest bill or not.

16 And even we had a--I remember in the study we had a
17 proxy for whether it costs money. You know, so the argument
18 was that--oh, the reason why blacks are less likely to have
19 their bills passed is because they introduce these things
20 that require spending money. And in these tight fiscal times
21 we're not going to spend any money, so that's why we vote
22 against these things. That's one argument.

23 So we put in a control for whether or not it required
24 an expenditure of money. And even if you hold that constant,
25 we found that those results held up with regards to race.

1 Q Was that specifically with regards to North Carolina
2 or was that across all the states?

3 A It was across in this particular study six states,
4 these five here and then California included.

5 Ms. Smiley: Trey, I usually after an hour and a
6 half ask my witness if they want to take a break.

7 The Witness: I'm fine.

8 Ms. Smiley: Are you fine? I mean if everybody is
9 fine, the court reporter?

10 The Reporter: I'm fine.

11 Ms. Smiley: Okay.

12 Mr. Thurman: Thank you.

13 By Mr. Thurman:

14 Q Okay. Doctor, explain regression analysis.

15 A Have you got time for a three hour course?

16 Q I've taken it at least once, but give me your summary
17 of how you mean--you say you used a regression analysis.
18 Explain what that means.

19 A You have a dependent variable that is to be explained.
20 In this case it's the introduction of a bill. And you want
21 the independent variables regressed on that dependent
22 variable, in this case, race, party, gender, seniority, and
23 those other independent variables.

24 And you're trying to isolate the specific effect of
25 your independent variable on the changes in your dependent

1 variable. And that's what regression analysis allows you to
2 do. And these days it's done with various computer packages
3 and programs.

4 Q Did you use a computer program for this, Doctor?

5 A Yes. And I don't remember whether it was data or
6 science or some computer based statistical package. And I
7 should say I mean in the studies that were published from
8 which--the report is taken from published studies, part of
9 the review process is a review of the statistical analyses
10 that you use to generate the results.

11 And in the case of the journal article it was
12 published in the top--the second or third best journal in
13 political science and went through a rigorous review of the
14 analysis, so just sort of standard procedures in social
15 science is what I'm getting at.

16 Q A peer reviewed journal?

17 A That's correct.

18 Q And regression analysis is an accepted technique;
19 correct?

20 A Absolutely. In fact, that will be one of the main
21 things a reviewer at a peer reviewed journal will look at,
22 whether you used the appropriate method of analysis. And in
23 this case, it passed muster and was published.

24 Q Have you reviewed any research or writings by other
25 academics that would contradict your findings?

1 A Yes; I mean not for the purpose of this study but in
2 general.

3 Q Yes.

4 A I mean one that comes to mind and in fact what
5 motivated my initial research in this area was a study by a
6 friend of mine, Carol Swain. We were at graduate school
7 together at UNC back in the 1980s. She left in '89 and I
8 left some years later.

9 She wrote a book, *Black Interest, Black Faces*, a
10 representation of African-Americans in Congress. And her
11 general conclusion is that the race of the representative
12 doesn't matter in the nature of the representation blacks get
13 in Congress. So she definitely would disagree. Her results
14 would disagree.

15 Now, I mean let me say that--let me phrase this
16 carefully. I don't know whether she would disagree with my
17 findings, but the findings are at odds with the findings in
18 her book. I should put it that way. That's the most
19 appropriate way to say it. And I think her findings are just
20 flat wrong, those particular findings.

21 What Carol does in that book is she looks at roll call
22 votes in Congress. And she compares the roll call votes of
23 black members of Congress to roll call votes of white members
24 of Congress who represent significant numbers of blacks and
25 from pools that you don't see much difference in how they

1 vote. So therefore, the race of the representative doesn't
2 matter.

3 You know, I argued with her on her dissertation and I
4 argued with her when the book was published about this. The
5 only thing that she shows in that analysis that she can stand
6 by is that white Democrats and black Democrats vote alike,
7 because her sample is a sample of all Democrats. And they
8 happen to differ in terms of their race.

9 And the other problem with her analysis from my point
10 of view is by the time you get to a roll call vote, you've
11 missed what's interesting in the legislative process. It's
12 no surprise, hell, that black Democrats and white Democrats
13 vote alike. And that's what she shows with her analysis.

14 What I challenge her, even to this date I do, is to go
15 and see how they look at the beginning of the process, and
16 this is what I do. When--at the end of a process when you're
17 voting up or down, you only have two choices and the terms
18 have already been set.

19 What's important is what a white legislator who
20 represents blacks is willing to stand up and say at the
21 beginning of the process, you know, what are they going to
22 put on the agenda. They have free rein at that point to say
23 I'll introduce a bill in this area or that area or none at
24 all.

25 When you get to the point at the end of the process

1 where you had a long process and you had debates and you had
2 amendments and then you just have a vote up or down, it's
3 misleading to draw the conclusions that she draws in that
4 study. Again, the most relevant is what are those
5 representatives willing to say and put on the agenda by a
6 bill introduction.

7 And another thing she did in the analysis in that book
8 that I disagree with is that in some ways she stacked the
9 deck. She includes bills that we wouldn't expect any
10 disagreement over. If you want to know if there's a
11 difference in how black members and white members vote and
12 particularly those members who represent the similar kinds of
13 constituencies that she has argued, that, you know, it's the
14 district that matters and not the race of the representative,
15 we know that there are certain issues in which blacks and
16 whites in the general population will tend to disagree on.

17 What I suggested that Carol would do in that
18 particular analysis is choose legislation in which black
19 interests and white interests conflict and then see how those
20 white representatives who represent black constituents--what
21 position they then take. To get some bill on, you know,
22 whether or not you're going to have a post office in a
23 district, why would you expect blacks and whites to disagree?
24 Those kinds of bills are included in her analysis.

25 What I would have done in that analysis is say here,

1 here is something that I know there's going to be some
2 disagreement, where black interests and white interests are
3 conflicting. Then how well do those white representatives
4 represent black interests when push comes to shove, I mean,
5 and she can't demonstrate that.

6 So the only thing that she shows, I mean her--the
7 conclusion of her book is that the race of the representative
8 doesn't matter in the type of representation of black
9 interests you get. And I'm suggesting that she's wrong based
10 on her own analysis, and certainly my analyses here differ
11 with what she finds in that book.

12 Q And I want to be sure I heard you correctly. I think
13 you said what's more relevant or most relevant is what a
14 legislator does at the beginning. Are those words that you
15 said?

16 A I think it's more relevant--if you want to determine
17 how well a representative represents a particular set of
18 interests that the roll call analysis is not unimportant, is
19 not uninteresting, but you know, at the end of the day, you
20 have a yea or nay. That misses the point as to what has
21 taken place in the entire legislative process.

22 I'll give you a good example. In Congress--and I
23 argue with Carol Swain over this issue--if you look at
24 Democrats in Congress, for years the congressional black
25 caucus would have an alternative budget. I mean the

1 Democrats were in the majority and they had their budget.

2 At the end of--at the roll call analysis, what would
3 be included in Carol's analysis would be a yea or nay vote on
4 the budget. But what she would miss is that along the way
5 that the black Democrats had a separate budget that
6 articulated separate interests that they lost, and when the
7 bill came to the floor, it was voted down. And what
8 prevailed and made its way to the final roll call was the
9 Democratic party's budget.

10 But if you just focus on that budget, you miss the
11 fact that the black Democrats at different stages in that
12 process articulated a separate set of interests, a separate
13 set of interests that were more distinctive in representing
14 black interests. And she can't reflect that in the roll call
15 vote. If you looked at what was introduced by those
16 legislators, you will see as we show, as I show in this study
17 here, racial differences in terms of what's introduced.

18 Q Do you believe that a legislator who introduces a bill
19 that he or she believes has no chance of passage is repre-
20 senting the interests of their constituents?

21 A Could be in some sense. I mean oftentimes legislators
22 will introduce symbolic legislation as a way of representing
23 their constituents, so that's possible.

24 Q Is it possible that a legislator could make a rational
25 choice that they wish to be more within the mainstream by not

1 introducing bills that they know have no chance of passage?

2 A Repeat the question. I'm trying to---

3 Q (interposing) Yes, sir. You said, I believe, and
4 again, what we're going from is that a legislator could
5 introduce a bill that has no chance of passage to get it on
6 the agenda or for a symbolic purpose; is that right?

7 A That's correct.

8 Q Is it possible that a legislator could reach a
9 rational decision that they will be more effective by not
10 introducing bills that have no chance of passage so that the
11 bills they introduce are not tainted by the bills they have
12 introduced that they knew had no chance of passage?

13 A Yeah, I agree with that, that a person could make that
14 rational decision to behave that way, yes.

15 Q Again, to use an example, the longtime senior senator
16 from North Carolina, Jesse Helms, would introduce some bills
17 that had no chance of passage and those colored the way
18 people looked at other bills he introduced. Would you say
19 that was a fair analysis?

20 A I mean I can't comment on that in the sense of--I mean
21 without particulars, I mean, and when you say colored the way
22 other people looked at--I mean I don't know, you know, what
23 particular bills you talk about he introduced. And it's hard
24 to comment on how that may have colored what else. I mean
25 there's a lot of uncertainties. I mean---

1 Q (interposing) Introduce a bill calling on us to
2 withdraw from the UN, for instance, that that might have
3 influenced the way people looked at other bills he introduced
4 dealing with foreign policy.

5 A It might. I mean I can't dispute that it might.

6 Q You identified Carol Swain. Any other people who have
7 published and that have reached different conclusions than
8 your book and the paper you've produced?

9 A Carol Swain is the one that comes to mind at this
10 point, I mean in terms of legislative stuff. I mean I can't
11 think of anyone else, anything else that I've read that would
12 disagree with those general conclusions.

13 Q In terms of drawing district lines, redistricting, do
14 you feel that you have any expertise in that area?

15 A None whatsoever.

16 Q Have you been--you produced the report that we've
17 talked about today and we're going to attach as an exhibit to
18 Ms. Smiley and the attorneys from the Attorney General's
19 Office; is that correct?

20 A I gave it to Ms. Smiley. I don't know who else in the
21 Attorney General's Office has seen it.

22 Q Okay; that's what--yeah, but I mean you gave it to
23 her. Since that time have you been asked to produced any
24 other reports or express any other opinions?

25 A No.

1 Q Other than general discussion about what was going to
2 be involved in a deposition, have you had any discussion with
3 them about your testimony?

4 A Tell the truth and answer the questions and just sort
5 of a general framework of what would happen in a deposition.

6 Q All right. If we can take a break, and I think I may
7 be about finished.

8 A Okay.

9 The Reporter: Off the record. 2:40 p.m.

10 (A brief recess was taken.)

11 The Reporter: On the record. 2:44 p.m.

12 Ms. Smiley: I've got a couple of questions.

13 Mr. Thurman: Okay. If you want to go---

14 Ms. Smiley: (interposing) Oh, no. I thought you
15 said you were through.

16 Mr. Thurman: No, no. If you want to go ahead--

17 Ms. Smiley: (interposing) No.

18 Mr. Thurman: ---mine are just sort of wrap-up, so
19 I mean---

20 Ms. Smiley: No. Go ahead.

21 Mr. Thurman: Okay.

22 Ms. Smiley: No, I thought you said you were
23 through.

24 By Mr. Thurman:

25 Q Well, let me go back. Professor, other than the times

1 you've asked me to repeat a question, have you understood the
2 questions I've asked you this afternoon?

3 A Yes.

4 Q Any answers--any other thoughts that have come to you
5 since you answered and you would like to go back and amplify,
6 clarify?

7 A I mean not at this time. I mean if I can look at a
8 written transcript at some point, I would like that
9 opportunity to do so.

10 Q And I believe Ms. Smiley and I have agreed that you
11 are going to have--it's called read and sign. And the court
12 reporter will send you a copy of the deposition, and I will
13 let her explain to you what that means. But again, you will
14 have an opportunity to look at it and see it.

15 A Okay.

16 Q Carol Swain, I take it she was unpersuaded by your
17 suggested changes to her analysis?

18 A Yes. I would say yes.

19 Q Again, she has not since said, "No, I believe my
20 conclusions were faulty based on the opinions you've
21 expressed here this afternoon"?

22 A She hasn't but there's volumes of research that
23 followed up her study that would indicate that.

24 Q And who are those by?

25 A David Canon is one. Katherine Tate is another. Kenny

1 Whitby is another one, Sharon O'Halloran and some coauthors
2 in a journal article. David Lublin has a book that in part
3 challenges Swain's result. Those are the ones I can think of
4 offhand--and again, her results in terms of the types of
5 representation you get from--whether or not the race of the
6 representative matters in the representation you get from
7 legislators. Richard Fenno has a recent book in blacks in
8 Congress that would take issue with her results.

9 Q Do you feel that there is any distinction between
10 congressional versus state legislative difference in terms of
11 race, that race matters? Do you think there's any difference
12 there?

13 A No. The research doesn't show any differences there.

14 Mr. Thurman: That's all I've got for right now.

15 Ms. Smiley: Okay.

16 CROSS - EXAMINATION 2:46 p.m.

17 By Ms. Smiley:

18 Q Going to Carol Swain for a moment, has she taken issue
19 with your methodology or your results in this particular
20 study on legislators?

21 A Not to my knowledge, not--we've discussed it, but she
22 hasn't taken issue with the--in my presence, to my knowledge.

23 Q Now, you've indicated that the time at which you were
24 looking at legislation went through 1989?

25 A That's correct.

1 Q Okay. As a political scientist and as someone who has
2 done several kinds of study looking at substantive and
3 descriptive representation, do you have an opinion as to
4 whether or not if you looked at the legislation in the next
5 ten years after this that you would get significant
6 differences or any kind of difference? Do you have an
7 opinion you can express?

8 A I would expect not to find differences--results that
9 would be different in what I have in my data. In fact
10 there's some reason to suspect that the representation of
11 blacks would be--blacks would be less well off in terms
12 of--in North Carolina in particular.

13 When I did my data, the data that I have, the
14 Democrat-Republican balance in the legislature has changed.
15 There are more Republicans in the legislature, who tend to be
16 less likely to introduce black interests. And so the
17 Democratic Party has sort of been forced to at least pay
18 attention to some Republicans.

19 And I don't know what that means for the representa-
20 tion of black interests, but I could imagine that meaning
21 that blacks are less well off than when the Democrats were in
22 the clear majority and could deliver to black representatives
23 certain issues.

24 Q Okay. Now, in terms of what you--you're a political
25 scientist, and you've looked at descriptive and substantive

1 representation. Do you have an opinion as to the importance
2 in North Carolina for black citizens to have black repre-
3 sentatives in the legislature?

4 A Oh, absolutely. I mean the--and one of the most
5 important things about descriptive representation and what I
6 find is there's a link between the descriptive and the
7 substantive, which is important.

8 But beyond that it's clear based on several studies
9 that it has some positive benefits to black citizens outside
10 of the legislative process, that blacks are much more likely
11 in situations where they have representation that looks like
12 them or representatives that look like them to be interested
13 in politics, to be more knowledgeable about the political
14 process, to participate more in the process.

15 So there's some instrumental value for black citizens
16 in having black representation to be more trusting of the
17 system. There has been found to be a link between levels of
18 trust and the presence of black representation. So yes,
19 there are major benefits, and I would expect to find those in
20 North Carolina to be similar to what you find in general.

21 Q As a political scientist, do you have an opinion on
22 the importance of the General Assembly in doing its
23 redistricting to maintain districts that have in the past
24 elected black representatives?

25 A Yes. I mean I think it's increasingly important to do

1 so as the demographics of this state change. And given my
2 findings that--you know, that the race of the representative
3 matters in terms of how well citizens who share that race are
4 represented, I think it's incumbent upon the General Assembly
5 and policy makers to take that into account in drawing
6 legislative districts.

7 You know, this state is much more diverse than it once
8 was. And for that diversity to be reflected in public
9 policies and for those citizens to feel included in the
10 process, I think it's important that they be represented in
11 the halls of power. And in terms of the legislature, one way
12 to ensure that is to have districts in which they have a
13 reasonable opportunity to elect representatives who look like
14 them.

15 Q Okay. One of the things that you reference, I
16 believe, in your report is a study on the effectiveness of
17 North Carolina's legislators?

18 A Yes.

19 Q And---

20 A (interposing) Do you mean the study that I did?

21 Q You did a--yeah. All right. You did a study about
22 the effectiveness of North Carolina--of black North Carolina
23 legislators?

24 A That's correct.

25 Q Okay. And you've referenced that in your report?

1 A Yes.

2 Q Okay. And that study--did you provide that to any
3 African-American legislators?

4 A When it was published, I sent--shortly after it was
5 published, I sent copies to whoever was the head of the black
6 caucus. I was at Rutgers University in New Jersey at the
7 time. And because it was a North Carolina study and looking
8 at the--how effective black legislators in North Carolina
9 were perceived to be, I sent a copy to the--whoever was the
10 head of the congressional black--the legislative black caucus
11 at that time. I don't remember the name.

12 And I also subsequently sent a copy to Dan Blue, I
13 believe, in another context. I was in conversation with
14 Representative Blue about doing an event at Rutgers, and this
15 piece had recently been published. And his name was--he is
16 mentioned in there by name. And so I said, you know, "This
17 may be of interest to you" and sent him that.

18 Q And that study on the effectiveness of black
19 legislators in North Carolina, does that study refer to and
20 reference to your findings about the importance of black
21 representatives in a legislature and the fact that they
22 represent or bring--introduce bills about black interests?

23 A I don't---

24 Mr. Thurman: (interposing) Object to the form.

25 Q Okay. He is just objecting to the form. It's not a

1 well stated question.

2 A Okay.

3 Q You can---

4 A (interposing) I didn't understand the question. I
5 was going to say I didn't understand it. Okay.

6 Q Okay. Let me start over. You did that study on the
7 effectiveness of black legislators in North Carolina?

8 A Correct.

9 Q Okay. In that study, did you or did you not reference
10 the study you had done on bill introduction by black legis-
11 lators?

12 A Yes, I did.

13 Q Okay. All right. Now, what was the result of your
14 study on the effectiveness of black legislators in North
15 Carolina?

16 A In this study--in that study, I was looking at--I mean
17 the North Carolina Center for Public Policy Research has this
18 data on legislator effectiveness. And then I did this study
19 to sort of follow up the bill introduction analysis study.

20 And the logic--at least my logic was that okay, you
21 know, it's one thing to have blacks elected in a legislature
22 and introducing bills. How are they perceived their peers
23 once they are there? And part of this data that the North
24 Carolina Center for Public Policy Research collected allowed
25 me to do this analysis to see how effective black legislators

1 were perceived to be by their peers, by lobbyists who are
2 registered with the legislature, and by journalists who
3 regularly cover the legislature.

4 And what I found is that all else being equal--I mean
5 you control for party, seniority, committee assignments,
6 leadership positions--that black legislators were seen as
7 less effective than their peers. And when the ratings were
8 done by other legislators, they were seen as less effective.
9 When they were done by lobbyists, they were seen as less
10 effective than other legislators.

11 Q Now, what message as a political scientist were you
12 sending to the black legislators when you sent them your
13 study that they are less effective? What does that as a
14 political scientist--what does that mean?

15 A Well, my concern was and my interest in this was and
16 the conclusion of the study is whether or not the ratio
17 divisions and hurdles that we know exist outside of public
18 life also get transformed into public life as well. And that
19 is that here you have blacks, they overcome these hurdles and
20 they're elected to the legislature. And then inside the
21 legislature there may be institutional barriers for the
22 interests that they represent to be fairly considered within
23 the legislature.

24 Q Would your conclusion be that they ought to give up,
25 then?

1 A No, no. They certainly shouldn't give up. I mean I
2 think--because I mean, again, the research is clear they have
3 an effect on the--they can shift the terms of the debate.
4 But my conclusion would be that it's an uphill battle in so
5 doing.

6 You may have an African-American, you know, to rise to
7 become Speaker. That's not some magic bullet for black
8 interests and black legislators being successful in the
9 legislature, that it's--you know, it has to be a continuous
10 process of fighting the battle to have those interests
11 articulated.

12 And in fact I mean--and in part it's because--I mean
13 one conclusion that I raise and one possibility that I raise
14 in that study is that it's because of the particular
15 interests that they articulate may be the reason why they are
16 seen as less effective; when you are articulating black
17 interests that sometimes often challenges the status quo that
18 that's not a popular position to be in. And that could be
19 sort of that negative perception of black legislators.

20 Q And as I recall, that effectiveness study is cited in
21 your report?

22 A I think so. I'm certain that it is. One moment here,
23 I'll look for the note.

24 (Witness peruses document.)

25 I can't find the reference. I'm not sure that it is.

1 (Witness peruses document.)

2 Q I thought I had seen it in there. What would be the
3 name of it?

4 A It's in my--it's Chapter 5 of the book that's cited.
5 And then there's a separate article with some different
6 analysis on the same topic that was published in a journal on
7 this topic. But the--I'm trying to think of the title or the
8 article. I don't remember the title of the article.

9 Ms. Smiley: Okay. I don't have any further
10 questions.

11 REDIRECT EXAMINATION

2:5

12 By Mr. Thurman:

13 Q Professor, are you familiar with demographic changes
14 that have occurred in North Carolina since 1969?

15 A In general terms.

16 Q Has the percentage of the population that's black
17 increased or decreased?

18 A That I don't know. I just know the state is much more
19 diverse when you look at diversity in general terms of the
20 minority population and primarily with the influx of Latino
21 voters, Latino citizens, persons who may not be citizens.

22 Q So you don't know then whether there was a higher
23 percentage of the population that was black in 1969 versus
24 today or 1989 for that matter?

25 A No, I don't know.

1 Q Do you think that might influence the type of legis-
2 lation that gets enacted?

3 A It's possible that that might, but I would be more
4 interested in looking at it district by district in that
5 sense. But it's possible that that may be.

6 Q You talked about black legislators being perceived as
7 being less effective?

8 A Yes, that's what I found in my study. And then
9 Chapter 5 of the book is a study of that.

10 Q I take it the fact that you're citing it means that
11 you feel that the annual survey that the North Carolina
12 Policy for Public Research, I believe--is that---

13 A (interposing) Yes.

14 Q ---the title?

15 A North Carolina Center for Public Policy Research.

16 Q Okay; thank you--that their methodology is valid,
17 then?

18 A In fact, that data they collected I think is some of
19 the best. Several states collect data on effectiveness, but
20 the measures they use I think are the best out there. In
21 fact there's some--there's a study that looked at the
22 different effectiveness measures and gave them very, very
23 high marks on their data.

24 Q Given that the study shows that black legislators, all
25 other things being equal I believe is what you said--or

1 controlling for the other variables, I should say. Is that
2 more accurate?

3 A Correct; either way.

4 Q Okay; are perceived as less effective?

5 A Yes.

6 Q Do you have an opinion as to why that is?

7 A Well, in part--I think part of it is that the particu-
8 lar issues that they come to the legislature to represent,
9 those black interest issues. I mean it's sort of standard in
10 legislative policy research among political scientists that
11 the way to gain power and influence in the legislature and
12 prestige in the legislature is to serve on the committees
13 that distribute money, that set the rules, the terms of the
14 debate.

15 And what some of my research shows is that black
16 legislators, they do those things and serve on those
17 committees, but they spend quite a bit of their time repre-
18 senting these black interests. And these are not popular
19 things to represent in the legislature. So my guess is--from
20 the data is that black legislators suffer from the particular
21 agenda that they have to push in the legislature or that they
22 feel burdened to push in the legislature.

23 Q Children don't vote, so if you're pushing children's
24 interests, that group can't help elect you; is that right?

25 A That's part of the logic in that, yes, or blacks

1 making demands or requests is seen as something radical for
2 rocking the boat or being defensive. So it could be, you
3 know, some issue that asked for some equity or retribution
4 and redistribution of resources, and that's perceived as
5 being not a popular issue.

6 Mr. Thurman: That's all I've got.

7 Ms. Smiley: Thank you very much.

8 (The deposition was closed at 3:04 p.m.)

STATE OF NORTH CAROLINA
COUNTY OF WAKE

C E R T I F I C A T E

I, Alexandra Hartman, Notary Public-Reporter, do hereby certify that **Kerry L. Haynie, Ph.D.** was duly sworn or affirmed by me prior to the taking of the foregoing deposition and that said deposition was taken by me and transcribed under my direction and that the foregoing 79 pages constitute a true and correct transcript of the testimony of the witness.

I do further certify that I am not counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

I do further certify that the stipulations contained herein were entered into by counsel in my presence.

In witness whereof, I have hereunto set my hand, this 18th day of February, 2004.

My commission expires

June 1, 2008.

Alexandra Hartman, CVR
Notary Public for the
State of North Carolina

KAY McGOVERN & ASSOCIATES
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S I G N A T U R E

I have read the foregoing 79 pages which contain a correct transcript of the answers made by me to the questions herein recorded.

Signature is subject to corrections on attached errata sheet, if any.

(Signature of Kerry L. Haynie, Ph.D.)

State of
County of

Subscribed and sworn to before me this _____ day of
_____, 20____.

My commission expires

Notary Public

(Seal)

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Analysis of Out-of-Precinct Provisional Votes by Race in North Carolina General Election, Nov. 2004

Prepared by Democracy North Carolina, January 2005

This analysis identified the race of 99% of the out-of-precinct (OOP) provisional voters in the Nov. 2004 election and found that 36.4% were black. By contrast, blacks cast 18.6% of all votes in the election. Blacks made up a disproportionately larger share of out-of-precinct provisional voters in 57 of the 60 counties with 5 or more OOP votes and where blacks cast at least 6% of all votes; they were a smaller share in Hertford County and an equal share in Vance and Franklin.

COUNTY	Total Out-of-Precinct		% Out-of-Precinct Votes			%All Votes Cast By Black	%Pts.Diff. OOP v. All Votes
	Number	%Identified	Blacks	Whites	Other		
ALAMANCE	72	100.0%	23.6%	70.8%	5.6%	17.2%	6.4
ALEXANDER	19	100.0%	5.3%	94.7%	0.0%	3.6%	
ALLEGHANY	5	100.0%	0.0%	100.0%	0.0%	1.1%	
ANSON	25	100.0%	52.0%	40.0%	8.0%	41.3%	10.7
ASHE	44	100.0%	0.0%	97.7%	2.3%	0.4%	
AVERY	45	100.0%	0.0%	97.8%	2.2%	0.2%	
BEAUFORT	23	100.0%	69.6%	30.4%	0.0%	21.0%	48.6
BERTIE	95	100.0%	85.3%	12.6%	2.1%	54.1%	31.2
BLADEN	2	100.0%	50.0%	50.0%	0.0%	34.7%	
BRUNSWICK	12	100.0%	16.7%	83.3%	0.0%	10.3%	6.4
BUNCOMBE	163	96.9%	12.3%	80.4%	7.4%	4.9%	
BURKE	351	100.0%	4.6%	94.0%	1.4%	5.6%	
CABARRUS	85	100.0%	22.4%	71.8%	5.9%	11.1%	11.3
CALDWELL	247	100.0%	7.7%	91.5%	0.8%	4.3%	
CAMDEN	11	100.0%	27.3%	72.7%	0.0%	15.1%	12.2
CARTERET	40	100.0%	7.5%	90.0%	2.5%	4.4%	
CASWELL	1	100.0%	100.0%	0.0%	0.0%	36.1%	
CATAWBA	202	100.0%	15.3%	79.2%	5.4%	6.7%	8.6
CHATHAM	104	100.0%	24.0%	71.2%	4.8%	14.4%	9.6
CHEROKEE	15	100.0%	6.7%	93.3%	0.0%	0.7%	
CHOWAN	18	100.0%	27.8%	72.2%	0.0%	24.4%	3.4
CLAY	17	100.0%	0.0%	100.0%	0.0%	0.1%	
CLEVELAND	34	100.0%	32.4%	64.7%	2.9%	18.7%	13.7
COLUMBUS	30	100.0%	30.0%	70.0%	0.0%	27.2%	2.8
CRAVEN	66	100.0%	36.4%	59.1%	4.5%	20.1%	16.3
CUMBERLAND	511	99.6%	48.3%	41.1%	10.6%	36.4%	11.9
CURRITUCK	15	100.0%	0.0%	100.0%	0.0%	5.7%	
DARE	13	100.0%	0.0%	92.3%	7.7%	1.7%	
DAVIDSON	30	100.0%	13.3%	86.7%	0.0%	7.8%	5.5
DAVIE	11	100.0%	0.0%	100.0%	0.0%	5.4%	
DUPLIN	8	100.0%	50.0%	37.5%	12.5%	27.6%	22.4
DURHAM	254	100.0%	72.8%	20.1%	7.1%	37.4%	35.4
EDGECOMBE	87	100.0%	79.3%	20.7%	0.0%	53.9%	25.4
FORSYTH	494	92.9%	52.4%	36.8%	10.7%	22.5%	29.9
FRANKLIN	100	100.0%	26.0%	70.0%	4.0%	25.7%	0.3
GASTON	16	100.0%	18.8%	81.3%	0.0%	12.7%	6.1
GATES	23	100.0%	43.5%	52.2%	4.3%	34.8%	8.7
GRAHAM	4	100.0%	0.0%	100.0%	0.0%	0.0%	
GRANVILLE	12	100.0%	91.7%	0.0%	8.3%	32.8%	58.9
GREENE	2	100.0%	50.0%	50.0%	0.0%	31.2%	
GUILFORD	443	92.8%	56.9%	34.5%	8.6%	27.1%	29.8
HALIFAX	240	100.0%	60.8%	35.4%	3.8%	45.6%	15.2

COUNTY	Total Out-of-Precinct		% Out-of-Precinct Votes			%All Votes Cast By Black	%Pts.Diff. OOP v. All Votes
	Number	%Identified	Blacks	Whites	Other		
HARNETT	149	100.0%	40.9%	52.3%	6.7%	18.3%	22.6
HAYWOOD	3	100.0%	0.0%	100.0%	0.0%	0.8%	
HENDERSON	88	100.0%	0.0%	92.0%	8.0%	1.9%	
HERTFORD	19	100.0%	36.8%	63.2%	0.0%	54.0%	-17.2
HOKE	66	100.0%	51.5%	34.8%	13.6%	40.1%	11.4
HYDE	14	100.0%	35.7%	64.3%	0.0%	21.2%	14.5
IREDELL	91	100.0%	17.6%	81.3%	1.1%	10.2%	7.4
JACKSON	6	100.0%	0.0%	100.0%	0.0%	1.1%	
JOHNSTON	355	99.2%	25.1%	69.0%	5.9%	13.0%	12.1
JONES	10	100.0%	70.0%	30.0%	0.0%	34.3%	35.7
LEE	173	100.0%	48.0%	46.8%	5.2%	17.3%	30.7
LENOIR	12	100.0%	75.0%	8.3%	16.7%	35.0%	40.0
LINCOLN	36	100.0%	0.0%	97.2%	2.8%	5.0%	
MACON	13	100.0%	0.0%	92.3%	7.7%	0.4%	
MADISON	28	100.0%	0.0%	100.0%	0.0%	0.4%	
MARTIN	1	100.0%	100.0%	0.0%	0.0%	37.1%	
MCDOWELL	34	100.0%	0.0%	97.1%	2.9%	2.8%	
MECKLENBURG	1777	100.0%	46.9%	48.1%	5.1%	26.8%	20.1
MITCHELL	28	100.0%	0.0%	100.0%	0.0%	0.1%	
MONTGOMERY	10	100.0%	50.0%	50.0%	0.0%	18.8%	31.2
MOORE	57	100.0%	21.1%	77.2%	1.8%	10.7%	10.4
NASH	5	100.0%	80.0%	20.0%	0.0%	28.7%	51.3
NEW HANOVER	317	99.1%	14.5%	80.4%	5.0%	11.3%	3.2
NORTHAMPTON	9	100.0%	55.6%	44.4%	0.0%	52.2%	3.4
ONSLow	161	100.0%	24.8%	67.7%	7.5%	16.6%	8.2
ORANGE	65	100.0%	41.5%	56.9%	1.5%	11.4%	30.1
PAMLICO	1	100.0%	0.0%	100.0%	0.0%	18.1%	
PASQUOTANK	27	100.0%	48.1%	44.4%	7.4%	33.1%	15.0
PENDER	60	100.0%	21.7%	70.0%	8.3%	19.4%	2.3
PERSON	6	100.0%	66.7%	33.3%	0.0%	24.3%	42.4
PITT	95	100.0%	36.8%	57.9%	5.3%	26.5%	10.3
POLK	1	100.0%	0.0%	100.0%	0.0%	3.9%	
RANDOLPH	158	100.0%	4.4%	92.4%	3.2%	4.6%	
RICHMOND	35	100.0%	40.0%	60.0%	0.0%	28.4%	11.6
ROBESON	357	100.0%	37.0%	20.7%	42.3%	25.8%	11.2
ROCKINGHAM	103	99.0%	37.9%	58.3%	3.9%	17.9%	20.0
ROWAN	40	100.0%	20.0%	77.5%	2.5%	13.0%	7.0
RUTHERFORD	45	100.0%	15.6%	82.2%	2.2%	8.2%	7.4
SAMPSON	24	100.0%	66.7%	29.2%	4.2%	28.2%	38.5
SCOTLAND	5	100.0%	60.0%	20.0%	20.0%	34.5%	25.5
STANLY	25	100.0%	64.0%	36.0%	0.0%	8.5%	55.5
STOKES	54	100.0%	7.4%	90.7%	1.9%	4.2%	
SURRY	98	100.0%	6.1%	90.8%	3.1%	3.1%	
SWAIN	2	100.0%	0.0%	100.0%	0.0%	0.9%	
TRANSYLVANIA	41	100.0%	4.9%	95.1%	0.0%	2.9%	
TYRRELL	6	100.0%	33.3%	33.3%	33.3%	29.5%	3.8
UNION	183	100.0%	17.5%	77.6%	4.9%	9.8%	7.7
VANCE	11	90.9%	45.5%	45.5%	9.1%	45.8%	-0.3
WAKE	2120	99.1%	40.9%	53.0%	6.1%	17.5%	23.4
WASHINGTON	3	100.0%	33.3%	66.7%	0.0%	42.7%	
WATAUGA	88	100.0%	4.5%	92.0%	3.4%	1.3%	
WAYNE	31	96.8%	32.3%	61.3%	6.5%	28.4%	3.9
WILKES	68	98.5%	0.0%	92.6%	7.4%	3.3%	
WILSON	87	100.0%	83.9%	13.8%	2.3%	34.5%	49.4
YADKIN	12	100.0%	0.0%	100.0%	0.0%	2.5%	
YANCEY	36	100.0%	0.0%	97.2%	2.8%	0.5%	
TOTALS	11,338	99.1%	36.4%	56.9%	6.6%	18.6%	17.8

TABLE 1: Comparison of Black Interest Bill Introductions by Race

	% of African Americans who Introduce a Black Interest Bill	% of Whites who Introduce a Black Interest Bill
1969	82%	39%
1979	55%	7%
1989	82%	22%
Total	74%	23%

Source: Bratton, Kathleen A. and Kerry L. Haynie (1999).

Note: As used in this table, black interest bills include introductions in children's, civil rights, education, health care, poverty/social welfare, and women's issues. The percentages are based on data pooled from each of the five states.

TABLE 2: Black Interest Bill Introductions as a Percentage of All Bill Introductions

State/Year	Proposed By		Difference
	Blacks	Non-Blacks	
Arkansas			
1979	20.8	19.5	1.3
1989	39.4	23.5	15.9*
Illinois			
1969	27.5	9.1	18.4*
1979	30.8	17.4	13.4*
1989	39.6	9.8	29.8*
Maryland			
1969	46.6	18.5	28.1*
1979	28.6	25.3	3.3
1989	37.7	29.2	8.5*
New Jersey			
1969	14.8	16.1	-1.3
1979	31.6	18.1	13.5*
1989	37.9	23.9	14.0*
North Carolina			
1969	40.0	13.1	26.9*
1979	75.0	16.9	58.1*
1989	53.1	26.3	26.8*

*Black-white difference significant at the .01 level.

(Table 3 contd.)

Arkansas	.01 (.25)	-.27 (.18)	-.35** (.09)	-.65** (.11)	-.23 (.15)	-.66** (.19)
California	-.48* (.25)	.52** (.17)	.25** (.09)	.04 (.09)	.55** (.15)	.69** (.14)
Illinois	-.16 (.22)	.37** (.15)	.09 (.08)	-.32** (.09)	-.05 (.14)	.10 (.13)
Maryland	-1.2** (.26)	.64** (.146)	-.30 (.08)	-.18* (.09)	.58** (.14)	.04 (.13)
North Carolina	.55** (.25)	-.29* (.17)	-.11 (.09)	-.41** (.09)	.03 (.15)	-1.0** (.17)
1979	-1.1** (.18)	.55** (.11)	-.80** (.06)	.22** (.06)	.13 (.09)	-.43** (.09)
1989	-.18 (.17)	.74** (.11)	-.35** (.06)	.50** (.06)	.95** (.09)	-.02 (.09)
Total Number of Bills	284	733	3028	3715	1179	1159

Dependent Variable = number of bills a legislator introduced in a category. Number of cases = 2023

**p ≤ .01 (one tailed test)

*p ≤ .05 (one tailed test)

NORTH CAROLINA COUNTY STATISTICS REPORT
October 2003

	Total Voters	Dem	Rep	Una	Lib
AMERICAN INDIAN or ALASKA NATIVE	43,158	32,308	5,336	5,441	72
ASIAN	4,121	1,396	996	1,714	15
BLACK or AFRICAN AMERICAN	967,128	828,732	42,882	94,764	750
MORE THAN ONE RACE or MULTI-RACIAL	1,667	770	320	552	25
OTHER	69,703	26,527	19,225	23,575	375
UNDESIGNATED	18,985	7,739	4,823	6,313	110
UNDESIGNATED	18,994	7,743	4,825	6,316	110
WHITE	3,896,726	1,489,017	1,650,044	749,172	8,491
	5,001,522	2,386,506	1,723,633	881,541	9,838

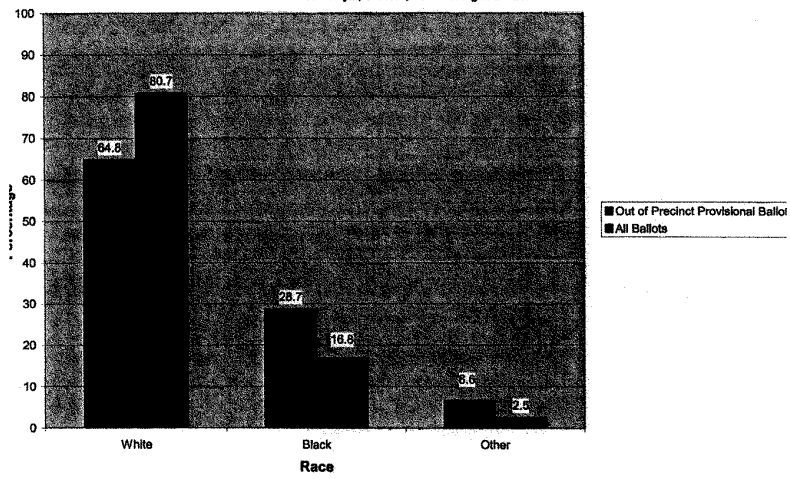
	Total Voters	Female	Male	Undesig
AMERICAN INDIAN or ALASKA NATIVE	43,158	24,364	18,745	49
ASIAN	4,121	2,158	1,919	44
BLACK or AFRICAN AMERICAN	967,128	580,344	385,532	1,252
MORE THAN ONE RACE or MULTI-RACIAL	1,667	890	695	82
OTHER	69,703	35,566	33,763	374
UNDESIGNATED	18,994	8,091	7,043	3,860
WHITE	3,896,726	2,090,857	1,803,113	2,756
	5,001,522	2,742,276	2,250,829	8,417

	Hispanic	Not Hispanic	Undesig
AMERICAN INDIAN or ALASKA NATIVE	17	41,771	1,363
ASIAN	38	2,654	1,425
BLACK or AFRICAN AMERICAN	432	926,674	39,316
MORE THAN ONE RACE or MULTI-RACIAL	318	700	646
OTHER	3,580	63,456	2,642
UNDESIGNATED	769	14,353	3,867
WHITE	2,188	3,776,174	116,766
	7,342	4,825,807	166,025

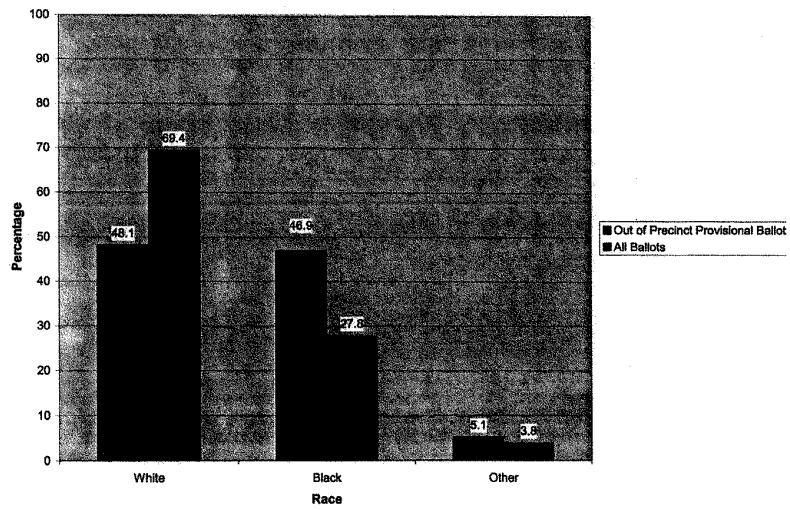
Racial Breakdown of Provisional Ballots Cast Out of Precinct

November 2, 2004

Excludes Forsyth, Guilford, Mecklenburg and Wake



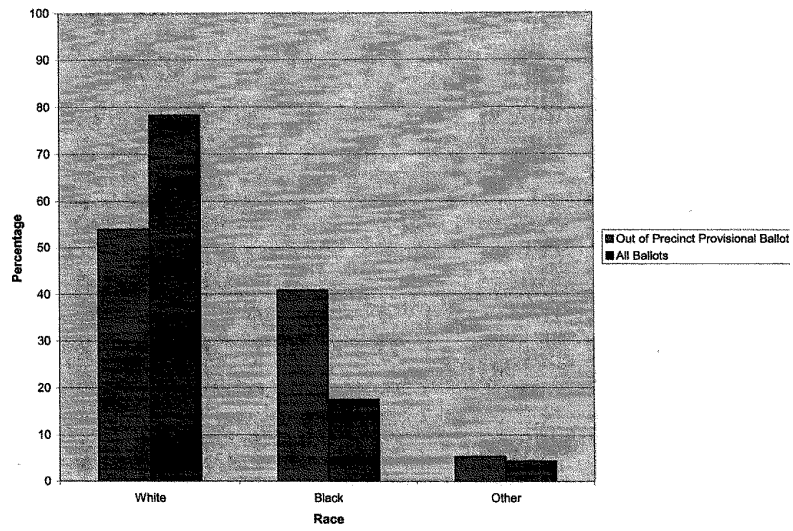
Racial Breakdown of Provisional Ballots Cast Out of Precinct
November 2, 2004
Mecklenburg County



3338

- 3 -

Racial Breakdown of Provisional Ballots Cast Out of Precinct
November 2, 2004
Wake County





Georgia General Assembly

Legislation - Bills - Resolutions - Joint Resolutions - Orders

05 LC 14 8991
House Bill 168

By: Representatives Franklin of the 43rd, Keen of the 179th, Cooper of the 41st, Burkhalter of the 50th, Lane of the 167th, and others

A BILL TO BE ENTITLED AN ACT

To amend Title 21 of the Official Code of Georgia Annotated, relating to elections, and Title 28 of the Official Code of Georgia Annotated, relating to the General Assembly, so as to specify requirements applicable to legislative and congressional reapportionment; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 21 of the Official Code of Georgia Annotated, relating to elections, is amended by adding a new subsection at the end of Code Section 21-1-1, relating to definitions and descriptions for use in designating congressional districts, to be designated subsection (d), to read as follows:

(d)(1) The General Assembly shall by general law apportion congressional districts in accordance with the following:

- (A) All districts shall comply with the United States Constitution and the Voting Rights Act of 1965, as amended;
- (B) All districts shall be composed of contiguous territory. Districts that connect on a single point are not contiguous;
- (C) All districts shall be compact in form. Bizarre shapes shall be avoided;
- (D) No district shall divide a community of interest unless necessary to comply with federal standards. A community of interest may be defined by a variety of factors, including, but not limited to, economic, social, and cultural factors, government services, and location;
- (E) Districts shall divide as few counties and recognized political boundaries as is practicable to comply with the other requirements in this subsection; and
- (F) No district shall be established with the intent or effect of diluting the voting strength of any person, group of persons, or members of any political party. Data reflecting past partisan voting behavior shall not be solely considered.

(2) None of the criteria specified in paragraph (1) of this subsection shall be afforded greater weight than any other criteria. Minor deviations from one or more of such criteria shall be permitted if necessary to conform a plan to the other criteria specified in paragraph (1) of this subsection. The requirements, however, of the United States Constitution and the Voting Rights Act of 1965, as amended, shall be given

priority should those requirements conflict with any other criteria..

SECTION 2.

Title 28 of the Official Code of Georgia Annotated, relating to the General Assembly, is amended by adding a new subsection at the end of Code Section 28-1-1, relating to membership and apportionment of the General Assembly, to be designated subsection (c), to read as follows:

(c)(1) The General Assembly shall by general law apportion representative districts and senatorial districts in accordance with the following:

(A) All districts shall comply with the United States Constitution and the Voting Rights Act of 1965, as amended;

(B) All districts in an apportionment plan for the Senate or House of Representatives shall have a deviation of not more than plus or minus 2.5 percent from the ideal population size to ensure that each person to be elected under such plan represents, as nearly as possible, an equal number of inhabitants of the state;

(C) All districts shall be composed of contiguous territory. Districts that connect on a single point are not contiguous;

(D) All districts shall be compact in form. Bizarre shapes shall be avoided;

(E) No district shall divide a community of interest unless necessary to comply with federal standards. A community of interest may be defined by a variety of factors, including, but not limited to, economic, social, and cultural factors, government services, and location;

(F) Districts shall divide as few counties and recognized political boundaries as is practicable to comply with the other requirements in this subsection;

(G) No district shall be established with the intent or effect of diluting the voting strength of any person, group of persons, or members of any political party. Data reflecting past partisan voting behavior shall not be solely considered; and

(H) Single-member districts shall be used in all cases and multimember districts shall be prohibited.

(2) None of the criteria specified in paragraph (1) of this subsection shall be afforded greater weight than any other criteria. Minor deviations from one or more of such criteria shall be permitted if necessary to conform a plan to the other criteria specified in paragraph (1) of this subsection. The requirements, however, of the United States Constitution and the Voting Rights Act of 1965, as amended, shall be given priority should those requirements conflict with any other criteria..

SECTION 3.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.

□

HR237.html



Georgia General Assembly

Legislation > House > Senate > Information > Office > Home

05 LC 28 2240

House Resolution 237

By: Representative Franklin of the 43rd

A RESOLUTION

Establishing redistricting standards for use by the House of Representatives; and for other purposes.

WHEREAS, in the drafting and consideration of legislation to redistrict congressional districts and House and senate districts, standards are needed to guide the members of this body in determining proper district configurations; and

WHEREAS, such standards are a useful tool in constructing and evaluating plans for redistricting to ensure that districts are fairly drawn in a rational manner; and

WHEREAS, it is fitting and proper that the members of this body set forth the standards and principles that they will follow with regard to redistricting.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES that these are the redistricting standards that will be used by this body in drafting redistricting plans and in evaluating redistricting plans that come before this body:

For congressional districts, the General Assembly shall by general law apportion congressional districts in accordance with the following standards:

- (1) All districts shall comply with the United States Constitution and the Voting Rights Act of 1965, as amended;
- (2) All districts shall be composed of contiguous territory. Districts that connect on a single point are not contiguous;
- (3) All districts shall be compact in form. Bizarre shapes shall be avoided;
- (4) No district shall divide a community of interest unless necessary to comply with federal standards. A community of interest may be defined by a variety of factors, including, but not limited to, economic, social, and cultural factors, government services, and location;
- (5) Districts shall divide as few counties and recognized political boundaries as is practicable to comply with the other standards; and
- (6) No district shall be established with the intent or effect of diluting the voting strength of any person, group of persons, or members of any political party. Data reflecting past partisan voting behavior shall not be solely considered.

No standard shall be afforded greater weight than any other standard. Minor deviations from one or more of such standards shall be permitted if necessary to conform a plan to the other standards. The requirements, however, of the United States Constitution and the Voting Rights Act of 1965, as amended, shall be given

priority should those requirements conflict with any other standard.

For the redistricting of the General Assembly, the General Assembly shall by general law apportion representative districts and senatorial districts in accordance with the following standards:

- (1) All districts shall comply with the United States Constitution and the Voting Rights Act of 1965, as amended;
 - (2) All districts in an apportionment plan for the Senate or House of Representatives shall have a deviation of not more than plus or minus 2.5 percent from the ideal population size to ensure that each person to be elected under such plan represents, as nearly as possible, an equal number of inhabitants of the state;
 - (3) All districts shall be composed of contiguous territory. Districts that connect on a single point are not contiguous;
 - (4) All districts shall be compact in form. Bizarre shapes shall be avoided;
 - (5) No district shall divide a community of interest unless necessary to comply with federal standards. A community of interest may be defined by a variety of factors, including, but not limited to, economic, social, and cultural factors, government services, and location;
 - (6) Districts shall divide as few counties and recognized political boundaries as is practicable to comply with the other standards;
 - (7) No district shall be established with the intent or effect of diluting the voting strength of any person, group of persons, or members of any political party. Data reflecting past partisan voting behavior shall not be solely considered; and
 - (8) Single-member districts shall be used in all cases and multimember districts shall be prohibited.
- No standard shall be afforded greater weight than any other standard. Minor deviations from one or more of such standards shall be permitted if necessary to conform a plan to the other standards. The requirements, however, of the United States Constitution and the Voting Rights Act of 1965, as amended, shall be given priority should those requirements conflict with any other standard.

Laughlin McDonald
Exhibit 3

HUGH K. LEATHERMAN, individually)
and as Senator from the 31st)
District, SCOTT H. RICHARDSON,)
individually and as Senator from)
the 46th District, and ROBERT W.)
HAYES, JR., individually and as)
Senator from the 15th District,)

Plaintiffs,)

C/A 3:01-3609-10

v.)

GLENN F. McCONNELL, in his)
capacity as President Pro Tempore)
of the Senate and Chairman of the)
Senate Judiciary Committee,)
DAVID H. WILKINS, in his capacity)
as Speaker of the House of)
Representatives, and JAMES F.)
HENDRIX, in his capacity as)
Executive Director of the State)
Election Commission.)

Defendants,)

JAMES H. HODGES, in his official)
capacity as the Governor of South)
Carolina,)

Intervenor-Defendant.)

KAMAU MARCHARIA, JAMES MELVIN)
HOLLOWAY, ANN JOHNSON, and ELDER)
JAMES JOHNSON,)

Plaintiffs,)

C/A No. 3:01-3892-10

vs.)
)
)
)
)
 James H. Hodges, in his official)
 capacity as Governor of South)
 Carolina; GLENN F. McCONNELL, in)
 his official capacity as)
 President Pro Tempore of the South)
 Carolina Senate; DAVID H. WILKINS,)
 in his official capacity as)
 Speaker of the South Carolina)
 House of Representatives; and)
 JAMES F. HENDRIX, in his official)
 capacity as Executive Director of)
 the South Carolina State Election)
 Commission,)
)
 Defendants.)

ORDER

The United States Constitution requires the governing officials of the State of South Carolina to enact new districting plans for the South Carolina Senate, the South Carolina House of Representatives, and the United States Congressional districts within the state on an equipopulous basis every ten years, in accordance with population changes revealed by the decennial census. Unfortunately, the governing officials of the State of South Carolina, following receipt of the 2000 census data, failed to successfully fulfill this duty and have now reached an impasse. After a lengthy period of mapping, the South Carolina General Assembly, in which Republicans constitute a majority of both houses, prepared redistricting plans for all three bodies, but the

plans were vetoed by Governor James H. Hodges, a Democrat. The General Assembly failed in its attempt to override the veto, prompting the filing of these consolidated lawsuits. In each case now before the court, the plaintiffs seek a declaration that the existing districting plans for each elective district are unconstitutional and the implementation of interim court-ordered plans in time for impending 2002 elections. Thus, this court has once again been placed into the center of partisan politics in South Carolina, assigned the "unwelcome obligation" of devising and approving redistricting plans for each legislative body. Connor v. Finch, 431 U.S. 407, 415 (1977).¹

I. Background

South Carolina's General Assembly is composed of two bodies: a Senate with forty-six single-member district seats, see S.C. Const. art. III, §§ 1 & 6, and a House of Representatives with 124 single-member district seats, see S.C. Const. art. III, § 3. South Carolina is also entitled to six representatives in the United

¹ The redistricting process in South Carolina has historically been a troubled one. Much of that history is discussed in detail in Burton v. Sheheen, 793 F. Supp. 1329, 1337-40 (D.S.C. 1992), vacated sub nom. Statewide Reapportionment Advisory Comm. v. Theodore, 508 U.S. 968 (1993), in which a three-judge court was called upon to address a near-identical impasse for all three elective bodies following the release of the 1990 decennial census, and in Smith v. Beasley, 946 F. Supp. 1174, 1177-79 (D.S.C. 1996), in which a three-judge court was called upon to address the constitutionality of nine House of Representative election districts and three Senate election districts drawn by the South Carolina General Assembly after the Burton court plans were vacated by the Supreme Court.

States House of Representatives. Within quite limited variances, federal law requires that the South Carolina General Assembly redraw each seat in its bicameral state legislature, see Reynolds v. Sims, 377 U.S. 533, 577-80 (1964), as well as each of its six congressional seats in the United States House of Representatives, see U.S. Const. art. I, § 2, cl. 3; Karcher v. Daggett, 462 U.S. 725, 730-31 (1983), on an equipopulous basis in accordance with the results of the decennial census.

In anticipation of receiving the results of the 2000 census, and the inevitable malapportionment of existing districts it would reveal, the South Carolina General Assembly set upon a course to adopt new redistricting plans for its two governing bodies, as well as for its six United States Congressional districts. The process began in January 2001, with the introduction of skeleton bills H.3003 (for the South Carolina House of Representatives) and H.4182 (for the United States House of Representatives). The bills were given first reading and referred by the House Speaker to the House Judiciary Committee for use as redistricting vehicles in the General Assembly.

The House Judiciary Committee received the year 2000 census data from the United States Census Bureau on March 15, 2001. During the month of June 2001, the House Election Laws Subcommittee held public hearings in several locations throughout the state, taking testimony from citizens and public officials regarding the

proposed House, Senate, and Congressional plans. The full House of Representatives began consideration of House and Congressional redistricting plans passed by the House Judiciary Committee on August 13, 2001. Plans for the House (H.3003) and Congressional seats (H.4182) were subsequently passed by the House and then submitted to the Senate for consideration on August 17, 2001.

The Senate, through a similar Redistricting Subcommittee of its Judiciary Committee, had also been working on a redistricting plan for the South Carolina Senate. Upon receipt of the passed House Plan and the House version of the Congressional Plan, the Senate combined its Senate Plan with the House Plan into H.3003, attached an amended Congressional Plan, and returned H.3003 to the House on August 22, 2001. The House, after concurring in the Senate amendments, ratified H.3003 and sent the bill to Governor Hodges on August 27, 2001.

Three days later, Governor Hodges returned a veto message for H.3003 to the General Assembly. The Governor's stated reason for vetoing the legislatively passed redistricting plan centered on the claim that the House and Senate plans should have created more so-called minority "influence districts," defined by the Governor as districts with a black voting age population ("BVAP") of between 25% and 50%, and a claim that the Congressional Plan unnecessarily split several counties within the state. On September 4, 2001, the House attempted to override the Governor's veto, but failed by a

vote of 73 to 46. Consequently, H.3003 was never enacted as law. See S.C. Const. art. IV, § 21 (requiring that all laws be passed by the General Assembly and signed by the Governor to be effective, unless two-thirds of both the House and the Senate vote to override a gubernatorial veto).

Our involvement in this uniquely state matter resulted from the filing of three separate lawsuits, all of which allege that the existing election districts for the South Carolina General Assembly and the United States Congressional seats in South Carolina violate the "one-person, one-vote" requirement of the United States Constitution. See Karcher, 462 U.S. at 731; Reynolds, 377 U.S. at 568.

On September 4, 2001, citizens of Colleton County² filed suit against Glenn F. McConnell, in his official capacity as the President Pro Tempore of the South Carolina Senate; David H. Wilkins, in his official capacity as the Speaker of the South Carolina House of Representatives, and James H. Hodges, in his official capacity as the Governor of South Carolina. On September 6, 2001, an action against McConnell, Wilkins, and James F.

² The original complaint was brought by the Colleton County Council, Steven Murdaugh, individually and in his official capacity as Chairman of Colleton County Council, Dr. Joseph Flowers, individually and in his official capacity as a member of Colleton County Council, and by fourteen additional residents of Colleton County. Colleton County, as well as Steven Murdaugh and Dr. Joseph Flowers in their official capacities, were subsequently dismissed by order of this court.

Hendrix, in his official capacity as Executive Director of the State Election Commission, was brought by Hugh Leatherman, individually and as Senator from the existing 31st Senate District; Scott H. Richardson, individually and as Senator from the existing 46th Senate District; and Robert W. Hayes, Jr., individually and as Senator from the existing 15th Senate District. On October 1, 2001, plaintiffs Kamau Marcharia, James Melvin Holloway, Ann Johnson, and Elder James Johnson, African-American registered voters who reside in South Carolina, brought suit against Hodges, McConnell, Wilkins, and Hendrix. And, on October 30, 2001, the Chairman of the Georgetown County Council, Sel Hemingway, in his individual capacity, was allowed to intervene in the pending cases and to file a complaint against McConnell, Wilkins, and Hodges.

Although each group of plaintiffs seeks to advance its own unique interests, all seek essentially the same broad relief -- a declaration that, based on the population changes revealed by the 2000 census, the existing districts for the South Carolina Senate and South Carolina House of Representatives are malapportioned in violation of the one-person, one-vote principle of the Fourteenth Amendment to the United States Constitution, a declaration that the existing districts for South Carolina's Congressional seats are malapportioned in violation of Article I, § 2 of the United States Constitution, and a declaration that the legislative redistricting process in South Carolina has reached an impasse, necessitating

judicial intervention. Additionally, the parties seek implementation of interim districting plans by the court for all upcoming elections. All of the pending cases were consolidated and designated to be heard before this three-judge panel, appointed pursuant to 28 U.S.C.A. § 2284(a) (West 1994).

Due to the unusual complexity surrounding this type of case, and the skills and expertise which it requires, the court provided early notice of its intention to appoint a technical advisor to assist the court in understanding and utilizing the relevant technology needed to issue an order in the requisite expedited time frame. See Reilly v. United States, 863 F.2d 149, 154-56 (1st Cir. 1988). Specifically, the court notified all counsel of its intent to appoint Mr. Bobby Bowers, Director of the South Carolina Budget and Control Board Office of Research and Statistics, as its technical advisor.³ The parties were also asked to advise the court of any objections to the proposed appointment. No such objections were interposed and on November 26, 2001, Mr. Bowers was appointed in this capacity by order of this court.

Following expedited discovery, trial in this matter commenced on January 14, 2002. The trial was conducted in three phases, with the House phase of the litigation commencing on January 14 and

³ Mr. Bowers served in the capacity of technical advisor to the South Carolina District Court in the previous redistricting litigation in this state and has extensive experience in the area. See Burton, 793 F. Supp. at 1339.

concluding on January 18, 2002. Following a week-long recess, trial on the Congressional phase ran from January 29 to January 31, 2002, and trial on the Senate phase ran from February 1 to February 12, 2002. Having considered the voluminous evidence and testimony presented in these cases, we agree that the requested relief is necessary. The existing plans for each elective body are unconstitutional, necessitating the court's implementation of court-ordered remedial plans in their place.

II. Remedial Authority

The results of the 2000 census revealed that South Carolina's population has increased from 3,486,703 persons to 4,012,012 persons over the past decade, for an overall population growth of 15.1%. The percentage of the state's black population has remained relatively constant at just under 30% of the total population. The largest population growth occurred in the coastal areas of South Carolina -- Horry, Beaufort, Georgetown, and Jasper Counties. With the exception of Greenville County, the urban counties of the state (Charleston, Greenville, Richland, and Spartanburg) did not keep pace with the 15.1% state-wide growth rate, but areas surrounding some existing urban centers -- Lexington County, Kershaw County, and Calhoun County surrounding Columbia; York County and Cherokee County south of Charlotte, North Carolina; and Edgefield County and Aiken County near the North Augusta/Aiken metropolitan area -- did experience substantial growth. The rural counties were the hardest

hit in population losses. Four counties -- Allendale, Bamberg, Marlboro, and Union -- lost population, and nine others -- Chester, Darlington, Dillon, Fairfield, Lee, Marion, Newberry, Orangeburg, and Williamsburg -- did not keep pace with the 15.1% state growth rate.

These large population shifts from the rural areas to the urban and coastal areas of the state have resulted in severe malapportionment of both houses of the state legislature and of the United States Congressional districts. The parties have all stipulated that the existing plans for all three bodies are unconstitutionally malapportioned after the 2000 census, see, e.g., Karcher, 462 U.S. at 730-31; Reynolds, 377 U.S. at 568, and the court granted summary judgment as to the malapportionment issue in advance of each phase of the trial.

The primary responsibility for drafting and implementing a redistricting plan in South Carolina always rests with the South Carolina General Assembly, subject to the approval of the Governor. See U.S. Const. art. I, § 2; S.C. Const. art. III, § 3. "[J]udicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." White v. Weiser, 412 U.S. 783, 794-95 (1973) (quoting Reynolds, 377 U.S. at 586).

[L]egislative reapportionment is primarily a matter for legislative consideration and

determination, for a state legislature is the institution that is by far the best situated to identify and then reconcile traditional state policies within the constitutionally mandated framework of substantial population equality. The federal courts by contrast possess no distinctive mandate to compromise sometimes conflicting state apportionment policies in the people's name. In the wake of a legislature's failure constitutionally to reconcile these conflicting state and federal goals, however, a federal court is left with the unwelcome obligation of performing in the legislature's stead, while lacking the political authoritativeness that the legislature can bring to the task. In such circumstances, the court's task is inevitably an exposed and sensitive one that must be accomplished circumspectly, and in a manner free from any taint of arbitrariness or discrimination.

Connor, 431 U.S. at 414-15 (citations and internal quotation marks omitted).

Unfortunately, the elected officials of South Carolina have failed to redistrict the General Assembly and South Carolina's Congressional seats in accordance with their constitutional obligations. Primary elections for Congress and the South Carolina House of Representatives are currently scheduled for June 11, 2002, with the general election to follow on November 5, 2002. All of the parties appearing before us have stipulated, and have presented persuasive evidence, that the General Assembly is at an impasse with the Governor and that there is no chance that the governing officials will reach a compromise in time for the impending 2002 elections.

We too are satisfied that the governing officials cannot complete the requisite redistricting in time for the impending elections. Accordingly, the court is required to take steps "to insure that no further elections are conducted under the invalid plan[s]," Reynolds, 377 U.S. at 585, and to implement remedial districting plans, see Connor, 431 U.S. at 415.⁴

III. Remedial Factors

Although the court "perform[s] in the legislature's stead" when the latter has failed to redistrict in accordance with the Constitution, see id., we in fact operate under more stringent requirements than those imposed upon the state legislature. Accordingly, we begin with a summary of the specific redistricting standards under which we operate, each of which is discussed in more detail later.

⁴ Because regular elections for the South Carolina Senate seats will not be held until 2004, we considered qua sponte the propriety of implementing a remedial plan for the Senate at this time, due to the possibility that the impasse could be broken after the Gubernatorial and House elections in November 2002. However, we concluded that the matter is ripe. The existing Senate plan was challenged as unconstitutional under the one-person, one-vote mandate, the parties agreed that the existing plan is unconstitutionally malapportioned (and offered no opposition to the entry of summary judgment as to this issue), and the parties stipulated that the Governor and General Assembly are indeed at an impasse. Principles of judicial economy also counseled us to act upon the matter. The parties and the court have expended time and other resources preparing to address the matter without objection and, in any event, the court-imposed plan is only an interim remedy; the plan is only enforceable unless and until the South Carolina General Assembly, with the approval of the Governor and in accordance with § 5 of the Voting Rights Act, ends its current impasse and adopts its own redistricting plan.

First, we look to the federal standards which guide us. Because the constitutional wrong we remedy is the malapportionment of the existing districts, the one-person, one-vote requirement of the United States Constitution is always the paramount concern of a court-ordered remedial plan. The plan for redistricting of a state's bicameral legislature "must ordinarily achieve the goal of population equality with little more than de minimis variation," Chapman v. Meier, 420 U.S. 1, 27 (1975), whereas in the congressional redistricting process, a "good-faith effort to achieve precise mathematical equality" is required. Karcher, 462 U.S. at 730 (internal quotation marks omitted).⁵ And, in fashioning these constitutionally mandated equipopulous plans, the court must comply with the racial-fairness mandates of § 2 of the Voting Rights Act, 42 U.S.C.A. § 1973, and the purpose-or-effect standards of § 5 of the Voting Rights Act, 42 U.S.C.A. § 1973c. See Abrams v. Johnson, 521 U.S. 74, 90, 96 (1997).

Second, in satisfying these federally mandated requisites, we look to the historical redistricting policies of the state, but only insofar as "those policies do not lead to violations of the Constitution or the Voting Rights Act." Abrams, 521 U.S. at 79;

⁵ The Supreme Court has also held that courts must utilize single-member districts "[u]nless the . . . [c]ourt can articulate . . . a singular combination of unique factors" that justifies a different result. Chapman v. Meier, 420 U.S. 1, 21 (1975) (internal quotation marks omitted). The South Carolina General Assembly is already organized exclusively into single-member districts.

see also Upham v. Seamon, 456 U.S. 37, 39 (1982) (noting that "[a]lthough a court must defer to legislative judgments on reapportionment as much as possible, it is forbidden to do so when the legislative plan would not meet the special standards of population equality and racial fairness that are applicable to court-ordered plans"); White, 412 U.S. at 795 (noting that federal courts, in the context of reapportionment, "should follow the policies and preferences of the State, as expressed in statutory and constitutional provisions or in the reapportionment plans proposed by the state legislature, whenever adherence to state policy does not detract from the requirements of the Federal Constitution").

Finally, we reiterate the Supreme Court's admonition that, in implementing a court-ordered remedial plan for malapportioned legislative and congressional districts, the court must always act "circumspectly, and in a manner free from any taint of arbitrariness or discrimination." Connor, 431 U.S. at 415 (internal quotation marks omitted). Federal courts, unlike state legislatures, are not in a position to reconcile conflicting state policies on the electorate's behalf, nor at liberty to engage in political policy-making decisions. See id. We are limited to correcting the unconstitutional aspects of the state's plan while complying with the Voting Rights Act requirements. To the extent we can, we will also follow traditional state districting

principles, but we do not possess the latitude afforded a state legislature to advance political agendas.

To assist us in our task of implementing a remedial districting plan for each elective body, the parties have presented proposed plans for the two bodies of the South Carolina General Assembly and for the six congressional districts, which they urge us to either adopt in toto or, at a minimum, to use as templates in formulating our own plans. Indeed, in all phases of the trial, the bulk of the evidence presented was devoted to the parties' various redistricting proposals and, in particular, the issue of which of the proposed plans best complies with the one-person, one-vote requirement of the United States Constitution and with the mandates of §§ 2 and 5 of the Voting Rights Act.

We have carefully reviewed the various plans offered by the parties to this litigation, and the evidence presented in support of each, and we are satisfied that none are acceptable for wholesale adoption as a judicially approved redistricting plan. Among a myriad of individual deficiencies, the evidence overwhelmingly demonstrates one fatal problem that permeates them all. The General Assembly and the Governor, being controlled by and a member of, respectively, two different political parties, have proposed plans that are primarily driven by policy choices designed to effect their particular partisan goals. And, in many cases, the choices appear to be reflective of little more than an

individual legislator's desire to strengthen his or her ability to be re-elected to the seat in question.

Simply stated, the General Assembly, in which Republicans hold a majority in both bodies, passed plans that the majority of its members believed were favorable to them, and the incumbent Governor, a Democrat, vetoed those plans in order to advocate the implementation of alternative plans that are favorable to the views of his political party and its legislative and congressional members. The Leatherman plaintiffs, all of whom are currently members of the Republican Party, have proposed plans that both advance the Republican Party's agenda in general and strengthen their individual seats in particular. And, the Marcharia plaintiffs, represented by the American Civil Liberties Union ("ACLU"), did not advance plans of their own, but have either endorsed the plans offered by the General Assembly, or suggested modifications of their own, which they feel best serve the interests of black voters in South Carolina.⁶

Such is the political process. We find it interesting, but are mindful that none of the plans carry the imprimatur of the state and that, whatever merit exists for drawing a plan for

⁶ For simplicity's sake, we refer to the Leatherman plaintiffs simply as "Leatherman" and the Marcharia plaintiffs as the "ACLU."

political reasons or based upon a particular political ideology,⁷ it does not exist for us. While all parties are entitled to advocate a legislative redistricting plan that furthers their partisan interests, it is inappropriate for the court to engage in political gerrymandering.⁸

Accordingly, the court begins its remedial task of redistricting the malapportioned districts on an equipopulous basis and in the racially fair manner mandated by the Voting Rights Act. To the extent we can simultaneously observe districting principles demonstrated to have been of traditional concern to South Carolina in past redistricting, without compromising our obligations under federal law, we attempt to do so.⁹ We are, however, confident in

⁷ See, e.g., Hunt v. Cromartie, 526 U.S. 541, 551 (1999) (recognizing that a redistricting plan can be driven, at least to some extent, by partisan interests); Smith, 946 F. Supp. at 1206 (noting that "[t]he drawing of district lines for political purposes has often been criticized, but it is not illegal").

⁸ The citizens of Colleton County and of Georgetown County have offered plans that substantially incorporate the state-wide deficiencies of the other proffered plans, making unique modifications in their areas which address their particular localized concerns. On the whole, these proffered modifications do not appear to be politically motivated, but rather driven by county-based desires. Accordingly, we address their unique requests in isolation and, where appropriate, incorporate their requests into our plans.

⁹ Because the parties have raised the issue of constructing their plans by Voting Tabulation Districts (VTDs) and precincts, we note that in many cases there is a difference between the two. VTDs are geographical boundaries established by the United States Census Bureau prior to collecting data for the decennial census. Ideally, the VTDs would supply data from the census which coincide with precinct boundaries. However, precinct boundaries in many

the knowledge that those who disagree with the plans may seek alternative ones from those in the most appropriate position to redraw them -- the General Assembly and Governor of the State of South Carolina. And, because they are indeed in a better position to address the needs of South Carolina and her citizens, we encourage these elected officials, and those who follow in their footsteps, to renew and continue efforts to fulfill their constitutional duties in this respect.

A. Equality of Population and Acceptable Variances; the "One-Person, One-Vote" Requirement of the United States Constitution.

1. Congressional Reapportionment

The origin of the constitutional guarantee of "one-person, one-vote" for the election of congressional representatives is found in Article I, § 2 of the United States Constitution. In relevant part, it provides that "[t]he House of Representatives shall be composed of Members chosen every second Year by the People of the several States" and that such "Representatives . . . shall be apportioned among the several States which may be included

instances do not follow either natural or manmade features. While VTD boundaries are established prior to the census and remain in place for the decade, precincts are units created by the General Assembly for use in elections and for the collection of election data on a county-by-county basis. The latter may be changed at the will of the legislature and, in fact, there have already been a number of precinct changes since the creation of the VTD boundaries that were used in the 2000 decennial census. The end result, of course, is that VTDs and precincts are not synonymous in all instances, but any precinct splits that exist in the court plans can be remedied in any legislative session.

within this Union, according to their respective Numbers." U.S. Const. art. I, § 2.

The provision sets "a high standard of justice and common sense for the apportionment of congressional districts: equal representation for equal numbers of people." Karcher, 462 U.S. at 730 (internal quotation marks omitted). "[C]onstrued in its historical context," the Supreme Court has held, "the command . . . that Representatives be chosen 'by the People of the several States' means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." Wesberry v. Sanders, 376 U.S. 1, 7-8 (1964) (emphasis added). This standard is a demanding one, "requir[ing] that the State make a good-faith effort to achieve precise mathematical equality." Karcher, 462 U.S. at 730 (internal quotation marks omitted); see also White, 412 U.S. at 790. "[A]bsolute population equality [is] the paramount objective . . . in the case of congressional districts, for which the command of Art. I, § 2, as regards the National Legislature outweighs the local interests that a State may deem relevant in apportioning districts for representatives to state and local legislatures. . . ." Karcher, 462 U.S. at 732-33. "Unless population variances among congressional districts are shown to have resulted despite [a good-faith] effort, the State must justify each variance, no matter how small." Kirkpatrick v. Preisler, 394 U.S. 526, 531 (1969). "[T]here are no de minimis

population variations, which could practicably be avoided, but which nonetheless meet the standard of Art. I, § 2, without justification." Karcher, 462 U.S. at 734.

Small population deviations may be justified by legitimate state policies such as "making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives," if the state policies are consistent with constitutional norms. Karcher, 462 U.S. at 740. "As long as the criteria are nondiscriminatory, these are all legitimate objectives that on a proper showing could justify minor population deviations." Id. (emphasis added) (internal citation omitted). However, a state must "show with some specificity that a particular objective required the specific deviations in its plan, rather than simply relying on general assertions." Id. (noting that differences in the numbers of eligible voters and projected population shifts might justify small variations in congressional district populations).

2. Redistricting of the South Carolina General Assembly

The Equal Protection Clause of the United States Constitution requires that the seats in both houses of a bicameral legislature -- here the South Carolina Senate and House of Representatives -- also be apportioned on an equipopulous basis. See Reynolds, 377 U.S. at 568. This one-person, one-vote principle, established by

the Court in Reynolds and grounded in equal protection, ensures that each person's vote receives equal weight. See id.

In all cases, "the overriding objective [of redistricting] must be substantial equality of population among the various [legislative] districts." Id. at 579. States, however, are permitted somewhat more flexibility with respect to state legislative apportionment than in congressional districting in order to pursue other legitimate state policies, including "maintain[ing] the integrity of various political subdivisions," id. at 578, "provid[ing] for compact districts of contiguous territory," id., and recognizing "natural or historical boundary lines," Swann v. Adams, 385 U.S. 440, 444 (1967). Generally, a "safe harbor" exists for legislatively implemented plans achieving less than a 10% deviation. See Voinovich v. Quilter, 507 U.S. 146, 161 (1993) (noting that a plan with a maximum deviation under 10% is generally considered to fall within the category of minor deviations); see also Connor, 431 U.S. at 418; White v. Regester, 412 U.S. 755, 764 (1973).

Court-ordered remedial plans for bicameral state legislative bodies, in contrast, are held to a much more stringent standard of population equality. See Chapman, 420 U.S. at 26. Although not required to attain the mathematical preciseness required of courts and state legislatures for congressional redistricting, see id. at 27 n.19, a court-ordered plan "must ordinarily achieve the goal of

population equality with little more than de minimis variation," *id.* at 27; *see also* *Abrams*, 521 U.S. at 98; *Connor*, 431 U.S. at 414. "[A]ny deviation from approximate population equality must be supported by enunciation of historically significant state policy or unique features." *Chapman*, 420 U.S. at 26.

B. The Voting Rights Act

In exercising our equitable power to redistrict, we must also comply with the requirements imposed upon states by the racial-fairness mandates of § 2 of the Voting Rights Act, 42 U.S.C.A. § 1973, and the purpose-or-effect standards of § 5 of the Voting Rights Act, 42 U.S.C.A. § 1973c. *See Abrams*, 521 U.S. at 90, 96 (1997). Indeed, the number and composition of majority-minority districts in each proposed plan accounted for the lion's share of the evidence in every phase of this case.¹⁰

1. Section 2: The Prohibition Against Minority Vote Dilution

Section 2 of the Voting Rights Act of 1965, 42 U.S.C.A. § 1973, was enacted by Congress "to help effectuate the Fifteenth Amendment's guarantee that no citizen's right to vote shall 'be denied or abridged . . . on account of race, color, or previous condition of servitude.'" *Voivovich*, 507 U.S. at 152 (alteration

¹⁰ A majority-minority district is one in which the minority population comprises greater than 50% of the total population in the district. It is undisputed that the black population in South Carolina is the only minority present in significant concentrations in any area to warrant protection under the Voting Rights Act. Accordingly, we use the terms "minority" and "black" interchangeably.

in original) (quoting U.S. Const. amend. XV). Specifically, § 2 provides that "[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 42 U.S.C.A. § 1973(a) (West 1994). A violation of § 2 "is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of [a protected class of citizens] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C.A. § 1973(b) (West 1994) (emphasis added).¹¹

Simply stated, § 2 prohibits the implementation of an electoral law that "interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives." Thornburg v. Gingles, 478 U.S. 30, 47 (1986); see also Voinovich, 507 U.S. at 155 (explaining that § 2 "focuses exclusively on the consequences

¹¹ In City of Mobile v. Bolden, 446 U.S. 55 (1980), the Supreme Court held that a vote dilution claim under § 2 was only actionable if the challenged practice was adopted or maintained for the purpose of discriminating against minorities. In response, Congress added subsection (b) of § 1973 in 1982 to forbid practices having either the purpose or the effect of preventing minorities from electing representatives of their choice.

of apportionment. Only if the apportionment scheme has the effect of denying a protected class the equal opportunity to elect its candidate of choice does it violate § 2.").

In Gingles, the Supreme Court set forth the specific framework for evaluating a § 2 vote dilution claim.¹² Three preconditions must first be established: (1) that the minority group "is sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) that the minority group is "politically cohesive"; and (3) that the majority "votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." Id. at 50-51. If these factors are established, "the court considers whether, 'on the totality of circumstances,' minorities have been denied an 'equal opportunity' to 'participate in the political process and to elect representatives of their choice.'" Abrams, 521 U.S. at 91 (quoting 42 U.S.C.A. § 1973(b)).¹³

¹² Although Gingles actually set forth the requirements for establishing a § 2 challenge to a multi-member districting plan, see Gingles, 478 U.S. at 50-51, the Supreme Court has subsequently held that the same three prerequisites are necessary to establish a § 2 claim with respect to single-member districts. See Growe v. Emison, 507 U.S. 25, 39-42 (1993); Voinovich, 507 U.S. at 158.

¹³ The legislative history of § 2, particularly the Senate Report, sets forth a variety of factors considered relevant in determining if a legislatively enacted plan violates § 2 because it "results" in discrimination. These factors include:

1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to

The voting strength of a politically cohesive minority group may be diluted by fragmenting the minority voters among districts:

In the context of single-member districts, the usual device for diluting minority voting power is the manipulation of district lines. A politically cohesive minority group that is large enough to constitute the majority in a single-member district has a good chance of electing its candidate of choice, if the group is placed in a district where it constitutes a majority. Dividing the minority group among various districts so that it is a majority in none may prevent the group from electing its candidate of choice: If the majority in each

vote, or otherwise to participate in the democratic process;

2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
4. whether the members of the minority group have been denied access to any candidate slating process;
5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
6. whether political campaigns have been characterized by overt or subtle racial appeals; and
7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

See Thornburg v. Gingles, 478 U.S. 30, 43-45 (1986) (citing S. Rep. No. 417, 97th Cong. 2d Sess. 28-29 (1982)).

district votes as a bloc against the minority candidate, the fragmented minority group will be unable to muster sufficient votes in any district to carry its candidate to victory.

Voynovich, 507 U.S. at 153 (emphasis added). Or, minority voting strength may be diluted by concentrating minority voters within a district:

How such concentration or "packing" may dilute minority voting strength is not difficult to conceptualize. A minority group, for example, might have sufficient numbers to constitute a majority in three districts. So apportioned, the group inevitably will elect three candidates of its choice, assuming the group is sufficiently cohesive. But if the group is packed into two districts in which it constitutes a super-majority, it will be assured only two candidates. As a result, we have recognized that "dilution of racial minority group voting strength may be caused" either "by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority.

Id. at 153-54 (internal alteration omitted) (quoting Gingles, 478 U.S. at 46).

Although "[o]n its face, § 2 does not apply to a court-ordered remedial redistricting plan . . . , courts should comply with the section when exercising their equitable powers to redistrict." Abrams, 521 U.S. at 90. Thus, to prevail on a § 2 claim, a plaintiff must demonstrate that, under the totality of the circumstances, the election scheme enacted by a legislature dilutes the minority's voting strength by either unnecessarily fragmenting

or packing a politically cohesive minority population. See Voinovich, 507 U.S. at 157; Gingles, 478 U.S. at 46. In the context of preparing a court-ordered redistricting plan, we interpret the Supreme Court's command as requiring us to consider the Gingles test as we draw, paying particular attention to those areas of the state where a "politically cohesive minority group ... is large enough to constitute the majority in a single-member district." Voinovich, 507 U.S. at 153. In this way, we operate much like the state legislature should, taking steps to ensure that our plan will not have the effect, albeit unintended, of diluting the voting strength of that majority-minority population. See Abrams, 521 U.S. at 90-91.

2. Section 5: Avoiding Retrogression

Section 5 of the Voting Rights Act likewise requires us to consider race in our draw. This provision requires certain covered jurisdictions -- those with a history of discrimination against minorities -- to obtain either administrative preclearance by the Attorney General or approval by the United States District Court for the District of Columbia for any change in a "standard, practice, or procedure with respect to voting." 42 U.S.C.A. § 1973c. To obtain preclearance, the covered jurisdiction must demonstrate that the proposed change has neither the purpose nor effect "of denying or abridging the right to vote on account of

race or color." 42 U.S.C.A. § 1973c; see McDaniel v. Sanchez, 452 U.S. 130, 149 (1981).

Enacted as "a response to a common practice in some jurisdictions of staying one step ahead of the federal courts by passing new discriminatory voting laws as soon as the old ones had been struck down," Beer v. United States, 425 U.S. 130, 140 (1976) (internal quotation marks omitted), § 5 "shift[s] the advantage of time and inertia from the perpetrators of the evil to its victim, by freezing election procedures in the covered areas unless the changes can be shown to be nondiscriminatory," id. (emphasis added; internal quotation marks omitted). "[T]he purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Id. at 141 (emphasis added).

Although they share the goal of addressing the evils of racial discrimination, § 5 differs in important respects from § 2 of the Voting Rights Act. First, § 2 applies to all states, whereas § 5 applies only to those states, such as South Carolina, which have the worst reputation for historical and ongoing discrimination against blacks. Second, by requiring the creation of majority-minority districts where vote dilution under the Gingles test would occur, § 2 looks beyond the status quo to ensure that a redistricting plan affords blacks an equal opportunity to elect the

representatives of their choice as white voters enjoy. See 42 U.S.C.A. § 1973(b); Gingles, 478 U.S. at 47. Section 5, in contrast, maintains the status quo. It only prevents "backsliding" in those jurisdictions subject to its requirements by prohibiting the implementation of any proposed voting change that has been enacted for a retrogressive purpose, see Reno v. Bossier Parish Sch. Bd., 528 U.S. 320, 335 (2000) ("Bossier Parish II"), or that has a retrogressive effect on minority voting strength, see Beer, 425 U.S. at 141. Section 5 requires no separate inquiry into the Gingles factors to determine whether an opportunity district must be created, but "mandates that the minority's [existing] opportunity to elect representatives of its choice not be diminished, directly or indirectly, by the State's actions." Bush v. Vera, 517 U.S. 952, 983 (1996).

The distinction between § 2 and § 5 was expounded upon by the Supreme Court in Reno v. Bossier Parish School Board, 520 U.S. 471 (1997) ("Bossier Parish I"). There, the Court struck down the Department of Justice's denial of preclearance under § 5 on the basis that the plan was, in the opinion of the Department of Justice, violative of § 2. See id. at 477. This position, the Court held, would "make compliance with § 5 contingent upon compliance with § 2," and would effectively "replace the standards for § 5 with those for § 2." Id. The Court explained that such an interpretation would contradict its "longstanding recognition that

the two provisions were designed to combat different evils, and, accordingly, to impose very different duties upon the States." Id.

Thus, in the redistricting context, Section 5 has a quite limited substantive goal -- to insure that the state does not adopt a redistricting plan that, when compared to the existing or "benchmark" plan, "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer, 425 U.S. at 141; see Holder v. Hall, 512 U.S. 874, 883 (plurality opinion) ("Under § 5, then, the proposed voting practice is measured against the existing voting practice to determine whether retrogression would result from the proposed change."); Bossier Parish I, 520 U.S. at 478 (explaining that "the jurisdiction's existing plan is the benchmark against which the 'effect' of voting changes is measured"). Thus,

[i]n § 5 preclearance proceedings -- which uniquely deal only and specifically with changes in voting procedures -- the baseline is the status quo that is proposed to be changed: If the change "abridges the right to vote" relative to the status quo, preclearance is denied, and the status quo (however discriminatory it may be) remains in effect.

Bossier Parish II, 528 U.S. at 334.

"Section 2, on the other hand, was designed as a means of eradicating voting practices that minimize or cancel out the voting strength and political effectiveness of minority groups." Bossier Parish I, 520 U.S. at 479 (internal quotation marks omitted). It involves changes to the status quo itself. See Bossier Parish II,

528 U.S. at 334. Because a determination of vote dilution requires "the existence of an 'undiluted' practice against which the fact of dilution may be measured, a § 2 plaintiff must also postulate a reasonable alternative voting practice to serve as the benchmark 'undiluted' voting practice." Bossier Parish I, 520 U.S. at 480. Thus, "the comparison must be made with a hypothetical alternative: If the status quo results in an abridgement of the right to vote or abridges the right to vote relative to what the right to vote ought to be, the status quo itself must be changed." Bossier Parish II, 528 U.S. at 334 (alterations and internal quotation marks omitted).

Because South Carolina is a covered jurisdiction under the Voting Rights Act, any redistricting plan that it adopts is subject to the preclearance requirements of § 5. See Allen v. State Bd. of Elections, 393 U.S. 544, 548-49 (1969). A legislative plan still reflects "the exercise of legislative judgment" and "the policy choices of the elected representatives of the people"; such plans, therefore, remain subject to preclearance under § 5 even if later reviewed by a court. See McDaniel, 452 U.S. at 153.

Generally, "a decree of the United States District Court is not within reach of Section 5 of the Voting Rights Act such that it must be precleared," Abrams, 521 U.S. at 95 (internal quotation marks and alterations omitted), but "[t]he exception applies only to judicial plans devised by the court itself," not to legislative plans which are submitted to the court by the parties for

consideration, id.; see Lopez v. Monterey County, 525 U.S. 266, 286 (1999). Because we have independently devised plans for each elective body from scratch, however, none of the plans implemented by this court order are subject to the preclearance requirements of § 5 and, accordingly, must be immediately implemented for the upcoming elections.

Even where the court elects to devise its own plan, such that it need not be precleared, the court must still "follow the appropriate § 5 standards, including the body of administrative and judicial precedents developed in Section 5 cases." Abrams, 521 U.S. at 96 (quoting McDaniel, 452 U.S. at 149). Thus, like state legislatures, we must ensure that our redistricting plan does not "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise" in South Carolina. Beer, 425 U.S. at 141.

3. Equal Protection Constraints Upon The Voting Rights Act Requirements; the Limits of Racial Gerrymandering.

In complying with the Voting Rights Act in the redistricting context, we must also remain cognizant of the limitations the Fourteenth Amendment of the United States Constitution imposes upon the permissible use of race in the process. The Equal Protection Clause of the United States Constitution requires racial neutrality in governmental decision-making. See U.S. Const., amend. XIV, § 1 (providing that no State shall "deny to any person within its jurisdiction the equal protection of the laws"). And, the Supreme

Court has repeatedly held that dividing voters according to their race in the redistricting context is subject to the strictures of the Equal Protection Clause. See Shaw v. Hunt, 517 U.S. 899, 904-05 (1996) ("Shaw II"); Miller v. Johnson, 515 U.S. 900, 905 (1995); Shaw v. Reno, 509 U.S. 630, 644 (1993) ("Shaw I").

By prohibiting election plans that have the effect of diluting minority voting strength or that lead to retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise, however, the Voting Rights Act necessarily forces states to consider race in the redistricting context, placing the Act in obvious tension with the Equal Protection Clause. The end result is that the Voting Rights Act must always be considered in tandem with the strictures of the Equal Protection Clause, with the latter operating as a constant limit upon the degree to which state legislatures -- and this court acting in its remedial capacity -- can engage in race-based districting to achieve the goals of the Voting Rights Act.

Race-based classifications, of course, are generally subjected to strict scrutiny and will pass constitutional muster only if the state action is narrowly tailored to achieve a compelling state interest. See, e.g., Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 224 (1995). In this case, however, we have no occasion to apply strict scrutiny, at least not in the usual way. Strict scrutiny is a particularly stringent level of judicial review

applied to determine the constitutionality of a law or other action already taken by the state. Because the General Assembly failed to implement redistricting plans, we have no pre-existing plans to which strict scrutiny could be applied. Instead, we are drawing the plans ourselves, not reviewing plans drawn by the General Assembly. Nonetheless, because our draw is guided by similar limitations as those imposed upon states in the redistricting context, the purposes of a strict scrutiny review are of importance in this case as well.

a. **When does the consideration of race trigger strict scrutiny analysis?**

The Equal Protection Clause, as interpreted by Adarand, would seem to compel strict scrutiny of any governmental classification based on race. However, the Court has held that strict scrutiny in the redistricting context only applies where "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." Miller, 515 U.S. at 916. Because a state must observe the Voting Rights Act requirements when redistricting its legislative and congressional districts, such redistricting decisions necessarily differ from other types of governmental decision-making:

[T]he legislature is always aware of race when it draws district lines, just as it is aware of age, economic status, religious and political persuasion, and a variety of other demographic facts. That sort of race

consciousness does not lead inevitably to impermissible race discrimination. . . . [W]hen members of a racial group live in one community, a reapportionment plan that concentrates members of the group in one district and excludes them from others may reflect wholly legitimate purposes. The district lines may be drawn, for example, to provide for compact districts of contiguous territory, or to maintain the integrity of political subdivisions.

Shaw I, 509 U.S. at 646. So long as race is only a consideration, and other traditional districting principles such as compactness and contiguity are not subordinated to it, the challenged majority-minority district is not subject to strict scrutiny analysis.

The question of when race predominates over nonracial factors, thereby triggering strict scrutiny, can be difficult to answer. In cases arising outside the redistricting context, "statutes are subject to strict scrutiny under the Equal Protection Clause not just when they contain express racial classifications, but also when, though race neutral on their face, they are motivated by a racial purpose or object." Miller, 515 U.S. at 913; see also id. at 920 ("[W]here the State assumes from a group of voters' race that they think alike, share the same political interests, and will prefer the same candidates at the polls, it engages in racial stereotyping at odds with equal protection mandates." (internal quotation marks omitted)). These principles also apply in redistricting cases. See id. at 914.

Strict scrutiny of a districting plan may also be triggered by an allegation that the state "adopted a reapportionment scheme so irrational on its face that it can be understood only as an effort to segregate voters into separate voting districts because of their race." Shaw I, 509 U.S. at 658; Miller, 515 U.S. at 916. Thus, "appearances do matter" in the area of redistricting. Shaw I, 509 U.S. at 647. "Shape is relevant not because bizarreness is a necessary element of the constitutional wrong or a threshold requirement of proof, but because it may be persuasive circumstantial evidence that race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale in drawing its district lines." Miller, 515 U.S. at 913.¹⁴

¹⁴ The three-judge panel in Smith provided a helpful summary of the factors that have been identified by the Supreme Court as evidencing race-based line drawing:

They are: using land bridges in a deliberate attempt to bring black population into a district (Miller); use of sophisticated computers with block-by-block racial data (Bush); evidence of demographer's . . . purpose in drawing the challenged lines (Shaw and Miller); creation of new, non-compact and oddly shaped districts beyond those necessary to avoid retrogression (Miller and Shaw); creation of districts that exhibit disregard for city limits, local election precincts, and voting tabulation districts (Bush); districts that wind "in snakelike fashion" until enough black neighborhoods are included to create a black-majority district (Shaw I); establishment of a fixed percentage of minority population with[in] a district . . .

A plaintiff making an equal protection challenge to a redistricting plan must "show, either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." Miller, 515 U.S. at 916.

To make this showing, a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, to racial considerations. Where these or other race-neutral considerations are the basis for redistricting legislation, and are not subordinated to race, a State can "defeat a claim that a district has been gerrymandered on racial lines."

Id. (quoting Shaw I, 509 U.S. at 647). In sum, "compliance with traditional districting principles such as compactness, contiguity, and respect for political subdivisions may well suffice to refute a claim of racial gerrymandering," but does not suffice where

to establish a safe black district (Bush); evidence that race or percentage of race could not be compromised (Shaw II); statements by legislators indicating that race was the predominant factor in creating the challenged districts (Miller); and statements made in submission for preclearance to the Department of Justice that its purpose was to comply with the dictates of the Department's rejection letter (Shaw II).

Smith, 946 F. Supp. at 1207.

"those factors [a]re subordinated to racial objectives." *Id.* at 919.¹⁵

b. When race predominates in the redistricting context.

The fact that race has predominated in the decision-making process, however, does not automatically render the district

¹⁵ Justice O'Connor reconciled the competing considerations involved in the review of equal protection challenges made in the context of a Voting Rights case as follows:

Today's decisions, in conjunction with the recognition of the compelling state interest in compliance with the reasonably perceived requirements of § 2, present a workable framework for the achievement of the[] twin goals [of "combating the symptoms of racial polarization in politics and eliminating unnecessary race-based state action"]. I would summarize that framework, and the rules governing the States' consideration of race in the districting process as follows. . . . [S]o long as they do not subordinate traditional districting criteria to the use of race for its own sake or as a proxy, States may intentionally create majority-minority districts and may otherwise take race into consideration, without coming under strict scrutiny. Only if traditional districting criteria are neglected and that neglect is predominately due to the misuse of race does strict scrutiny apply.

Bush, 517 U.S. at 993 (O'Connor, J., concurring) (emphasis added; citations omitted). Under Justice O'Connor's view, states may take race into consideration and intentionally create majority-minority districts without triggering strict scrutiny, so long as the state does not allow the use of race to predominate over the use of traditional districting considerations. However, "districts that are bizarrely shaped and noncompact, and that otherwise neglect traditional districting principles . . . for predominately racial reasons are unconstitutional." *Id.* at 994.

constitutionally infirm. Rather, "[i]f race is the predominant motive in creating districts, strict scrutiny applies and the districting plan must be narrowly tailored to serve a compelling governmental interest" to pass constitutional muster. Abrams, 521 U.S. at 91; see also Miller, 515 U.S. at 920.¹⁶ And, because compliance with the Voting Rights Act is a compelling state interest, states are afforded a very narrow ability to further that interest through the consideration of race.¹⁷ If there is "a strong basis in evidence for concluding that creation of a majority-minority district is reasonably necessary to comply" with the Act, and the race-based districting substantially addresses the violation, the plan will not fail under the Equal Protection analysis. See Bush, 517 U.S. at 977 (citations and internal quotation marks omitted); see also Abrams, 521 U.S. at 91.

¹⁶ Districts drawn by a state legislature which deviate from traditional districting principles for the purpose of serving partisan politics do not trigger the strict scrutiny analysis. Seeasley v. Cromartie, 532 U.S. 234, 257 (2001). But as noted previously, this court may not draw its plans to serve partisan purposes.

¹⁷ In Bush, five members of the Court "assumed without deciding" that compliance with § 2 of the Voting Rights Act is a compelling state interest. 517 U.S. at 977 (plurality opinion); id. at 1003 (concurring opinion of Thomas, J., joined by Scalia, J.). Justice O'Connor, however, who authored the plurality opinion, also wrote a separate concurring opinion in which she expressed her opinion that compliance with the Act is a compelling state interest, see id. at 992 (concurring opinion of O'Connor, J.), a view that seems to be shared by the four dissenting justices as well, see id. at 1004 (dissenting opinion of Stevens, J., joined by Ginsberg and Breyer, JJ.); id. at 1065 (dissenting opinion of Souter, J., joined by Ginsberg and Breyer, JJ.).

Of course, to be narrowly tailored to achieve the compelling interest of § 2, there must be evidence that the Gingles test is met in the first instance. Section 2 "does not require a state to create, on predominately racial lines, a district that is not reasonably compact. And the § 2 compactness inquiry should take into account traditional districting principles such as maintaining communities of interest and traditional boundaries." Abrams, 521 U.S. at 91 (emphasis added; internal quotation marks and citations omitted); see also Bush, 517 U.S. at 977 ("A § 2 district that is reasonably compact and regular, taking into account traditional districting principles such as maintaining communities of interest and traditional boundaries, may pass strict scrutiny without having to defeat rival compact districts designed by plaintiffs' experts in endless 'beauty contests.'").

In preparing a redistricting plan in its remedial authority, the court must also comply with §§ 2 and 5 of the Voting Rights Act and, where necessary, narrowly tailor the draw to do no more than is necessary to serve these compelling state interests. The task requires a balancing of all the relevant inquiries. Avoiding minority vote dilution under § 2 may require the creation or maintenance of particular majority-minority districts, even on a predominately racial basis, if this can be done in a reasonably compact manner, taking into account traditional districting principles. Avoiding vote dilution does not, of course, require

the creation of a majority-minority district wherever it can be done; indeed, equal protection forbids such a course. See Miller, 515 U.S. at 926-27 (rejecting the Department of Justice's position that § 2 requires the "maximization" of minority voting strength). Bizarrely shaped districts are not "narrowly tailored to serve the State's interest in avoiding liability under § 2, because § 2 does not require a State to create, on predominately racial lines, a district that is not reasonably compact." Bush, 517 U.S. at 979 (internal quotation marks omitted).

Nor does § 5 compel the maximization of black voters in the district. See Miller, 515 U.S. at 927 ("[T]he Justice Department's implicit command that States engage in presumptively race-based districting brings the Act . . . into tension with the Fourteenth Amendment. . . . There is no indication Congress intended such a far reaching application of § 5, so we reject the Justice Department's interpretation of the statute. . . ." (emphasis added)). To achieve nonretrogression in the position of racial minorities, we are permitted to use race as a consideration in the draw, but must narrowly tailor the remedy. "A reapportionment plan would not be narrowly tailored to the goal of avoiding retrogression if the State went beyond what was reasonably necessary to avoid retrogression." Bush, 517 U.S. at 983 (internal quotation marks omitted).

In sum, where the Voting Rights Act requires that a majority-minority district be drawn or maintained, there are points in the drawing of the district where race must predominate, in the sense that we choose to draw the line in one particular direction over another because of race, though either direction would be consistent with traditional districting principles. In these limited situations, race might be said to predominate in the decision-making process at a particular moment, but never operates to the exclusion of all other districting principles, and even then we are careful to narrowly tailor our draw so that this predominate use of race is limited to the accomplishment of the purposes of the Voting Rights Act and no more.

4. Section 2 Considerations: Racially Polarized Voting in South Carolina and the Point of Equal Opportunity.

In conducting our § 2 inquiry, we must first evaluate the presence of the Gingles factors. We may not assume that racial bloc voting and minority-group political cohesion exists in a particular area of the state; rather, these factors must be proven in each case. See Shaw I, 509 U.S. at 653.

The history of racially polarized voting in South Carolina is long and well-documented -- so much so that in 1992, the parties in Burton stipulated that "since 1984 there is evidence of racially polarized voting in South Carolina." Burton, 793 F. Supp. at 1357-58. The three-judge court in Smith made a similar finding:

In South Carolina, voting has been, and still is, polarized by race. This voting pattern is general throughout the state. . . . There is only one exception according to Defendants' expert, Dr. Ruoff, who has studied the voting history of South Carolina for a number of years. He testified, "Whites almost always vote for whites and blacks almost always vote for blacks unless the candidate is a black Republican and then never."

Smith, 946 F. Supp. at 1202-03. The court also noted the wide socio-economic gap between white and black voters, as evidenced by, among other things, the disparity in unemployment rates, household income, education, and access to private transportation. See id. at 1203.

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

Dr. John Ruoff, who was retained by the Southern Poverty Law Center for the purpose of conducting an extensive analysis of racially polarized voting patterns in South Carolina during the last ten years,¹⁸ has appeared again to testify regarding his

¹⁸ Dr. Ruoff examined 401 elections in the period from 1992 to 2000, including 234 black-white elections, 142 white-white

findings and conclusions about the continued racially polarized voting in South Carolina. Specifically, he offered undisputed testimony that South Carolinians are still very divided in terms of where they live and that elections throughout South Carolina continue to be marked by very high levels of racial polarization in voting. Black voters are generally politically cohesive and white voters almost always vote in blocs to defeat the minority's candidate of choice. Racial polarization is highest in black-white elections -- those involving a black candidate running against a white candidate. And, there is a well-documented hierarchy in the preference of black voters. With few exceptions, black voters demonstrate an overwhelming preference for black Democrats as their representatives, followed by white Democrats, particularly in a general election, but black voters virtually never vote for a Republican candidate. The other experts retained by the parties in this case substantially concurred in this portion of Dr. Ruoff's opinion, which was likewise supported by the statistical and other evidence presented to the court by all of the parties.

By way of summary, the evidence revealed that in black-white, single seat elections, the median level of black voters voting for black candidates was 98% in general elections and 86% in primary

elections, 24 black-black elections and 1 Hispanic-white election, using correlation analysis, double-equation ecological regression analysis, and extreme or homogenous precinct analysis, which are the generally accepted techniques for analyzing racial polarization. See, e.g., Gingles, 478 U.S. at 52-53.

contests. Although white voters will cross over to vote for black candidates at a rate of 21% in general elections, they will cross over to vote for a black candidate in primary elections at a rate of only 8%. In addition, voter mobilization among blacks in general elections is lower than among white residents, but greater in black-majority districts.¹⁹

In addition, the ACLU provided extensive documentation of the history of voting-related racial discrimination in South Carolina, which was submitted largely as a stipulation among the parties. Evidence of the depressed socio-economic and educational status of blacks in the state which hinders their ability to participate effectively in the political process and to elect representatives of their choice was also presented.²⁰

This evidence overwhelmingly demonstrates that the first two Gingles factors, necessary for the creation of majority-black legislative and congressional districts in areas where minorities

¹⁹ Dr. Loewen testified that, based upon his study of black-white contests, 85% of the whites voted white and 84% of the blacks voted black (compared to 90% and 85%, respectively, in the 1970s and 1980s).

²⁰ In analyzing this same data, which remains the most recent, the Smith court noted that "there is a socio-economic gap between the average white citizen and the average black citizen. There is a larger percentage of blacks than whites below the poverty level; the household income of blacks is generally less than that of whites; unemployment is greater among blacks; and the level of formal education among blacks is less. . . . More blacks than whites are without private means of transportation, more whites than blacks own their own homes. Infant mortality is greater among blacks." Smith, 946 F. Supp. at 1203.

are sufficiently large and geographically compact to constitute a majority in a single-member district, are present statewide. Minority voters are generally politically cohesive to a very high degree and, as a rule, the majority usually votes sufficiently as a bloc to defeat the minority's preferred candidate. See Gingles, 478 U.S. at 51. Thus, we can and should consider race in each of our redistricting plans to ensure that they do not have the unintended effect of diluting the voting strength of a reasonably compact, majority-minority population.

The measure that must be used to ensure that the compact, majority-minority population actually has an "equal opportunity" to elect the candidate of its choice in a particular district, on the other hand, is often in sharp dispute. We measure equal opportunity by the percentage of minority voting age population necessary for the minority voters to elect the candidate of their choice, see Johnson v. Miller, 922 F. Supp. 1556, 1568 nn.18 & 19 (S.D. Ga. 1995) (noting that minority voting age population is the appropriate measure for analyzing vote dilution and that the alternative use of black registered voter percentages condones voter apathy), aff'd sub nom. Abrams v. Johnson, 521 U.S. 74 (1997), which seems to create little controversy. The actual

percentage required in a particular district, and how that percentage is reached, are much different matters.²¹

Dr. Ruoff testified on behalf of the General Assembly defendants on this subject as well. He testified that state-wide black voters are only able to elect candidates of their choice in majority-black or very near majority-black districts. In addition to the high levels of voter polarization, this is in part because black political mobilization is lower than white political mobilization overall, but higher in districts where black candidates have a strong opportunity to be elected. In other words, blacks in a majority-black district are aware of their opportunity and tend to register and turn out to vote in districts that are majority-black or very near majority-black. Dr. James W. Loewen, who testified on behalf of the Senate in the Senate phase of this litigation, generally concurs in this view as well.

David Epstein, an expert favoring the Governor's proposed House and Senate plans, does not share this view. Using a new technique called "probit analysis" (which he professes to have

²¹ The 2000 census data, unlike that of prior decades, reports the black population in several racial categories, including "black only," which would report the least numerous count, "all or any part black" (AP-Blk), which would report the most numerous count, and "non-Hispanic black," which would fall somewhere between the two. The parties differed in their choice of category for purposes of analyzing the black population in this case; however, the use of the differing black population categories has an insignificant impact on the analysis before this court. Like the House and the Governor, we use the "black only" category in our order.

pioneered), Dr. Epstein testified that the point of equal opportunity for the state as a whole occurs at just over 47.11% BVAP. By region, Dr. Epstein opined that the Upstate's point of equal opportunity is 44.61%, the Midlands' is 47.45%, the Pee Dee's is 48.19%, and the Low Country's is 45.58%. Dr. Epstein also testified that once a district exceeds approximately 40% BVAP, the addition of more black votes does not alter the particular representative's voting patterns; Democrats of both races support the minority-favored position in General Assembly votes. This is because, according to Dr. Epstein, blacks now turn out in numbers roughly equivalent to whites, there is white cross-over voting at about 20%, and a black's tendency to vote against a minority candidate is only about 2%. For these reasons, Epstein testified, redistricting plans drawn to lower BVAP levels, by allowing for the draw of influence districts, will better advance the substantive representation of the black community in South Carolina.²²

²² Because of the high level of racial polarization in the voting process in South Carolina, "influence districts" allow the Democratic Party the opportunity to gain control of the General Assembly. It is, therefore, an inherently politically based policy. With the aid of a substantial (but not majority) black population that votes nearly exclusively for a Democratic candidate, a white Democrat can usually defeat a black Democrat in the primary election and then use the black vote to defeat any Republican challenger in the general election. See *Smith*, 946 F. Supp. at 1183. Although the Governor asserts that a draw based on "traditional districting principles" will naturally lead to the creation of such districts, he does not advance a claim that this court can or should consider race to intentionally draw such "influence districts."

Having carefully considered all of the expert testimony offered by the parties on these important issues, as well as the supporting documentation behind their views, we find that in order to give minority voters an equal opportunity to elect a minority candidate of choice as well as an equal opportunity to elect a white candidate of choice in a primary election in South Carolina, a majority-minority or very near majority-minority black voting age population in each district remains a minimum requirement.

Section 2 requires the court to consider whether, "on the totality of circumstances," a plan will deny minority voters "an 'equal opportunity' to 'participate in the political process and to elect representatives of their choice.'" Abrams, 521 U.S. at 91 (quoting 42 U.S.C.A. § 1973(b)). The evidence presented overwhelmingly demonstrates that, with rare exceptions, blacks currently prefer to be represented first by black Democrats. In the absence of either the choice, such as in a primary, or the opportunity, due to percentages too low to outvote a cohesive majority bloc vote, blacks prefer to be represented by white Democrats. Equal opportunity does not equate to a guarantee of success, but it does require an equal opportunity to elect the minority's candidate of choice which, in South Carolina, is almost always a minority candidate. In sum, the Voting Rights Act protects the minority voters' opportunity to elect their candidate of choice, not just a minority incumbent and not just the

minority's opportunity to elect an incumbent of any race. Rather, a minority's equal opportunity to elect a candidate of choice must include the opportunity to elect a minority candidate of choice, and since a minority candidate cannot win the seat without having an equal opportunity to win the party primary, equal opportunity must be measured at every step in the electoral process. The precise point of equal opportunity, however, must always be evaluated on a district by district basis.

5. Section 5 Considerations in South Carolina; the Benchmark Plan and the Measure of Retrogression.

In order to ensure that our plan complies with § 5 of the Voting Rights Act, we must first identify the "benchmark" plan from which to measure any retrogressive effect of our actions. See Bossier Parish I, 520 U.S. at 478. As a general premise, the benchmark plan for purposes of measuring retrogression is the last "legally enforceable" plan used in the jurisdiction. 28 C.F.R. § 51.54(b)(1) (providing that the last "legally enforceable" plan is the benchmark plan for purposes of measuring retrogression); see Holder v. Hall, 512 U.S. 874, 883-884 (1994). A potential problem arises, however, due to the well-documented use of racial gerrymandering during the 1990s round of redistricting to maximize black representation. See, e.g., Abrams, 521 U.S. at 80; Smith, 946 F. Supp. at 1185. The Governor asserts that this "max-black" policy has resulted in an unnecessarily high black voting age percentage in most majority-minority districts. In Abrams,

however, the Supreme Court reiterated that the last legally enforceable plan used by the jurisdiction is to serve as the baseline for comparison in a § 5 retrogression analysis. See Abrams, 521 U.S. at 96-97; see also Rossier Parish II, 528 U.S. at 334 (noting that "[i]n § 5 preclearance proceedings -- which uniquely deal only and specifically with changes in voting procedures -- the baseline is the status quo that is proposed to be changed: If the change abridges the right to vote relative to the status quo, preclearance is denied, and the status quo (however discriminatory it may be) remains in effect" (internal quotation marks omitted)); Holder, 512 U.S. at 883-84 ("The baseline for comparison is present by definition; it is the existing status. While there may be difficulty in determining whether a proposed change would cause retrogression, there is little difficulty in discerning the two voting practices to compare to determine whether retrogression would occur."); Smith, 946 F. Supp at 1209 (noting that "any benchmark . . . should be the last plan that was legally adopted by the General Assembly that has not been set aside by the court or superseded by action of the General Assembly that has not been altered by the court"). And, in January 2001, the Justice Department released its guidelines for redistricting, taking the position that an actual "finding of unconstitutionality under Shaw" would be a prerequisite to rejecting the last legally enforceable

plan as the benchmark. Guidance Concerning Redistricting & Retrogression, 66 Fed. Reg. 5412, 5412 (Jan. 18, 2001).

We hold that, so long as a current district or plan has not been formally declared to be the product of an unconstitutional racial gerrymander under the principles of Shaw and its progeny, it will serve as the benchmark for measuring retrogression. The determination that a particular district is the product of a racial gerrymander is a fact-intensive inquiry and no Shaw challenge to any district has been brought in these proceedings. Furthermore, any such benchmark districts have now been declared unconstitutional under the one-person, one-vote strictures of the Equal Protection Clause, and a Shaw inquiry would unnecessarily embroil this court in extended mini-trials over the moot issue of whether the district is constitutionally infirm for other reasons as well.

This conclusion does not, however, equate to a requirement that we must accept the configuration of the existing districts. The benchmark has no direct effect upon the constraints we now know to be imposed by the Equal Protection clause. The fact that a suspect district has not been formally declared unconstitutional does not affect our duty to draw districts in accordance with the goals of the Voting Rights Act and the principles enunciated by the Supreme Court in Shaw and its progeny. Those principles operate in tandem to require us to "clean up" cores of existing majority-

minority districts should the application of federal law and traditional state districting principles now dictate a somewhat different configuration. If, in fact, the prior district was gerrymandered to achieve an unnecessarily -- and indeed unconstitutionally -- high percentage of black voting age population, the constraints of our current remedial factors will necessarily bring that percentage down to a more acceptable and reasonable level.

The question of how retrogression should be measured and evaluated in the 2000 redistricting process is a more difficult one. In January 2001, the Department of Justice issued its Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act. According to the Department:

A proposed plan is retrogressive under the Section 5 "effect" prong if its net effect would be to reduce minority voters' "effective exercise of the electoral franchise" when compared to the benchmark plan. The effective exercise of the electoral franchise usually is assessed in redistricting submissions in terms of the opportunity for minority voters to elect candidates of their choice. The presence of racially polarized voting is an important factor considered by the Department of Justice in assessing minority voting strength. A proposed redistricting plan ordinarily will occasion an objection by the Department of Justice if the plan reduces minority voting strength relative to the benchmark plan and a fairly-drawn alternative plan could ameliorate or prevent that retrogression.

. . . [The state] bears the burden of demonstrating that a less-retrogressive plan cannot be reasonably drawn. . . .

. . . If it is determined that a reasonable alternative plan exists that is non-retrogressive or less retrogressive than the submitted plan, the Department will interpose an objection.

66 Fed. Reg. at 5413 (Jan. 18, 2001) (emphasis added; internal citation omitted). Although § 5 "does not require jurisdictions to violate the one-person, one-vote principle" or "to violate Shaw v. Reno and related cases," the Department concludes that § 5 "may require the jurisdiction to depart from strict adherence to certain of its redistricting criteria." Id. By way of example, the Department advises that state criteria that "require the jurisdiction to make the least change to existing district boundaries, follow county, city, or precinct boundaries, protect incumbents, preserve partisan balance, or in some cases, require a certain level of compactness of district boundaries may need to give way to some degree to avoid retrogression." Id.

In accordance with these precedents, the standard of nonretrogression prohibits our implementation of a plan that will diminish the existing opportunity for minority voters to elect the candidate of their choice in a particular district if a fairly-drawn alternative exists that would not have that effect. However, "[n]onretrogression is not a license for the State to do whatever it deems necessary to ensure continued electoral success; it merely

mandates that the minority's opportunity to elect representatives of its choice not be diminished, directly or indirectly, by the State's actions." Bush, 517 U.S. at 983.

Accordingly, for purposes of § 5, we must consider race in redistricting where necessary to avoid retrogression. To do so, we first examine the court plan to ensure that it does not unfairly retrogress the overall position of minority voters by reducing the total number of majority-minority districts in the benchmark plan and, secondly, to ensure that it does not unnecessarily reduce the opportunity of minority voters to elect their preferred candidate in a particular district, where meaningful comparisons can be made. See Abrams, 521 U.S. at 97.

Because we must narrowly tailor any race-based changes designed to prevent retrogression in the minority's voting strength, however, we do not arbitrarily strive to achieve any benchmark BVAP, which only represents the current BVAP in a malapportioned district. The history of race-based districting by state legislatures and courts in the early 1990s to maximize the drawing of majority-minority districts without regard to whether there was in fact a geographically compact minority population in the area, believed to be both constitutional and required by the Department of Justice policies, is well-documented. We have not examined individual districts to determine whether we believe they were racially gerrymandered because we do not think that inquiry is

appropriate at this stage, nor have the parties proffered evidence which would be sufficient to establish any such finding. But, we do recognize that this may explain, at least in part, why the court, operating under its currently known constraints, cannot constitutionally achieve the existing BVAP in a fairly-drawn district. Additionally, unavoidable reductions in the BVAP percentages have resulted in some areas because of increased residential integration. While the 2000 census reveals that the percentage of minorities remained constant, minorities have moved away from historically black neighborhoods, resulting in substantial population deviations in existing majority-minority districts. Nearly all of the existing majority-minority districts need population and, to remain a majority-minority district, need predominately black population. The residential integration of blacks and whites revealed by the 2000 census results is an encouraging sign in South Carolina. But if it has any downside, it is that it makes it more difficult for courts and state legislatures to add the concentrations of black population necessary to replace the concentrations lost in predominately black areas to avoid retrogression without engaging in bizarre draws.

Cognizant of these constraints on our task, we consult the benchmark BVAP in each of the proposed majority-minority districts, and weigh it along with the other factors that affect the ultimate goal of avoiding a draw that causes an unnecessary diminution of

the effectiveness of a majority-minority district. In sum, the court plans avoid retrogression by preserving the number of electable black majority districts in the current plan, and preventing the unnecessary reduction of BVAP in those effective majority-minority districts, within the parameters of the Equal Protection Clause, the Voting Rights Act, and traditional districting principles.

C. Traditional Districting Principles

We turn now to the "traditional districting principles" of the state. We must consider these principles along with the federal mandates imposed by the one-person, one-vote requirement of the Equal Protection Clause and the racial fairness and nonretrogression principles of the Voting Rights Act, but we apply them only to the extent that they do not conflict with the federal principles. See Abrams, 521 U.S. at 79; Upham, 456 U.S. at 39.

Generally speaking, traditional redistricting principles in South Carolina have directed courts to maintain, where possible, recognized communities of interest and the cores of existing districts, as well as political and geographical boundaries delineated within the state. See South Carolina State Conference of Branches of the NAACP v. Riley, 533 F. Supp. 1178, 1180 (D.S.C.), aff'd, 459 U.S. 1025 (1982). This includes maintaining county and municipal boundaries where possible, and protecting the cores of existing districts by altering old plans only as necessary

to achieve the requisite goals of the new plan. See id. at 1180-81.

Maintaining the residences of the incumbents who serve those core constituents within the district is also a districting principle that historically has been observed in South Carolina. See id. Although this is usually referred to as "incumbency-protection," we view the principle as more accurately protecting the core constituency's interest in reelecting, if they choose, an incumbent representative in whom they have placed their trust. Provided it does not conflict with other nonpolitical considerations such as communities of interest and compactness, it is one worthy of consideration by this court. See, e.g., Bush, 517 U.S. at 964 ("[W]e have recognized incumbency protection, at least in the form of avoiding contests between incumbents, as a legitimate state goal.") internal quotation marks and alteration omitted); Johnson, 922 F. Supp. at 1565 (noting the protection of incumbents as a legitimate consideration, albeit an inherently more political one).

Metropolitan areas that overflow county boundaries, such as Charleston/Berkeley/Dorchester, Greenville/Spartanburg, and Richland/Lexington, previously have been recognized as sharing a special community of interest. See Riley, 533 F. Supp. at 1181. And, of course, South Carolina has traditionally adhered to the principle that "districts should be as compact as reasonably

possible" and "that district boundaries are not gerrymandered to dilute the voting strength of minorities," id.

The amount of deference owed to the historical districting principle of maintaining county boundaries, and the position it holds in the hierarchy of pertinent considerations, was the subject of a fair amount of dispute at trial. In the 1980s redistricting process, the three-judge court in Riley noted the State's "substantial interest in the preservation of county lines," primarily "because the residents of a county have a community of interest." Id. at 1180. As noted then, county residents "are accustomed to voting together for county officials. There is much administrative convenience in drawing district lines along county lines, and it facilitates the process of organizing constituencies and campaigning for the support of constituents." Id. The Riley court, however, did not elevate the respect for county lines to the level of excluding all other factors. Rather, it likewise noted the state's historical concern for preserving the core of existing districts and protecting the incumbents who serve them, the state's recognition of other non-county-based communities of interest, the need for compact districts, and the principle of racial fairness. See id. at 1181.

Ten years later, the three-judge court in Burton seemed to elevate the importance of maintaining county lines. There, the court stated that, "in the quarter century since Reynolds the

General Assembly has consistently stated, through its plans and specific statements of policy, that among various state policies, preserving county lines should enjoy a preeminent role in South Carolina's redistricting process. This preeminence is highly rational." Burton, 793 F. Supp. at 1341. Although the Burton court stated that the preservation of county lines was "[t]he only cognizable state policy [it] considered," id. at 1360, the court split 27 of the state's 46 counties in its Senate plan. Ultimately, Burton was summarily vacated by the Supreme Court and remanded for "further consideration in light of the position presented by the Solicitor General in his brief for the United States filed May 7, 1993." Statewide Reapportionment Advisory Comm. v. Theodore, 508 U.S. 968, 968 (1993). The Solicitor General had maintained that the three-judge court failed to apply a proper analysis under § 2 of the Voting Rights Act and, as a part of that failure, placed undue emphasis upon preserving county and precinct lines.

We likewise recognize South Carolina's strong preference for minimizing the splits of counties within her borders. Many governmental services, such as fire and police protection, are organized along political subdivision lines, and counties and cities are often representative of a naturally existing community of interest. See Burton, 793 F. Supp. at 1341 & n.29; Riley, 533 F. Supp. at 1180. We also understand the desire expressed by

county representatives, particularly those in small counties, to remain "whole" in a district, or a substantial part of a district, in order to maximize their voice on a state level.

Nevertheless, we are also cognizant of the evidence that the trend of population movement continues to be from small rural counties to urban/suburban and coastal counties, and that often the cost of keeping small counties "whole" or their splits minimal is to increase the number of splits in more populated counties. Furthermore, as demonstrated by the testimony and other evidence presented to us in this proceeding, the principle of preserving county lines, while accorded much importance, has not been an inviolate policy or even a superior policy in all districts. Different parts of a county may also lack commonality of interest, most notably those counties located in coastal and metropolitan regions of the state which are now divided rather starkly upon rural/resort or rural/urban lines.

Finally, we note that it has long been recognized that "[t]he policy of maintaining the inviolability of county lines . . . , if strictly adhered to, must inevitably collide with the basic equal protection standard of one person, one vote." Connor, 431 U.S. at 419. These population shifts and the stringent deviation to which we are held make maintaining county lines a more difficult goal for the court to achieve, particularly in the context of the smaller

House districts, than for the state's elected officials who possess more latitude in this regard.

For these reasons, we agree that we must honor South Carolina's important and longstanding state policy of maintaining county boundaries, but only insofar "as that can be done without violation of the [one-person, one-vote] principle of Wesberry v. Sanders and consistently with other state interests." Riley, 533 F. Supp. at 1180. Like all traditional districting principles adhered to by the state legislature, the principle of preserving county lines occupies a subordinate role to the federal directives embodied in the United States Constitution and the Voting Rights Act when the court is called upon to implement remedial redistricting plans. We do not find that the preservation of county lines continues to enjoy a preeminent role in the court's redistricting task. It is required to be considered as an important, guiding principle in our decision and, where appropriate, accorded great, but not necessarily greater, weight.

Having considered the history of redistricting in South Carolina and the evidence of traditional districting principles presented in this proceeding, we find that the traditional districting principles and existing redistricting policies observed in South Carolina direct us first and foremost to remedy the population deviations in existing districts by maintaining the core of those districts present in the malapportioned plan, while adding

or subtracting population in a compact and contiguous manner to achieve the population equality required by the Constitution. In doing so, we consider all of the districting principles historically observed by the state. Generally speaking, however, we find that the cores in existing districts are the clearest expression of the legislature's intent to group persons on a "community of interest" basis, and because the cores are drawn with other traditional districting principles in mind, they will necessarily incorporate the state's other recognized interests in maintaining political boundaries, such as county and municipal lines, as well as other natural and historical communities of interest.

IV. The South Carolina House of Representatives

A. Background

The South Carolina House of Representatives consists of 124 members elected from single-member districts, see S.C. Const., art. III, § 3, to serve two-year terms, see S.C. Const., art. III, § 2. Prior to the Supreme Court's one-person, one-vote mandate enunciated in Reynolds v. Sims, 377 U.S. 533 (1964), the House was apportioned to counties based on population, but each county received at least one representative regardless of population. See Smith, 946 F. Supp. at 1177 (detailing the history of legislative reapportionment since Reynolds); see also O'Shields v. McNair, 254 F. Supp. 708, 709-11 (D.S.C. 1967) (invalidating the South Carolina

Constitution's method of apportioning the General Assembly as violative of the one-person, one-vote principle).

In the 1980s, the House successfully redistricted itself without court intervention. However, in 1992, the legislature reached an impasse with the Governor, who believed additional majority-minority districts were required by § 2 of the Voting Rights Act, resulting in a court-ordered plan. See Burton, 793 F. Supp. at 1340. The Burton court determined that the state would follow a predominate policy of maintaining county lines and held that, due to the exigency of the time pressures caused by a pending election schedule, it need not conduct a full § 2 Voting Rights Act inquiry. See id. at 1341, 1353. The Supreme Court summarily vacated and remanded the case to the district court "for further consideration in light of the position presented by the Solicitor General in his brief" to the Court. See Statewide Reapportionment Advisory Comm. v. Theodore, 508 U.S. 968 (1993). As previously noted, the Solicitor General had argued that the district court placed undue emphasis upon the maintenance of county lines and gave inadequate consideration to the requirements of § 2 of the Voting Rights Act. More particularly, the Solicitor General argued that the district court did not adequately address the question of whether additional compact and contiguous districts with black majorities should be created to avoid dilution of black voting strength and that the district court lacked an appropriate basis to

conclude that a bare 50% majority-black voting age population should be automatically considered a "black opportunity district" for purposes of § 2 of the Voting Rights Act. See Smith, 946 F. Supp. at 1181. Two weeks later, the Supreme Court issued its decision in Shaw v. Reno, 509 U.S. 630 (1990), which denounced the use of racial gerrymandering to create majority-minority districts under § 2.

In 1994, the legislature successfully passed and precleared a redistricting plan for the House. However, nine of those districts were subsequently challenged as being racially gerrymandered in violation of the Shaw/Miller principles. Following a trial before a three-judge district court panel, six of the nine districts were held to be the product of an unconstitutional gerrymander. See Smith, 946 F. Supp. at 1210. In 1997, the General Assembly passed a House plan which corrected the unconstitutional districts struck down by the court in Smith, which the parties agree is the most recent, legally enforceable House plan.

As noted previously, the parties agree that the current House districts are malapportioned and, therefore, constitutionally infirm under the one-person, one-vote strictures of the Equal Protection Clause. Applying the 2000 census numbers, South Carolina's total population of 4,012,012 persons, split between the existing 124 House districts, compels a target population for each House district of 32,355 persons. The existing House plan has a

total population deviation of 95%, with District 118 at -38.21% below the ideal district population and District 79 at 56.79% over the ideal district population.²³

The malapportionment is pervasive. By way of example, House District 79, located in the suburban area of Columbia in northeastern Richland County and southern Kershaw County, is the most populated house district in the state, with a total population of 50,729, resulting in a deviation of 56.79%. Without regard to the deviations in adjoining or other nearby districts, District 79 requires the removal of more than 18,000 persons from the district to achieve population equality -- over half the population needed for a single district. Similar areas of large growth include the Greenville-Spartanburg area, Lexington County, and the suburbs of Charleston, as well as the beach communities of Horry County and Beaufort County.

House District 118, the former home of the now-closed Charleston Naval Base, demonstrates the opposite problem. Located in the heart of Charleston, it, like many other urban-based house districts, has become extremely underpopulated, and it also experiences the additional problem of being surrounded by other underpopulated urban-based districts. Consequently, District 118

²³ An individual district's deviation is the difference in total population from the ideal district size. A plan's total population deviation is derived by adding the largest positive deviation in the plan and the largest negative deviation in the plan.

is now the least-populated house district, with a total population of 19,992, for a deviation of -38.21%. In order to bring it into population compliance, District 118 would require the addition of more than 12,000 persons -- nearly half the population needed for a single district -- from surrounding districts which themselves are severely underpopulated.

B. The Proposed Plans

During the House phase, four plans were proposed to the court: H.3003, which was passed by the state legislature, but vetoed by Governor Hodges; Governor Hodges' plan, which was submitted as an amendment to the House plan, but overturned on the floor; a plan submitted by Colleton County, which was also submitted to the House but overturned on the floor; and a plan submitted to us by Georgetown County. The bulk of the evidence presented by the House and the Governor consisted of explanations of why this court should not adopt and implement the plans submitted by the other. By way of summary, the House charged the Governor with preparing a plan that racially gerrymandered districts to increase the BVAP percentages in predominately white districts to between 25% and 50%. These so-called "influence districts," the House charges, are designed to promote the election of white Democratic candidates and the concomitant ousting of white Republican incumbents, at the expense of reducing BVAP percentages in existing majority-minority districts to marginal levels.

The Governor charges the House with a converse racial gerrymandering argument, asserting that H.3003's version of the House plan was intentionally drafted to "racially polarize" the state. Specifically, the Governor points to a handful of House representatives and charges that they intentionally gerrymandered their districts on a racial basis, often with the assistance of racial "dot-density" maps, by moving one or two predominately black precincts out of their Republican-controlled district and into a majority-minority or otherwise Democrat-controlled district. The effect, the Governor charges, was the intentional "bleaching" of Republican districts at the expense of existing minority influence districts.²⁴ The Governor also asserts that his proposed plan adheres more closely to traditional districting principles in South Carolina and maintains more closely the cores of existing districts than does the legislatively passed House plan.

The ACLU initially proposed three alternative plans, but does not now advocate the plans for adoption by this court. Although they submitted the plans as illustrative of plans that satisfy the Voting Rights Act,²⁵ the ACLU asserts that they only seek to ensure

²⁴ As previously noted, the Governor specifically denied that he was claiming a right to influence districts under § 2 of the Voting Rights Act, but rather argued that the House plan could not be adopted by us because it was the product of "white gerrymandering" in violation of the Equal Protection Clause.

²⁵ The ACLU admitted that their plans did not consider any community of interest factors or any political factors other than incumbency protection.

that any plan adopted by the court is in compliance with the racial-fairness standards of § 2 and the nonretrogression standards of § 5. They further assert that all of the proposed plans satisfy the nonretrogression standard of § 5 and that the House plan, with minor modifications in a few majority-minority districts (particularly Districts 12, 102 and 116), is acceptable from a § 2 standpoint. Finally, the ACLU specifically denounced the Governor's advocacy of "influence districts" both as a policy matter and, given its partisan-based origin, as a valid consideration for this court in the draw.

Colleton County and Georgetown County advance more local concerns. Under the present 1997 plan, Colleton County is divided among five House districts, comprising a majority in none. The House and Governor both propose to now split Colleton County into four House districts, which Colleton County also opposes. Colleton County asks to be split into no more than three House districts. Additionally, Colleton County specifically opposes the House plan's proposal to separate the 742 persons on Edisto Beach from their neighbors on Edisto Island in District 119, and move them to the predominately Charleston-based District 116, which is contiguous only by water. Colleton County asserts that the split is unconstitutionally race-based, whereas the House asserts that the split was motivated by a coastal community of interest.

Georgetown County contests the decision of the House and Governor to split the City of Georgetown between House Districts 103 and 108. Georgetown contends that the City of Georgetown shares a strong community of interest with the coastal portion of Georgetown County and should therefore remain wholly within District 108. The decision to do otherwise, Georgetown charges, represents an unconstitutional, race-based gerrymander, performed with the exclusive intent to maintain House District 103 as a majority-minority district in derogation of all other traditional districting principles.

Having reviewed the evidence and testimony received, the court concludes that none of the proposed plans comply with the criteria required of a judicially drawn plan. First, the House and the Governor have submitted plans which exceed the range of de minimis population deviation and, therefore, could not be adopted by this court even if they were to survive the preclearance process under the Voting Rights Act. Neither disputes this fact. The House plan has a total deviation of 4.86% and the Governor's plan has a total deviation of 3.13%. The other plans submitted are likewise beyond an acceptable range of deviation for a court-ordered plan.

Second, the plans are of limited utility as a template to guide us. For the most part, the House and Governor have opted to attack each other's plan as being race-based and politically motivated. The evidence bears both sides out; both plans plainly

represent the culmination of very specific political and, in some cases, individual agendas. It is well-documented in the evidence, and indeed not in dispute by the parties, that black citizens in South Carolina vote almost unanimously for Democratic candidates against Republican candidates and, in a primary, for black Democrats against white Democrats. Given this high level of racial polarization and high correlation between black voters and the Democratic Party which currently exists, it is hardly remarkable that when one places a pen in the hands of incumbents to draw their own districts, a Republican might draw fewer blacks in the district to maximize its Republican base; a white Democrat might draw more blacks in the district to increase its Democratic majority, but not so many as to be threatened with defeat by a black challenger; and a black Democrat might draw enough blacks in the district as necessary to ensure re-election. In view of the mandate that race must be of at least some consideration given the high levels of racial polarization in the state, we find it most difficult to determine whether and when the incumbents' proper motives gave way to improper ones.

Fortunately, we need not do so. In some areas of the state, we were able to consult the submitted plans for common, and therefore noncontroversial ground, although this assistance is limited in those parts of the state that experienced substantial population disparity. In this limited manner, unenacted

legislative and gubernatorial plans were considered as evidence of state policy, but always with a healthy regard for each party's highlighting of the opponent's political motivations. In each case, we consulted both, but we ultimately found it necessary to draw the districts largely from scratch, in accordance with our own interpretation of the remedial factors that govern us in our draw.

C. The Court's Plan

1. Population Equality

Because our primary charge is to remedy the malapportionment present in the existing plan, we were guided in our remedy by traditional districting principles, seeking to preserve the core of each existing district where possible, and adding or subtracting population surrounding the core in a compact and contiguous manner. In doing so, we remained mindful of the existing majority-minority districts which §§ 2 and 5 of the Voting Rights Act compel us to respect, as well as any additional areas that the § 2 inquiry would direct us to protect from inadvertent vote dilution.

Because the substantial shifts in population alone would inevitably cause major change to the district cores in some areas, we began our charge with the question of whether we should collapse any existing House districts that have experienced extreme population loss and relocate them as new districts in areas of extreme population growth. In this regard, at least, we found the proposed plans to be of substantial benefit.

Both the House and the Governor agreed that the population shifts in South Carolina require the relocation of two House districts. Both proposed to collapse two existing districts in or near the areas of the state with the greatest population loss. They also agreed that the explosive population growth in the coastal counties of Horry and Beaufort called for the creation of one new House district in each. Horry County grew by 52,576 persons, a 36.5% increase in population, and Beaufort County grew by 34,512 persons, a 39.9% increase in population.²⁶

We agreed that two house districts must be collapsed and relocated elsewhere. Unless we collapsed and moved districts to account for the substantial population losses in the Pee Dee and downtown Charleston area and the substantial population growth in Horry County and Beaufort County, gross disruption of the cores of all existing districts would have "rippled" throughout the Pee Dee and Low Country regions of the state. See, e.g., *Johnson*, 922 F. Supp. at 1563 (noting that the appropriate place to locate Georgia's new congressional district was the high population growth area near Atlanta). By collapsing districts in those areas of greatest population loss, population is freed up to be relocated to adjoining districts, which were also low in population. Similarly,

²⁶ Other areas of substantial growth included Lexington County, which grew 28.9%, and York County, which grew 25.2%. Conversely, many areas in the Pee Dee and Low Country lost population: Allendale County lost 4.4%, Bamberg County lost 1.4%, Marlboro County lost 3.0%, and Union County lost 1.5%.

by relocating these districts to the areas of greatest population gain, we minimized the "ripple" effect of the population gains in the other area districts.

Of course, this determination led us to the difficult question of exactly which two districts in the existing plan should be collapsed, and where those districts should be relocated. Like the House and Governor, we found that the most logical places to locate new districts were in the areas where the most population growth occurred -- Horry County and Beaufort County. And, when we moved to these areas to locate the new districts, the cores of each new district naturally landed in the areas of those counties that, in fact, experienced the most growth.

Although the parties agreed that two districts should be collapsed and moved, they disagreed as to which two specific districts should be collapsed. The parties did agree that an existing district must be collapsed in the Charleston area (which grew only 5.0%) and moved to the Beaufort area as described above, but disagreed as to which district in Charleston should be collapsed. The House, which is currently controlled by the Republican Party, proposed the collapse of District 113 in Charleston County, whereas the Governor, a Democrat, proposed the collapse of District 119 in Charleston County. The parties wholly disagreed as to the specific area of the state where the second district should be collapsed. The House proposed the collapse of

District 80 in Richland County, an area which grew at 12.0%, whereas the Governor proposed the collapse of District 67 in Sumter County, an area which grew at only 3.3%. Unsurprisingly, the House proposed the collapse of two Democratic districts and the Governor proposed the collapse of two Republican districts.

In order to maintain as much as possible the cores of the remaining districts in the area, the court found that a district must be collapsed in the Charleston area, which experienced the second greatest overall population loss, in large part due to the closure of the Charleston Naval Base in the 1990s. The court rejected, however, both parties' proposed district for collapse. Instead, the court found that the most logical district to collapse in Charleston County was District 118, the district that experienced the greatest negative population deviation in the Charleston area (38.21%) and, indeed, statewide.

With regard to the second district to be collapsed, the court rejected the House proposal to collapse District 80 in Richland County, which was only 7.29% low in population, as opposed to the Governor's proposal to collapse a district in Sumter County. Collapsing a district in Richland County would result in the unnecessary shift of districts in the Midlands area of the state, which has not experienced a population loss as a whole, whereas the Pee Dee area experienced the largest overall negative population deviation in the state. However, the court rejected the Governor's

proposal to collapse District 67 in the Pee Dee, which experienced a population deviation of -13.14%. Instead, we found that District 68 was the most logical district to collapse because it, like the district we collapsed in Charleston, experienced the highest negative population deviation in its area (-17.94%).

Having made these difficult threshold decisions, we then turned to our task of drawing equipopulous districts. There, we began to draw the districts in a compact and contiguous manner, identifying at the outset the core of each existing district and moving about its borders to add or subtract compact and contiguous areas of population as the individual district dictated. This approach not only served the goal of minimal change and constituency consistency in the individual district, it created the least amount of "ripple" effect in other districts. Where possible, and where the decision was not outweighed by other competing interests, we attempted not only to avoid new county splits, but to also eliminate existing county splits to the extent possible. Our plan does not create any county or city splits that were not already present in the benchmark plan, although it does eliminate several splits that did exist. Beyond this, we were motivated by an attempt to follow natural and other easily identifiable boundaries, such as major roads, to create a smooth district border that election officials could easily pinpoint.

In the end, the court's plan achieves the requisite population equality, with a total de minimis deviation of plus or minus one percent variation, see, e.g., Chapman, 420 U.S. at 26-27, and results in the least change in terms of constituency movement. The plan contains three less total county splits than the 1997 benchmark plan and, as compared to the proposed plans of the House and Governor, the court plan contains seven less total county splits and nine less total county splits, respectively. With the exception of Districts 67 and 113, which adjoined the two collapsed districts, the court plan also does not pit any incumbents against one another. Finally, we note that the split of Colleton County has been reduced from five to three splits, and the constituents of Edisto Beach remain with their Edisto Island neighbors in District 121. And, being in agreement with the position that the City of Georgetown shares a strong community of interest with the coastal portion of Georgetown County, the court does not split the City of Georgetown, which remains wholly within District 108.

2. The Voting Rights Act

As noted previously, in carrying out our remedial task of devising and implementing a redistricting plan, the court is also directed to consider the requirements imposed upon South Carolina by the Voting Rights Act. For purposes of § 5, the House and Governor agree that the "benchmark" plan is the current 1997 plan with the 2000 census numbers applied to it. Although the ACLU

urges us to also consult the 1997 plan with the 1990 census numbers applied to it for comparison, they agree that both parties have drawn reasonable districts for purposes of the Voting Rights Act. The 1997 plan with the 1990 census numbers contains 32 majority-minority districts. As a result of the population losses and shifts revealed by the 2000 census results, the benchmark plan now contains only 25 majority-minority districts.

Prior to trial, the parties agreed that no § 5 issues were presented by the plans proposed by the Governor or House because each proposed majority-minority districts in excess of the 25 districts in the current benchmark plan. The Governor's plan proposed 28 majority-minority districts, whereas the House plan proposed 27 majority-minority districts. The ACLU's illustrative plan contained 32 majority-minority districts, but was not drawn in accordance with traditional districting principles, and the ACLU agrees that the numbers presented by the Governor and House are sufficient to avoid retrogression. Although we did not elect to adopt a submitted plan, the court-drawn plan, which also exceeds the 25-district benchmark, raises no retrogression issues under § 5.

The court plan also complies with § 2 of the Voting Rights Act. In preparing the new districting plan, we considered every existing majority-minority district present in the benchmark plan, as well as other areas pointed out to us by the parties as ones

that § 2 might require. First, in keeping with our paramount goal for every existing district -- save District 118 in which population deviation compelled a collapse -- we attempted to maintain the core of each existing majority-minority district. With few exceptions, these districts required the addition of population to achieve the one-person, one-vote requirement. And, in every case, we examined the geographic territory surrounding the existing minority district to determine whether additional concentrations of minority voters were present in a compact and contiguous area such that we could achieve the concurrent goals of equalizing population, avoiding retrogression, and preserving traditional districting principles. Where we believed it necessary to honor the principles established in the Shaw/Miller line of cases, we eliminated lines that, although never challenged, appeared to us to possibly be the result of the 1990s racial gerrymandering or that otherwise did not comport with the identified traditional districting principles.

Second, we considered those districts that were not majority-minority under the benchmark plan, but that one or more parties urged us to consider under § 2. If the minority population existed in a reasonably compact area, otherwise met the Gingles test,²⁷ and could be drawn utilizing traditional districting principles, it was

²⁷ As noted previously, there is no real dispute that the remaining Gingles prerequisites -- racially polarized and white bloc voting -- exist statewide.

drawn as a majority-minority district. House Districts 12 and 82, for example, fell easily into this category. The minority population in each area is sufficiently compact and has a sufficiently strong community of interest to require its draw as a § 2 district. District 103, in contrast, could have been drawn as a majority-minority district if we had split the City of Georgetown. The Governor and the House did so, placing its BVAP above the 50% mark. We declined to do so. The proposed split violated the strong community of interest between the residents of the City of Georgetown and its coastal neighbors. The court did not split municipal boundaries elsewhere in the plan, unless they were already split or were split on a county line or where municipal population size mandated a split. And, the loss of the district as a majority-black one did not cause a net retrogressive effect.

Although in drawing a majority-minority district applying traditional districting principles, the court might have produced a district where the BVAP exceeds the percentage necessary to be considered an "equal opportunity" district under § 2, the court did not allow race to predominate so as to remove the excess black voters to create an "influence" district elsewhere. We protected the status of an equal opportunity district and prevent retrogression where we must, as we are compelled to do by the mandates of the Voting Rights Act. Beyond that mandate, however,

the lines were drawn wherever traditional districting principles led us without the consideration of race. Although demographic changes did not always allow for a constitutionally appropriate draw that reached the benchmark BVAP in every district, there is no net loss of majority-minority districts in the state-wide plan and the black voting age population in every district closely approximates that percentage which the parties agreed was sufficient to be both a minority opportunity district under § 2 and nonretrogressive under § 5.

3. The Specific Majority-Minority House Districts

We turn now to the specific majority-minority districts present in the court plan. As noted previously, the Governor's plan proposes 27 majority-minority districts, whereas the House plan proposes 28 majority-minority districts. The court-drawn plan contains 29 majority-minority districts. As to each, we make the following additional findings.

First, the parties agreed that twenty-one districts -- Districts 23, 25, 31, 49, 50, 51, 57, 59, 62, 66, 70, 73, 74, 76, 77, 82, 91, 95, 101, 109, and 121 -- all satisfied the Gingles test and that the proposed plans had all been drawn to a level sufficient to provide black voters an equal opportunity to elect the candidates of their choice. This was confirmed by Dr. Ruoff in his testimony. In addition, Dr. Ruoff testified that Districts 111 and 122, while in danger of losing their opportunity status due to

anticipated development, also met the Gingles test and were drawn to provide the requisite equal opportunity. We agree that the cores of these districts are located in areas that satisfy the Gingles test and, while not adopting either plan's iteration in full, the court's draw of these districts accomplishes similar levels of opportunity.

The draws of two districts -- Districts 41 and 64 -- in the proposed plans are, according to Dr. Ruoff, at questionable levels to be called "equal opportunity" districts, but cannot be drawn at a higher BVAP level without racially gerrymandering. Having determined that the areas do meet the Gingles factors, the court's plan maintains these districts as majority-minority and at a level similar to that proposed by the parties and which the court believes will be sufficient to provide the black voters an equal opportunity.

According to Dr. Ruoff, three districts -- Districts 102, 103, and 116 -- are drawn to a marginal level of equal opportunity by the proposed plans, but should be maintained as majority-minority districts. Having considered the areas in conjunction with other districting principles, the court agrees that Districts 102 and 116 meet the Gingles factors. Under the court plan, they contain BVAP levels that approximate those proposed by the parties and that the court believes is sufficient to provide an equal opportunity. As noted previously, District 103 could not be drawn to the proposed

level of equal opportunity without violating the existing community of interest between the residents of the City of Georgetown and the Georgetown County coastal community; therefore, it falls just shy of a majority-minority district.

Finally, Dr. Ruoff testified that District 118 was in serious jeopardy and that District 12 was a questionable equal opportunity district. As previously noted, the court found that District 12 could and should be maintained as an equal opportunity district, and the court has drawn that district accordingly. However, for the reasons previously discussed, the court weighed all of the relevant considerations and concluded that the severe population variance in District 118 and its surrounding districts dictated that it be collapsed and relocated to an area of substantial population growth in Beaufort County. As a result of that collapse, however, District 113 recouped much of its population shortfall from the constituents of the collapsed District 118, causing its BVAP to increase from 32.15% to 50.11%, which we also believe provides the minority constituents in that area an equal opportunity to elect the candidate of their choice. Consequently, the number of majority-minority districts in this area suffered no loss.

V. The South Carolina Senate

A. Background

The South Carolina Senate consists of 46 members elected from single-member districts. See S.C. Const., art. III, § 1; State ex rel. McLeod v. West, 153 S.E.2d 892, 894 (S.C. 1967). Prior to Reynolds' one-person, one-vote mandate, each of South Carolina's 46 counties was entitled to elect one senator to serve a four-year term. See S.C. Const., art. III, § 6; see also Smith, 946 F. Supp. at 1177; O'Shields, 254 F. Supp. at 711. In Burton, the three-judge panel implemented a court-drawn plan for the Senate, see Burton, 793 F. Supp. at 1358-63, a plan that was subsequently vacated by the Supreme Court. See Statewide Reapportionment Advisory Comm., 508 U.S. at 968. The Burton court plan had created eleven black-majority districts, ten of which had a majority-black voting age population. See Burton, 793 F. Supp. at 1362. On remand, the General Assembly passed a new redistricting plan for the Senate, which received approval from the Department of Justice and became law. See Smith, 946 F. Supp. at 1181, 1201-02. This legislatively drawn plan created 12 black-majority districts. See id. at 1203.

However, in Smith, three of those districts -- Districts 29, 34 and 37 -- were subsequently declared to be the product of an unconstitutional gerrymander. See Smith, 946 F. Supp. at 1210. In 1997, the General Assembly passed a Senate plan to remedy the unconstitutional Senate districts. It is the plan currently in use and, therefore, is the last legally enforceable Senate plan. The

current plan, applying either 1990 or 2000 census numbers, contains 10 majority-minority districts.

As with the House districts, it is undisputed that the existing Senate districting plan is now malapportioned. Based on the state's total population of 4,012,012, the ideal Senate district would have a population of 87,218 people. The total deviation of the existing Senate districts is 48.16%, with District 46 overpopulated by 21.15% and District 43 underpopulated by 27.01%. Nine of the ten majority-minority districts in the Senate benchmark plan, measured by total black population, are substantially low in population.²⁸

B. The Proposed Plans

During the Senate phase, six plans were proposed to the court: H.3003's version of the Senate plan, which was passed by the legislature, but vetoed by Governor Hodges; two plans prepared by Governor Hodges, designated Plan A and Plan B; one plan proposed by Leatherman; one plan proposed by Colleton County; and one plan

²⁸ As noted in more detail *infra*, District 7 is a majority-minority district in terms of total black population only. Thus, the benchmark plan contains ten majority-minority districts, if defined as districts with a total black population that exceeds the 50% mark, but only nine majority-minority districts that exceed the 50% mark in terms of BVAP. Unless otherwise noted, our reference to majority-minority districts hereafter refers to those districts that contain a BVAP greater than 50%. An opportunity district, in contrast, is one in which it is demonstrated (usually by election data and expert testimony interpreting it) that the BVAP percentage in a district is sufficient to actually afford the minority population an equal opportunity to elect the candidate of its choice.

proposed by Georgetown County. The ACLU proposed an illustrative plan as well, but now place their full support behind the Senate version of the Senate plan, asserting that it fully complies with the one-person, one-vote requirements of the Constitution and the Voting Rights Act. As in the House case, the bulk of the evidence presented was designed to encourage this court to adopt the plan of the advocate and to point out the improprieties of the other plans.

The Senate asserts that its plan better serves the goals of least change, compactness, preserving communities of interest and county lines, and accommodating incumbents where practical. The Senate also charges that the Governor's plan cannot be adopted because it facially violates § 5 of the Voting Rights Act by reducing the overall number of effective majority-minority districts under the existing plan and by reducing the effectiveness of individual majority-minority districts by deliberately removing black population from majority-black districts and moving them into adjacent districts. The effect, as alleged by the Senate, is the deliberate reduction of the BVAP in majority-minority districts below the point of equal opportunity in order to create so-called "influence districts" -- majority white districts where blacks cannot elect their candidate of choice, but will substantially aid in the election of a white Democratic candidate over a Republican candidate. While the Senate asserts that such influence districts may have merit from a purely political standpoint, i.e., to

increase the probability that the Democratic party will be able to oust incumbent Republicans and regain control of the South Carolina Senate, it asserts that political goal cannot be achieved at the expense of retrogressing other districts and that this court cannot engage in such a political design. Simply stated, the court cannot draw a plan that intentionally aids one political party at the expense of another.

The Governor, for his part, charges that the Senate plan is racially and politically gerrymandered for the purpose of "bleaching" Republican-held districts and rendering them "safe" Republican districts. As before, this generally amounts to the converse of the Senate's argument that the Governor has racially gerrymandered districts to achieve the opposite result. By increasing the BVAP percentage in Republican-held districts, the Governor increases the probability of a white Democrat ousting the Republican incumbent in the general election, but at the expense of lowering the BVAP in an adjoining majority-minority district and the concomitant ability for blacks to elect a black Democrat in that district over a white Democrat. By increasing the BVAP in current majority-minority districts, the Senate Republicans avoid that result and make the adjoining "superwhite" districts Republican strongholds. Leatherman has also proposed a Senate plan that generally advances the Republican point of view, basing communities of interest upon votes cast for a particular candidate.

Again, these are political arguments that we cannot and do not endorse, and involve issues that are not appropriate for our consideration in the draw.

Colleton County asserts, as before, the importance of county lines to our inquiry. The Senate Plan splits Colleton County into three districts, District 38, 39 and 45. Noting that the approximately 38,000 people in Colleton County could fit within one senate district (and even then not hold the majority), they ask us to consider their plan for splitting Colleton County into only two districts, Districts 38 and 45.

Georgetown County is divided between Senate District 32, located west of the City of Georgetown in a more rural part of the County, and District 34, located on the coastal side of the County. Essentially, Georgetown's plan advocates a proposal that maintains the core of District 34 along the coast of Georgetown, with Georgetown as the hub or core. As part of its proposal, Georgetown also advocates the retention of the City of Georgetown in District 34, based upon the assertion that it shares the coastal-based community of interest (fishing, beach and environmental concerns in particular) with the other parts of that district.

Again, we have carefully considered the plans proposed by all of the parties, but conclude that none comply fully with the criteria that govern a court-drawn plan. As was the case in the House phase of this litigation, the evidence presented demonstrated

that political policies and goals were the driving force in determining the draws of the plans submitted by the Senate, Leatherman, and the Governor. In particular, we note that while we may consider race to the extent authorized by the Voting Rights Act -- to avoid minority vote dilution and retrogression -- we are aware of no authority, and have been pointed to none, that would permit us to draw district lines based upon what amounts to political policy decisions as to who best can represent the wishes of minority voters. Accordingly, this court has drawn its own plan in accordance with the criteria that guide us, consulting the proposed plans for common ground where possible.

C. The Court's Plan

1. Population Equality

First, the court plan satisfies the one-person, one-vote standard required by the Equal Protection clause. As we did in the House case, the court generally sought to maintain the cores of the existing districts, adding or subtracting compact and contiguous population as individual district requirements dictated to correct the population deviations. The district-wide plan has a total de minimis variation of plus 0.96% and minus 0.85%. And, the plan does not pit any incumbents against each other in the same districts.

2. The Voting Rights Act

The parties agree that none of the proposed plans run afoul of the requirements of § 2 of the Voting Rights Act. Neither does the court plan. Rather, the application of § 5 of the Voting Rights Act to the Senate districts is the source of the dispute.

All proposed plans, save those of the Governor, maintain the current benchmark of nine majority-minority districts, plus District 7, at levels sufficient to provide the minority voters an equal opportunity to elect their preferred candidate. The Governor's proposed plan maintains only eight majority-minority districts, plus District 7, at a level of equal opportunity, which the others contend is retrogressive.

More specifically, all of the proposed plans maintain Districts 19, 21, 30, 32, 36, 39, 42, and 45 as majority-minority districts -- that is, each district has a BVAP that exceeds the 50% mark -- and at levels that each plan's advocate believes to be sufficient to provide the minority voters an equal opportunity to elect the candidate of their choice.

Two other districts -- District 7 in Greenville and District 17 in the Chester/Fairfield area -- have historically been majority-minority opportunity districts under the existing plan, but cannot be maintained as such. Under the benchmark plan, just over 50% of the total population of District 7 is black, but the current BVAP falls just below the 50% mark. Additionally, the district has lost so much population (-15.06% deviation) that the

parties agree it can no longer be drawn with at least 50% total black population or black voting age population, without improper racial gerrymandering. However, all parties agree that the BVAP in District 7 is still high enough for it to be an equal opportunity district and the district is currently represented by a black incumbent. District 17 has a total population and BVAP in excess of 50% under the benchmark plan, but also suffers from a substantial population shortage (-12.77%). However, it is obvious that it can no longer be drawn with a BVAP over 50% or as one of equal opportunity without unconstitutionally gerrymandering the district.

The Senate plan, however, would add black voting age population to District 40, located in the Orangeburg area, to make it a majority-minority district where blacks have an equal opportunity to elect the candidates of their choice. Although the Governor's plan produces a district with only 46.96% BVAP, Senator Brad Hutto, the Democratic Senator who currently represents District 40, encouraged the court to increase District 40's BVAP to over 50%.

Minority Districts 30, 32 and 36 generated the greatest amount of discussion. All located in the Pee Dee area and currently low in population, they surround the Republican-held District 31 in Florence. While most of the submitted plans keep these districts at a BVAP level of 58% to 59%, the Governor's plan reduces the BVAP

in District 30 (currently represented by a minority candidate) from 58.69% to 52.00%; reduces the BVAP in District 32 (which has never elected a minority candidate) from 58.27% to 50.93; and reduces the BVAP in District 36 (which also has never elected a minority candidate) from 58.37% to 52.46%. As a result, it appears, the Governor's plan can maintain, and even slightly increase, the BVAP percentage in District 31 from 29.58% to 31.91%, compared to the Senate's BVAP percentage of 22.34%.

3. The Specific Senate Majority-Minority Districts

The court-drawn plan contains nine majority-minority districts developed from the cores of the existing districts, plus District 7, at sufficient levels to afford the minority voters an equal opportunity to elect their preferred candidate. All of these districts were drawn using the state's traditional districting principles along with consideration of the compact and contiguous black population in and adjoining the cores of those districts.

Eight of the nine majority-minority districts in the court plan are drawn as majority-minority districts in both the Senate and Governor's plans; they are Districts 19, 21, 30, 32, 36, 39, 42, and 45. Also, like the Senate and Governor, the court plan does not attempt to maintain District 17 as a majority-minority district given the overwhelming evidence that it cannot be done in a manner to ensure equal opportunity without racially gerrymandering the district. Thus, the only substantial difference

in this respect lies in the court's draw of District 40 as a majority-minority district, as the Senate plan did, in order to both prevent retrogression in the state-wide voting strength of blacks and to protect the naturally compact voters within the area from the dilution of their voting strength.

The BVAP of each preexisting majority-minority district in the court plan was reduced somewhat from the benchmark plan, this being caused primarily by the existence of abnormally high levels of black population established by the previous gerrymandering of the district lines and by the subsequent loss in population within the districts. However, we are satisfied that the BVAP for each district in the court's plan is the best that could be reached consistent with our responsibilities under the Voting Rights Act and other districting principles. And, we are confident that the BVAP levels are sufficient in each district to provide the minority voters of each an equal opportunity to elect the candidate of their choice. In reaching these conclusions, we have carefully considered the voluminous expert testimony and statistical evidence presented to us, and note that, with one exception, the BVAPs in the court plan closely approximate or exceed the points of equal opportunity arrived at by each expert.

The one exception is District 36, located in the Pee Dee area of the state. Both the Senate and the House draw the district as a majority-minority district, but differ substantially on the BVAP

level necessary to render it an equal opportunity district. The Governor's expert, Dr. Epstein, opined that a district in the Pee Dee region generally requires a BVAP of only 48.19% to give black voters an equal opportunity, and the Governor draws the district at 52.46% BVAP. Dr. Ruoff and Dr. Loewen, on the other hand, both testified that the district needed a BVAP in excess of 57% to give minority voters an equal opportunity to elect a minority candidate of their choice, but base this conclusion on a demonstrated lack of cohesion among the black voters in that district in the last several elections. Everyone acknowledges, however, that District 36 is currently represented by a popular and long-serving white Democratic senator.

We agree with the parties that District 36 should be maintained as a majority-minority district. However, the experts' analyses of the election data clearly reveals that District 36 is atypical for South Carolina and, in particular, for the Pee Dee region of South Carolina in that blacks are crossing over in sufficient numbers to vote with a highly polarized white community to elect a white incumbent over a black challenger. Nevertheless, the district is currently a majority-minority district in the benchmark plan, and the racial composition of the population residing there and traditional districting principles naturally led to District 36 remaining a majority-minority district. Additionally, we view the lack of cohesion in the black community

as induced by the years of faithful constituent service by the long-serving white Democratic senator, and we question the testimony that an extraordinarily high BVAP is necessary to make District 36 one in which minorities have an equal opportunity to elect the candidate of their choice for purposes of the Voting Rights Act. We must remember that the question is not what BVAP would be necessary to defeat a popular incumbent; the question is what BVAP is required to insure that the minority population has an equal opportunity to elect a minority candidate of choice in an open election. We are convinced by the testimony that the bloc voting by black citizens that has been demonstrated to exist in South Carolina generally and in other parts of the Pee Dee area in particular would also occur in District 36 during an open election and, therefore, that a BVAP consistent with that required in other parts of the Pee Dee is proper. Accordingly, we believe the BVAP that exists under the court's plan, 55.15%, also will be sufficient to make this an opportunity district for minorities in an open election.

The court plan also draws District 40 as a majority-minority district. District 40 previously had a BVAP of 48.73%, almost enough to make it a majority-minority district. The black population in this highly polarized area is sufficiently large and geographically compact to satisfy the Gingles test, and this population coupled with traditional districting principles quite

naturally led to its being drawn as an opportunity district. We are also satisfied that the BVAP we establish (51.02%) will, based upon the expert testimony of Dr. Loewen, make this district one of equal opportunity. And, by drawing District 40 as an opportunity district, we avoid the retrogression in the total number of such districts state-wide that the loss of District 17 would otherwise cause.

In sum, there is no impermissible retrogression in the court's Senate plan. The number of majority-minority seats, measured by black voting age population, remains the same as in the benchmark plan. And, the changes in voting strength reflected in the BVAP for each district, caused by our correction of the likely racial gerrymandering of the 1990s and the subsequent drops in population, are minor and do not represent a diminution of the effective voting strength of the minority population in those areas. Consequently, in our judgment, § 5 of the Voting Rights Act has been satisfied. Section 2 of the Voting Rights Act has also been satisfied. The only new district required by § 2 has been created. Additionally, we have weighed the testimony and verified that the BVAPs in all of the majority-minority districts and in District 7 are sufficient for minorities to have an equal opportunity to elect the candidate of their choice.

VI. The United States House of Representatives

A. Background

Based upon the results of the 2000 census, South Carolina is entitled to keep its six seats in the United States Congress. With a total population of 4,012,012, the ideal congressional district should contain 668,669 persons. Four of South Carolina's six existing districts are overpopulated: the First District is overpopulated by 16,096; the Second District is overpopulated by 62,353; the Third District is overpopulated by 1,470 persons; and the Fourth District is overpopulated by 1,666 persons. The Fifth District is underpopulated by 13,144 persons. The Sixth District, which is South Carolina's only existing majority-minority district, is severely underpopulated by 68,443 persons. The parties concede that all of the existing congressional districts are malapportioned based upon the 2000 census, and therefore in violation of Article I, § 2 of the Constitution, and that the General Assembly and Governor are at an impasse in the redistricting process.

B. The Proposed Plans

A number of plans have been submitted for consideration by the court. First, the House and Senate have a joint legislatively passed plan (the "General Assembly plan"), which was vetoed by the Governor; the Governor has offered two proposed plans; Leatherman has offered two proposed plans; and Colleton County has offered a proposed plan. The General Assembly plan and the plans proposed by Leatherman all have a total deviation of plus or minus one person.

The Governor's plan deviates from plus nine to minus eleven persons.

With regard to the Voting Rights Act requirements, the parties agree that there remains a single possibility for a majority-minority congressional district in South Carolina - the existing majority-minority Sixth Congressional District, which has as its core the substantial and predominately black populations in the Pee Dee area and in portions of adjoining Richland and Charleston Counties. The Sixth District, which is currently represented by the Honorable James Clyburn (the only African-American congressional incumbent in South Carolina), has a current BVAP, based upon the 2000 census population, of 57.78%. All parties agree that the Voting Rights Act requires the maintenance of this single district as a majority-minority district in South Carolina, and all proposed plans incorporate the core areas of the current district. The dispute among the parties arises over the specific lines that should encompass constituents of the Sixth Congressional District.

The General Assembly plan achieves a BVAP in the Sixth District of 54.12%. To resolve the severe population loss in the district, the General Assembly plan proposes to eliminate the current split in Colleton County between the Second and Sixth Districts and to place the county entirely in the Sixth District. The splits of Orangeburg and Calhoun County between the Second and

Sixth Districts are maintained. The splits of Lee County and Darlington County between the Fifth and Sixth Districts are removed, but Sumter County, in the Pee Dee, and Richland County remain split, as do Dorchester, Berkeley, and Charleston Counties. Georgetown County is also split in the General Assembly plan.

The Governor has proposed two congressional redistricting plans: Governor's Plan A and Plan B. The two plans are nearly identical, achieving BVAP percentages of 53.05% and 53.01%, respectively. Both plans reflect the Governor's desire to eliminate the existing splits of Orangeburg County and Calhoun County between the Second and Sixth Districts and to place those counties entirely within the Sixth District, as well as the Governor's desire to avoid a split of Georgetown County. To accomplish these goals, the Governor eliminates the split of Colleton County, but places it whole within the Second District. Like the General Assembly plan, the Governor eliminates the splits of Lee County and Darlington County, but maintains the splits in Sumter County, Richland County, Dorchester County, Berkeley County, and Charleston County. However, the Governor's plans also move the Savannah River Site in Aiken County from its home in the Third District to the Second District. And, Governor's Plan B, at the apparent request of Congressman Clyburn, proposes the relocation of Fort Jackson, the largest military installation in South Carolina, from its present home in the Second District, which is currently

represented by Congressman Joe Wilson, to the Sixth District, which is currently represented by Congressman Clyburn.

Both of Leatherman's plans make dramatic changes to the Second, Fifth, and Sixth Congressional Districts. Designated the "Court E Plan" and "No Retrogression Plan," the plans achieve a BVAP percentage of 56.57% and 58.37%, respectively. They are admittedly partisan-based draws, designed to maximize the election of Republican candidates. For the same reasons, they are inconsistent with this court's goal of achieving population equality with the minimal effect upon the status quo. While we have considered these plans, we find them to be of quite limited utility to us in our draw.

Finally, Colleton County has appeared for the sole purpose of advocating that the County, which is currently split between the Second District and the Sixth District, be kept wholly within one congressional district in the court-imposed plan. Prior to the court-drawn plan of Burton, Colleton County was placed wholly within the First District. However, Colleton County takes no position as to which district it would prefer to be placed within, so long as it is placed within it whole.

C. The Court's Plan

1. Population Equality

In keeping with our overriding concern, the court plan complies with the "as nearly as practicable" population equality

requirement of Article 1, § 2 of the Constitution, Karcher, 462 U.S. at 730, with a deviation of plus or minus one person. In drawing the court plan, the court consulted both the existing 1994 plan, originally drawn by the court in the Burton litigation and later enacted by the General Assembly, as well as the predecessor Congressional plan from the 1980s. As we did in the House and Senate cases, we generally sought to maintain the cores of the existing congressional districts, adding or subtracting compact and contiguous population as individual district requirements dictated to correct the population deviations.

2. The Voting Rights Act

The parties agree that the 1994 plan enacted by the General Assembly is the benchmark plan for purposes of the Voting Rights Act. This existing congressional plan was substantially drawn by the three-judge court in Burton in 1992, and later codified with slight modifications by the General Assembly. See S.C. Code Ann. § 7-19-40 (Law. Co-op. Supp. 2001). In 1996, the Sixth District was challenged under Shaw/Miller principles as an unconstitutional racial gerrymander, see Leonard, et. al. v. Beasley, et. al., 3:96 CV 3640 (D.S.C. filed Dec. 6, 1996), but the parties settled the matter without resolving the constitutionality of the Sixth District. Instead, the state defendants agreed to concede that racial considerations predominated over traditional districting principles in the draw of the Sixth District should the Leonard

plaintiffs bring another such challenge after the 2000 census and redistricting process was completed.

In this case, no § 2 concerns have been raised by the parties. Indeed, the parties agree that § 2 legally requires maintenance of the Sixth District as a majority-minority district and that its core population is the substantial and predominately black population located in the Pee Dee and adjoining counties of Richland and Charleston. Furthermore, the creation of the district in 1994 by the General Assembly, and the proposed plans of the current General Assembly and Governor, are persuasive evidence that the preservation of the district is now a nonpartisan districting policy of the state.

However, the district is presently over 68,000 persons low in population and, therefore, could only maintain its status as a § 2 district if there is sufficiently compact majority or near majority-black population in areas contiguous to the core of the existing district which shares a community of interest with the existing constituents and in a number sufficient to make up the existing deficit without losing majority-minority status overall. We agree that there is and, therefore, that § 2 and § 5 of the Voting Rights Act require the maintenance of the Sixth District as a majority-minority district. We believe the minority population in the core areas of the Sixth District, as drawn by the court, is

sufficiently compact and shares a sufficiently strong community of interest to warrant being a majority-minority district.

Application of the 2000 census figures to the 1994 benchmark plan produces the current BVAP of the Sixth District at 57.78%. Apparently acknowledging the impossibility of drawing a congressional district that maintains this BVAP level, the General Assembly and Governor do not challenge each other's proposed plans on the basis of § 5 of the Voting Rights Act. As noted previously, both plans contain a BVAP of between 53% and 54%. Rather, only Leatherman raises § 5 as an issue in the Congressional case, asserting that we should strive to achieve the current benchmark BVAP in the Sixth District, and proposing two alternative draws that achieve a BVAP of 56.57% and 58.87%, respectively.

In drawing the borders of the Sixth District, we generally followed the existing lines of the 1994 plan. In doing so, we also remedied those aspects of the 1994 plan that appeared to reflect the unnecessary subordination of traditional districting principles to race. The result was our elimination of some of the rougher lines and "fingers" that plague the existing plan and that were apparently the subject of prior challenge in the Leonard proceeding. Having done so, we found that there was still a sufficiently numerous, geographically compact, and politically cohesive minority population in the area to require the preservation of a minority district there.

In drawing the district, however, we discovered that the magnitude of the population shortage in the Sixth District revealed by the 2000 census, coupled with our correction of some of the questionable aspects of the existing plan, only allowed for a constitutionally proper draw that has a 53.75% BVAP in the district. We are satisfied that we have narrowly drawn the district and achieved a BVAP that does not result in a dilution of the effective voting rights of the district's minorities. Indeed, Congressman James Clyburn testified that a BVAP of 53% or above would be sufficient to allow the minority constituency a fair opportunity to elect a non-incumbent black candidate of choice in the district. In sum, the court's draw of the Sixth District does not run afoul of the standards imposed by § 5 of the Voting Rights Act. Although the overall voting strength of the minority voters in the Sixth District is lowered, the result cannot be avoided without running afoul of the strictures imposed upon us by the Equal Protection Clause and is not one which causes "a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer*, 425 U.S. at 141 (emphasis added); *see also Abrams*, 521 U.S. at 95.²⁹

²⁹ We note that the court attempted several alternative draws of the Sixth District that would maintain it as a Pee Dee and Low Country district and eliminate the splits of either Richland County or Charleston County, or both. However, we found that it was not possible to create a majority-minority district that achieved a greater than 53% BVAP without splitting nearly every adjoining county along racial lines and causing major changes in

3. Other Considerations in the Draw of District Six

We also considered the areas of dispute among the parties as to the precise lines of the Sixth District. Although our draw of the Sixth District incorporates the same cores of those in the existing plan and the proposed plans, our ultimate plan varies somewhat from all of the others.

Under the current plan, the Second District contains all or portions of 11 counties and the Sixth District contains all or portions of 16 counties. The House plan places the Second District in all or part of 10 counties and places the Sixth District in all or portions of 14 counties. The Governor's plan places the Second District in all or part of 9 counties and places the Sixth District in all or portions of 12 counties. The court's plan places the Second District in all or part of 10 counties and places the Sixth District in all or part of 14 counties. Therefore, the court's plan, like those of the General Assembly and the Governor, improves upon the current plan in at least this limited respect.

The major differences between the General Assembly and the Governor stem from the proffered splits of Orangeburg, Calhoun, and Georgetown Counties. The General Assembly proposed to maintain the existing splits of Orangeburg and Calhoun Counties between the Second and Sixth Districts, eliminate the split of Colleton County and place it wholly within the Sixth District, and split Georgetown

every other congressional district in the state.

County between the Sixth and First Districts. The Governor, on the other hand, proposed to eliminate the existing splits of Orangeburg and Calhoun Counties and place those counties wholly within the Sixth District; eliminate the existing split of Colleton County, but place it wholly within the Second District; and keep Georgetown County wholly within the First District.

In the court's plan, Darlington County is removed from the Sixth District and placed wholly within the Fifth District. Beaufort County is placed wholly within the Second District, eliminating that split as well. The split of Colleton County is eliminated by placing Colleton County wholly within the Sixth District, but a split is created in Georgetown County between the Sixth District and the First District.

With regard to Orangeburg County and Calhoun County, the court considered eliminating the existing splits, but elected to maintain the status quo in those areas by maintaining the splits (albeit in a slightly cleaner fashion), and to provide needed population to the Sixth District instead from the remainder of Colleton County residents. According to the evidence, the western portions of Orangeburg County and Calhoun County are an important part of the existing core of the Second District. Indeed, in the 1980s, and for most of the twentieth century, Calhoun County and Orangeburg County were located wholly within the Midlands-based Second District. It was the creation of the majority-minority district

compelled by § 2, and first drawn by the Burton court in 1992, that removed the eastern portions of those counties from the Second District, adding the predominately black population in that area to the compact and contiguous majority-black population of the Pee Dee to create the Sixth District. As a result, the Second District was forced to partially migrate away from its Midlands base, picking up Allendale, Hampton, Jasper, and Beaufort counties.

The legislature's draw after Burton also necessitated removal of a portion of Colleton County from its home in the First District (a predominately coastal district) and placement of it within the Second District. Thus, unlike the western portions of Orangeburg County and Calhoun County, which have always been in the Second District, the Colleton County constituents in the Second District are relative newcomers, placed there as a result of compliance with the Voting Rights Act in the 1990s.

This court, therefore, was faced with a number of competing considerations in this area. Viewing the Sixth District in isolation from its surrounding districts, we considered adding the needed population from the contiguous majority-black area of Colleton County, as well as the contiguous majority-black counties of Allendale, Hampton, and Jasper, currently in the Second District. But, this decision would have isolated Beaufort County from the Second District, necessitating its inclusion in the First District and resultant large changes to the cores of all three

districts. Accordingly, we elected to maintain the split of Orangeburg and Calhoun Counties, which preserved these core areas of the Second District and caused the fewest changes elsewhere.

Our decisions in these areas did, however, impact Georgetown County. Under the current plan, Georgetown County is located wholly within the First District. Under the General Assembly plan, Georgetown County is split between the First and Sixth districts. The Governor proposed that Georgetown County be contained wholly within the Sixth District.³⁰ The court plan splits Georgetown County (albeit in a different fashion than that proposed by the General Assembly plan), dividing its residents between the Sixth District and First District.

Weighing all the competing considerations, we believe the county splits in our plan, however unfortunate they may seem in isolation, best serve the concurrent goals of achieving population equality, preserving the cores of the existing congressional districts, and maintaining the Sixth District as a majority-minority district under the Voting Rights Act while recognizing state redistricting principles.

4. Fort Jackson and the Savannah River Site

³⁰ Interestingly, although Georgetown participated in the other phases of this litigation to advocate its particular interests, the citizens of Georgetown did not propose a plan nor otherwise participate in the Congressional phase.

We also considered, but rejected, Governor Hodges' proposed relocation of Fort Jackson from the Second District to the Sixth District in his Plan B. Congressman Clyburn testified that he requested the relocation of Fort Jackson from the Second District to the Sixth District upon the death in the fall of 2000 of Congressman Floyd Spence, who represented the Second District. Prior to his death, Congressman Spence served as Chairman of the House Armed Services Committee. The Second District is now represented by Congressman Joe Wilson, who was elected in a special election after Congressman Spence's death.

According to Congressman Clyburn, who testified at trial, as a senior member of Congress and a member of the House Appropriations Committee, he is now in a better position than the recently elected Congressman Wilson to serve the interests of Fort Jackson. Not surprisingly, Congressman Wilson expressed a contrary opinion. He testified that Fort Jackson should remain in its historical place in the Second District and that, in any event, he has now been elected a member of the House Armed Services Committee and can serve the Fort's interests as well or better than Congressman Clyburn.

We express no opinion on the issue of whether Congressman Clyburn or Congressman Wilson is best suited to serve the interests of Fort Jackson. We are confident that both men will attempt to serve this important South Carolina interest regardless of its

district home. However, even were we to agree that the move had some political benefit, such an important change to the core of an existing district in a redistricting plan, based upon nothing more than our determination that one elected official will do a better job than another, is clearly beyond the scope of our remedial authority. The Governor's attorney has implicitly conceded the same, admitting that the requested relocation of Fort Jackson has no relevance to the task of remedying the malapportionment of the existing congressional districts in a manner consistent with the mandates of the Voting Rights Act. We think that obvious truth, and admirable concession, ends the matter. For largely the same reasons, we also rejected the Governor's proposal to move the Savannah River Site entirely from the Third District to the Second District.


VII. Conclusion

In drawing the plans to remedy South Carolina's unconstitutional districting plans, we have approached our task with great concern, attempting to apply federal redistricting principles in such a way as to preserve, where possible, the status quo in South Carolina and to minimize the damage to existing districts where large population changes have occurred. We have also attempted to adhere to the requirements that the Voting Rights Act would impose upon the South Carolina legislature in the redistricting context, in order to avoid the imposition of a plan

ACCORDINGLY, IT IS HEREBY ORDERED that the State of South Carolina is hereby enjoined from conducting any further elections under the existing electoral districts for the South Carolina House of Representatives, the South Carolina Senate, and the United States Congress.

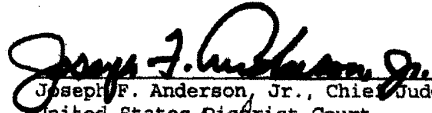
IT IS FURTHER ORDERED that the redistricting plans for the South Carolina House of Representatives (set forth at Exhibit A), for the South Carolina Senate (set forth at Exhibit B), and for the South Carolina Congressional Delegation (set forth at Exhibit C)³¹ shall be the lawful election districts for each of those bodies for the elections scheduled in 2002 and for all subsequent elections until the South Carolina General Assembly, with the approval of the Governor and in accordance with § 5 of the Voting Rights Act, ends its current impasse and enacts a redistricting plan for any or all of them.

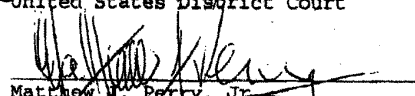
IT IS SO ORDERED.


William B. Traxler, Jr.
United States Circuit Judge

³¹ A compact disc of the court-proposed districts with population summary statistics, including block equivalency files based on the Census 2000 PL94-171 data file, are attached as Exhibit D.

3454


Joseph F. Anderson, Jr., Chief Judge
United States District Court


Matthew W. Perry, Jr.
Senior United States District Judge

March **20**, 2002
Columbia, South Carolina

Laughlin McDonald
Exhibit 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

R. O. LEVY, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Civ. No. 3:03-3093 24
)	
LEXINGTON COUNTY, SOUTH)	
CAROLINA, SCHOOL DISTRICT)	
THREE BOARD OF TRUSTEES, et)	
al.,)	
Defendants.)	

PLAINTIFFS' FIRST REQUEST FOR JUDICIAL NOTICE

Plaintiffs R. O. Levy, et al., respectfully request that the Court take judicial notice pursuant to Rule 201 of the Federal Rules of Evidence of the following documentary evidence attached hereto as exhibits:

1. S.C. Acts of 1704, No. 227 (providing that "no person whatsoever, which hath less than fifty acres of land in possession, or value of ten pounds in money, goods, chattels or rents . . . shall have the right to vote for members [of the Assembly of South Carolina]").
2. S.C. Acts of 1716, No. 373 (limiting voting for members of the assembly to "every white man (and no other) professing the Christian religion").
3. Constitution of South Carolina of 1790, Art. 1, sec. 4 (limiting voting to "[e]very free white man, of the age of twenty-one years").
4. Constitution of South Carolina of 1790, Art. 1, sec. 6 (providing that "[n]o person shall be eligible to a seat in

the House of Representatives, unless he is a free white man of the age of twenty-one years").

5. S.C. Acts of 1834, p. 468 (making it a crime to "teach any slave to read or write, or . . . aid or assist in teaching any slave to read or write," and making violations punishable by fine, imprisonment, and whipping "not exceeding fifty lashes").
6. S.C. Acts of 1834, p. 468 (making it a crime for any person to "employ, or keep as a clerk, any slave or free person of color").
7. Constitution of South Carolina of 1865, Art. I, secs. 13 & 14, and Art. IV (limiting voting and office holding to free white men at least 21 years of age).
8. Jackson v. Edgefield County, South Carolina School District, 650 F. Supp. 1176, 1180 (D.S.C. 1986) (finding that "[b]lack[s] were not allowed to vote until the post-Civil War Reconstruction era").
9. S.C. Acts of 1865, No. 4730, p. 271 (providing that "all free negroes, mulattoes and mestizoes, all freedmen and freedwomen, and all descendants through either sex of any of these persons, shall be known as persons of color, except that every such descendant who may have of Caucasian blood seven-eighths or more, shall be deemed a white person," and that persons of color were "not entitled to social or political equality with white persons").

10. S.C. Acts of 1865, No. 4731, p. 274 (providing that "[a] person of color who is in the employment of a master engaged in husbandry shall not have the right to sell any . . . product of a farm, without having written evidence from such master or some person authorized by him, or from the District Judge or a Magistrate, that he has the right to sell such product").
11. S.C. Acts of 1865, No. 4731, p. 275 (providing that "[p]ersons of color constitute no part of the Militia of the State, and no one of them shall, without permission in writing from the District Judge or Magistrate, be allowed to keep a fire-arm, sword, or other military weapon," and that "[i]t shall not be lawful for a person of color to be the owner, in whole or in part, of any distillery where spiritous liquors of any kind are made, or of any establishment where spiritous liquors of any kind are sold by retail").
12. S.C. Acts of 1865, No. 4731, p. 276 (providing that "[n]o person of color shall migrate into and reside in this State," except upon posting a bond in the amount of \$1,000).
13. S.C. Acts of 1865, No. 4731, p. 278 (providing that "[u]pon view of a misdemeanor committed by a person of color, any person present may arrest the offender and take him before a Magistrate, to be dealt with as the case may require").
14. S.C. Acts of 1865, No. 4732, p. 280 (providing that "[t]he District Court shall have exclusive jurisdiction . . . of all civil causes where one or both of the parties are persons of

color, and of all criminal cases wherein the accused is a person of color").

15. S.C. Acts of 1865, No. 4732, p. 286 (providing that "[a]n indictment against a white person for the homicide of a person of color shall be tried in the Superior Court of Law").
16. S.C. Acts of 1865, No. 4733, p. 291 (providing that "[m]arriage between a white person and a person of color shall be illegal and void").
17. S.C. Acts of 1865, No. 4733, p. 293 (providing that "[c]olored children . . . whose parents are not teaching them habits of industry and honesty . . . may be bound as apprentices by the District Judge, or one of the Magistrates").
18. S.C. Acts of 1865, No. 4733, p. 295 (providing that "[a]ll persons of color who make contracts for service or labor, shall be known as servants, and those with whom they contract, shall be known as masters").
19. S.C. Acts of 1865, No. 4733, p. 296 (providing that "servants shall rise at the dawn in the morning, feed, water and care for the animals on the farm, do the usual and needful work about the premises, prepare their meals for the day, if required by the master, and begin the farm work or other work by sun-rise").
20. S.C. Acts of 1865, No. 4733, p. 299 (providing that "[n]o person of color shall pursue or practice the art, trade or business of an artisan, mechanic or shop-keeper . . . until he

- shall have obtained a license therefor from the Judge of the District Court").
21. S.C. Acts of 1865, No. 4752, p. 320 (providing that "[a] Colonel of the line [of the state militia] shall be elected by all free white men, above the age of eighteen years, who . . . belong to the regiment in which the vacancy shall occur," and that "[a] Major of the line [of the state militia] shall be elected by all free white men, above the age of eighteen years, who . . . belong to the battalion in which the vacancy shall occur").
 22. S.C. Acts of 1866, No. 4798, p. 394 (providing that "marriage between a white person and a person of color shall be illegal and void").
 23. Constitution of South Carolina of 1868, Art. 8, sec. 2 (providing that "[e]very male citizen of the United States, of the age of twenty-one years . . . without distinction of race, color, or former condition . . . shall be entitled to vote").
 24. Constitution of South Carolina of 1868, Art. IV, sec. 19 (establishing as the governing authority for each county a board of commissioners elected by the voters of the county at-large).
 25. Constitution of South Carolina of 1868, Art. II, sec. 7 (requiring segregated schools for whites and blacks).
 26. S.C. Acts of 1878, No. 542, p. 632 (requiring separate ballots and boxes for state and federal elections).

27. S.C. Acts of 1878, No. 382, p. 398 (imposing "double the amount" and costs for failing to pay the poll tax).
28. S.C. Acts of 1878, No. 513, p. 565 (abolishing strong Republican precincts and requiring that "all general elections held in this State . . . shall be conducted at the voting precincts which are hereby fixed by law").
29. S.C. Acts of 1879, No. 5, p. 3 (making it "unlawful for any white man to intermarry with any woman of either the Indian or negro races, or any mulatto, mestizoe [sic], or half breed, or for any white woman to intermarry with any person other than a white man, or for any mulatto, half breed, negro, Indian or mestizoe [sic] to intermarry with a white woman," and providing that violations are "punished by a [\$500 fine] or imprisonment for not less than twelve months, or both," and that any "clergyman, minister . . . , [or] Magistrate who shall knowingly and willfully [marry] any persons of different races . . . shall be liable to the same penalty").
30. S.C. Acts of 1882, No. 3, p. 3 (adding "burglary, larceny, perjury, forgery or any other infamous crime" to the list of disfranchising offenses).
31. S.C. Acts of 1882, No. 717, p. 1110 (requiring "a full and complete registration of all qualified voters" within the year; providing that the registration period "shall not be . . . more than three days at each registration precinct;" allowing the Supervisor of Registration "in case . . . a qualified voter in a precinct . . . has failed to register, .

- . in his discretion [to] permit the name of such voter to be placed on said list;" providing that "[n]o elector removing from one residence . . . to another shall be allowed to register or vote without a transfer of registration as [herein] provided;" requiring separate "Commissioners of Election for [federal] election[s]" and "separate and distinct . . . polling place[s] for the election of Congressmen and Presidential Electors;" and providing that "[t]here shall be separate and distinct ballots" for each of eight offices and corresponding boxes "labelled . . . with the office or officers voted for, . . . and no vote for any office other than that for which such box shall be designated shall be counted," that "each ballot . . . shall be inserted by the person voting, and no other," and that "[n]o one except the [election officials] shall be allowed to speak to the voter").
32. S.C. Acts of 1890, No. 433, p. 649 (repealing the system of locally elected county government that had been implemented in 1868).
33. S.C. Acts of 1891, No. 704, p. 1102 (establishing a racially segregated "institution for the practical training and higher education of white girls," and charging its trustees with the "maintenance of a first class institution for the thorough education for the 'white girls' of South Carolina").
34. S.C. Acts of 1893, No. 320, p. 481 (placing the selection of county commissioners in the hands of the governor and the county legislative delegation).

35. Journal of the Constitutional Convention of the State of South Carolina, Tuesday, September 10, 1895, remarks of Chairman Robert Aldrich (declaring that "[t]he [South Carolina Constitutional] Convention of 1868 was the fruit of the Reconstruction Acts, which were notoriously unconstitutional," that the Constitution of 1868 "was made by aliens, negroes, and natives without character, all the enemies of South Carolina, and was designed to . . . overturn our civilization," that "[e]xperience has proved the wisdom of separate education of the races," that "[t]here should be an educational qualification for the right of suffrage," that "[w]e have experienced the cost and hardship of the rule of the ignorant, and know what it means," and that "it is your duty . . . to so fix your election laws that . . . Anglo-Saxon supremacy [will be] preserved").
36. South Carolina v. Katzenbach, 383 U.S. 301, 308 n.9 (1966) (noting that at the South Carolina Constitutional Convention of 1895, "Senator Ben Tillman frankly explained to the state delegates the aim of the new literacy test: '[T]he only thing we can do as patriots and as statesmen is to take from [the 'ignorant blacks'] every ballot that we can under the laws of our national government,'" and that Senator Tillman "was equally candid about the exemption from the literacy test for persons who could 'understand' and 'explain' a section of the state constitution: 'There is no particle of fraud or

illegality in it. It is just simply showing partiality, perhaps, [laughter,] or discriminating."

37. Constitution of South Carolina of 1895, Art. 2, sec. 1 (providing that "elections shall never be held or the ballots counted in secret").
38. Constitution of South Carolina of 1895, Art. 2, sec. 4 (providing that "the payment . . . of any poll tax then due and payable" shall be a "qualification for suffrage," that "all male persons of voting age . . . who can read any Section in this Constitution . . . or understand and explain it when read to them . . . shall be entitled to register," and that "all persons registered before January 1st, 1898, . . . shall remain during life qualified electors[.] Any person who shall apply [thereafter], if otherwise qualified, shall be registered: *Provided*, That he can both read and write any Section of this Constitution . . . or . . . owns . . . property . . . assessed at three hundred dollars").
39. Constitution of South Carolina of 1895, Art. 2, sec. 6 (denying the right to vote to those convicted of adultery, wife-beating, incest, perjury, house-breaking, and fornication).
40. Constitution of South Carolina of 1895, Art. 3, sec. 33 (requiring that "[s]eparate schools shall be provided for children of the white and colored races, and no child of either race shall ever be permitted to attend a school for children of the other race").

41. Constitution of South Carolina of 1895, Art. 11, sec. 8 (providing that "the general assembly shall . . . separate Claflin College from Claflin University, and provide for a separate [faculty], representation to be given . . . to the Negro race, and it shall be the Colored Normal, Industrial, Agricultural and Mechanical College of this State").
42. South Carolina v. Katzenbach, 383 U.S. 301, 310 (1966) (finding that South Carolina's literacy test enacted in 1895 was "specially designed to prevent Negroes from voting").
43. S.C. Code Ann. § 23-62 (4) (1962) (requiring that in order to register to vote, an applicant had to demonstrate that he "can both read and write any section of said Constitution submitted to said elector by the registration officer or can show that he owns, and has paid all taxes collectible during the previous year on, property in this State assessed at three hundred dollars or more").
44. S.C. Acts of 1896, Act 114, No. 25 (requiring residents of counties containing a city of 40,000 or more inhabitants to produce registration certificates as a condition for voting).
45. Elmore v. Rice, 72 F.Supp. 516, 518-19 (E.D.S.C. 1947), aff'd 105 F.2d 387 (4th Cir. 1947) (finding that the Democratic party conducted primary elections on a whites-only basis, and that prior to the decision of United States v. Classic, 313 U.S. 299 (1941), "there could be no doubt that a Negro had no right to be admitted to the primary elections or become a member of the Democratic Party in [South Carolina]").

46. S.C. Acts of 1896, p. 32 (requiring "of every elector offering to vote . . . proof of the payment of poll tax," and reenacting the requirements of separate ballots and boxes for each election).
47. S.C. Acts of 1896, p. 33 (providing for the re-registration of all voters).
48. S.C. Acts of 1896, p. 34 (allowing persons to register if they could "read any section in the . . . Constitution . . . or can understand and explain it when read to him," and denying the vote to "persons convicted of burglary, . . . robbery, . . . adultery, bigamy, wife-beating, housebreaking, receiving stolen goods, . . . fornication, sodomy, incest, assault with intent to ravish, miscegenation, and larceny").
49. S.C. Acts of 1896, p. 171 (providing that "[i]t shall be unlawful for pupils of one race to attend the schools provided . . . for persons of another race").
50. S.C. Acts of 1896, p. 174 (providing that "there shall be established within this State a . . . College for the higher education of the colored youth of this State. The Principal or President and corps of instructors shall be of the colored race").
51. S.C. Acts of 1898, p. 777 (requiring that "all railroads and railroad companies . . . shall furnish separate apartments . . . for the accommodation of white and colored passengers").
52. S.C. Acts of 1899, p. 113 (providing for a board of county commissioners for each county, consisting of a supervisor

elected from the county at-large and two commissioners appointed by the governor upon the recommendation of the county legislative delegation).

53. Wright v. State Board, 76 S.C. 574, 57 S.E. 536 (1907) (upholding the state constitutional provision requiring all electors to present to managers of elections a certificate and proof of payment of taxes as a condition for voting).
54. Gunther v. Gayden, 84 S.C. 48, 65 S.E. 948 (1909) (upholding the state constitutional provision requiring payment "of all taxes, including poll tax" as a condition for voting).
55. S.C. Acts of 1900, p. 443 (establishing a reformatory where "[t]he white convicts shall be kept and employed separately from the colored convicts").
56. S.C. Acts of 1904, p. 439 (requiring that "[a]ll railroads and steam ferries, and railroad companies . . . shall furnish separate [but equal] coaches or cabins for the accommodation of white and colored passengers").
57. S.C. Acts of 1906, p. 76 (providing that "no persons . . . which furnish meals to passengers at station restaurants . . . shall furnish said meals to white and colored passengers in the same room, or at the same table, or at the same counter").
58. S.C. Acts of 1906, p. 133 (establishing a "Reformatory and Industrial School" to which "white boys between the ages of eight and sixteen" may be committed, and provided that the old reformatory "shall be used exclusively for colored boys").

59. S.C. Acts of 1910, p. 702 (providing that "it shall be unlawful for any . . . white person . . . having custody of any white child . . . to dispose of, give, or surrender such white child permanently into the custody . . . or support of a negro," but that the statute shall not be construed "to prevent the offices of a negro in the family of any white family as a nurse").
60. S.C. Acts of 1911, p. 169 (requiring that "a separation of . . . the races be at all times observed" in chain gangs).
61. S.C. Acts of 1915, p. 79 (providing that "it shall be unlawful for any . . . cotton textile manufactur[er] . . . to allow . . . different races to labor and work together[,] or to use the same doors of entrance or exit[,] or to use . . . the same pay ticket windows[,] or to use . . . the same lavatories, toilets, drinking water buckets, pails, cups, dippers, or glasses").
62. S.C. Acts of 1917, p. 48 (providing that "any circus or other traveling show . . . shall maintain two main entrances[,] one . . . for white people and the other . . . for colored people, . . . plainly marked 'For White People' and . . . 'For Colored People,' and all white persons . . . shall pass in and out of the entrance provided for white persons, and all colored persons . . . shall pass in and out of the entrance provided for colored persons").

63. S.C. Acts of 1918, p. 731 (establishing a "Training School for the Feeble-minded" and providing that "white persons may be admitted thereto").
64. S.C. Acts of 1918, p. 888 (establishing a "State Board of Correctional Administration" to oversee the "State Reformatory for Negro Boys," to which "the present laws governing commitment of boys to the [white] South Carolina Industrial School . . . shall apply").
65. S.C. Laws of 1918, p. 853 (establishing the "State Industrial School for Girls," providing that "white females may be admitted thereto," and stating that the rules for commitment "shall apply only to white females between the ages of eight and twenty years").
66. S.C. Acts of 1924, p. 896 (providing that "[n]o license shall be issued to any person of the white Caucasian race to operate a billiard room to be used by . . . persons of the negro race; or to any person of the negro race to operate a billiard room to be used by . . . persons of the white or Caucasian race").
67. S.C. Acts of 1934, p. 1536 (providing that "[i]t shall be unlawful to maintain public parks, . . . recreation centers, . . . amusement centers, and . . . beaches for the joint use . . . of both the white and the colored races. [Such places] shall be publicly posted . . . to show whether [they are] . . . for the use and enjoyment of the white or the colored race[.] It shall be unlawful for any person of [one] race to . . . use any such place . . . maintained for the use of the

- [other] race. [T]his Act shall not apply to domestic servants [or] to nurses accompanying the children of the opposite race in their charge").
68. S.C. Acts of 1937, p. 376 (providing that "[a]ll passenger motor vehicle carriers . . . shall separate the white and colored passengers . . . and set apart . . . portion[s] . . . or certain seats" of their busses for each. "The driver . . . shall have the right, . . . when it may be necessary . . . for the comfort . . . of passengers so to do, . . . to increase or decrease the amount of space or seats set apart for either race; but no contiguous seats on the same bench shall be occupied by white and colored passengers at the same time[.] [A]cting in good faith, [the driver] shall be . . . the judge of the race of each passenger").
69. S.C. Code Ann. sec. 6223 (Jacobs Press 1942) (establishing "a training school for Negro nurses at the Negro department of the South Carolina state hospital").
70. S.C. Acts of 1945, sec. 16, pp. 401-02 (authorizing "the Board of Trustees of the Colored Normal Industrial, Agricultural and Mechanical College of South Carolina" to establish graduate schools for black students).
71. Statement of Congressman James F. Byrnes, quoted in O. Vernon Burton, "'The Black Squint of the Law': Racism in South Carolina," in The Meaning of South Carolina History: Essays in Honor of George C. Rogers, Jr. 170-71 (Chesnutt & Wilson eds. 1991) ("It is certain that if there was a fair registration

they [blacks] would have a slight majority in our state. We cannot idly brush the facts aside. Unfortunate though it may be, our consideration of every question must include the consideration of this race question").

72. Smith v. Allwright, 321 U.S. 649, 664-65 (1944) (invalidating Texas's white primary laws).
73. Statement of Governor Olin D. Johnson, quoted in Elmore v. Rice, 72 F.Supp. 516, 520-21 (E.D.S.C. 1947) ("I know that the white Democrats in South Carolina will rally behind you in this matter of repealing all primary laws from the Statute books. . . . History has taught us that we must keep our white Democratic primaries pure and unadulterated so that we might protect the welfare and homes of all the people of our state. After these statutes are repealed, in my opinion, we will have done everything within our power to guarantee white supremacy in our primaries of our State insofar as legislation is concerned. Should this prove inadequate, we South Carolinians will use the necessary methods to retain white supremacy in our primaries and to safeguard the homes and happiness of our people. White supremacy will be maintained in our primaries. Let the chips fall where they may").
74. S.C. Acts of 1944, p. 2241 (repealing state laws regulating primary elections).
75. Jackson v. Edgefield County, South Carolina School District, 650 F.Supp. 1176, 1180 (D.S.C. 1986) (finding that in repealing its primary laws, "[South Carolina] believed that,

having completely renounced its involvement with political parties and primaries, the primary elections that were conducted under the rules prescribed by the Democratic Party were purely private matters, which would not be subject to judicial scrutiny").

76. Thompson v. Gibbes, 60 F. Supp. 872, 877 (E.D.S.C. 1945) (finding that "prior to 1941 there was a very considerable and recognized disparity in the pay of negro and white teachers in the Richland County schools").
77. Elmore v. Rice, 72 F.Supp. 516, 519, 527 (E.D.S.C. 1947) (invalidating South Carolina's white primary, and finding that the 1944 special session called by Governor Johnston "was wholly and solely for the purpose of preventing the Negro from gaining a right to vote in the primaries as granted under the doctrine of Smith v. Allwright case").
78. Wrighten v. Board of Trustees, 72 F. Supp. 948 (E.D.S.C. 1947) (ruling by Judge J. Waites Waring that South Carolina was bound to furnish Negro residents facilities for legal education equal to those afforded persons of the white race, either at the University of South Carolina itself or South Carolina State College or any other satisfactory institution in the State, or else furnish no law school education to any person of either race).
79. Brown v. Baskin, 78 F.Supp. 933, 937, 940 (E.D.S.C. 1948) (finding that following the decision in Elmore v. Rice, 72 F.Supp. 516 (E.D.S.C. 1947), the Democratic Party adopted new

rules requiring voters to swear that they "believe[d] in and will support the social (religious) and educational separation of races," and "set up two standards of qualifications for voting; one applicable to the members of the white race, and the other to Negroes."

80. Brown v. Baskin, 80 F.Supp. 1017, 1019, 1021 (E.D.S.C. 1948), aff'd, 174 F.2d 391 (4th Cir. 1949) (invalidating the oath of the Democratic Party that voters "believe[d] in and will support the social (religious) and educational separation of races," and finding that under the rules adopted by the Democratic Party in 1948 "a Negro could never become a member, could never attend any meeting, could never have any vote in the election of the officials in charge of the party affairs, could never have a vote or even a voice in the adoption of rules, platforms or any part whatsoever in the government of the party").
81. S.C. Acts of 1947, p. 622 (funding and operating racially segregated schools).
82. S.C. Acts of 1948, p. 2115 (funding and operating racially segregated schools).
83. S.C. Acts of 1949, p. 669 (funding and operating racially segregated schools).
84. S.C. Acts of 1949, No. 224, p. 367 (funding and operating racially segregated schools).
85. No Request or Exhibit 85.

86. 94 Cong. Rec. H9752 (1948) (remarks of Congressman Mendell Rivers on the floor of the House of Representatives that Judge Waites Waring "is as cold as a dead Eskimo in an abandoned igloo. Lemon juice flows in his frigid and calculating veins. . . . He should be removed by the force of a boot, if necessary, because he is a disgrace to the Federal judiciary of the United States").
87. Resolution, 1950 S.C. House Journal, p. 440 (appropriating funds to buy one way tickets for Judge Waites Waring and "his socialite wife" out of the state, and to erect a "suitable plaque" to the couple in the mule barn at Clemson College).
88. S.C. Acts of 1950, p. 2084 (providing for the regulation of political parties and authorizing "the state convention of any political party . . . to add by party rules to the qualifications for membership in such party . . . and for voting at the primary elections thereof").
89. S.C. Acts of 1950, pp. 2059, 2098, No. 858 (imposing a majority vote requirement for primary elections).
90. S.C. Code Ann. § 7-17-600 (providing that "[n]o candidate shall be declared nominated in a first primary election unless he received a majority of the votes cast for the office for which he was a candidate").
91. S.C. Acts of 1950, p. 2092 (requiring voters to vote a "full slate," *i.e.*, for all the seats being filled).
92. Briggs v. Elliott, 98 F. Supp. 529, 538, 548 (E.D.S.C. 1951) (three-judge court) (holding that racial segregation was not

itself "violative of the Fourteenth Amendment," but that black children in Clarendon County had been denied "educational facilities and opportunities equal to those furnished white persons." Judge Waring wrote a dissenting opinion that "[s]egregation is per se inequality").

93. 1953 Code of Greenville, South Carolina, as amended in 1958, secs. 31-6 - 31-12 (requiring segregation of the races in school buildings, hotel and store buildings, restaurants and eating establishments, residential blocks, residences, and busses and trolleys).
94. Brown v. Board of Education, 347 U.S. 483, 495 (1954) (reversing the decision in Briggs v. Elliott, 98 F. Supp. 529 (E.D.S.C. 1951), and holding that segregation of the races in public schools was "inherently unequal").
95. Fleming v. South Carolina Electric & Gas Corp., 224 F.2d 752, 753 (4th Cir. 1955) (invalidating state laws, i.e., S.C. Code 1952, §§ 58-1491 to 58-1496, requiring segregated seating on buses).
96. Clark v. Flory, Civ. No. 5082 (D.S.C.) (suit filed by blacks in 1955 seeking to desegregate the facilities of Edisto Beach State Park).
97. Clark v. Flory, 141 F. Supp. 248 (E.D.S.C. 1956) (case dismissed after the State Commission of Forestry, at the direction of the state legislature, closed Edisto Beach State Park on February 7, 1956).

98. Hood v. Board of Trustees of Sumter County School District No. 2, 232 F.2d 626 (4th Cir. 1956) (affirming the denial of an injunction sought by blacks to desegregate public schools in Sumter County on the ground of failure to exhaust state administrative remedies).
99. S.C. Acts of 1956, No. 741, p. 1747 (declaring that the N.A.A.C.P. was responsible for: "disturb[ing] the peace and tranquility . . . and threaten[ing] the progress and increased understanding . . . between[,] Negroes and Whites; . . . agitat[ing] the members of the Negro race in the belief that their children were not receiving educational opportunities equal to those accorded white children[;] . . . urg[ing] the members of the Negro race . . . to break down all racial barriers existing between the two races; . . . exert[ing] constant pressure . . . on its members contrary to the principles upon which the economic and social life of our State rests[;] and . . . fostering . . . ideas designed to produce a constant state of turmoil between the races," and making it "unlawful for any member of the [N.A.A.C.P.] to be employed by the State, school district, county, or any municipality," and giving public employers the "authori[ty] to demand of any . . . employee . . . that he submit . . . a statement . . . setting forth whether or not he is a member of the [N.A.A.C.P.]").
100. S.C. Acts of 1956, No. 920, p. 2182 (providing "that the [N.A.A.C.P.] . . . foment[s] and nurtur[es] . . . unrest,

unhappiness, and resentment among the members of the Negro race[,] and that "increase[d] . . . tension between the two races [has caused] amicable and friendly relations, so common in the past, . . . [to] deteriorate[]," expressing a "desir[e] [to] know[] . . . to what extent . . . participation" "by faculty and students at the South Carolina State College" in the N.A.A.C.P. "has served to mislead the Negro citizens," and providing for the creation of a committee of, inter alia, state senators and representatives to "investigat[e] . . . the activities of the [N.A.A.C.P.] . . . [at] South Carolina State College, . . . [to] determine what individuals at the college are members of and sympathizers with the [N.A.A.C.P.][,] and [to] determine . . . whether or not the faculty and students . . . mislead the Negro citizens and foment and nurture ill feeling and misunderstanding between the White and Negro races," and authorizing "[t]he committee . . . to subpoena . . . witnesses and records").

101. S.C. Acts of 1956, No. 917, p. 2179 (closing "the State Park at Edisto Beach" following desegregation litigation in federal court).
102. S.C. Acts of 1956, p. 1948 (requiring that "[a]ll appropriations for . . . institutions of higher learning being made on the basis of racial segregation, [the several state colleges] are . . . directed to close . . . upon any pupil being ordered admitted immediately to it by the order of any Court[.] If any . . . institution[], . . . other than the

South Carolina State College, shall be forced [by this Act] to close . . . , the South Carolina State College shall likewise be closed").

103. S.C. Acts of 1956, p. 1955 (authorizing the "State Commission of Forestry . . . to operate and supervise only racially separate parks" and denying it "[t]he authority to operate and supervise racially integrated parks;" granting "[p]ermission . . . to the citizens of this State to use the facilities at the Parks [sic] for their own race;" and providing that "any person who . . . uses . . . the Parks without the express permission of the State shall be guilty of trespass . . . and . . . shall . . . pay a fine . . . [of up to] \$5,000 or . . . be imprisoned for not more than two years").
104. Concurrent Resolution of the House and Senate, March 8 and 24, 1956 (requesting the State Library Board to remove from circulation the Swimming Hole, a book which depicted black and white boys using the same swimming hole, as "antagonistic and inimical to the traditions and customs of South Carolina").
105. S.C. Act of 1956, No. S.514, Joint Resolution (adopting an interposition and nullification resolution condemning the decision of the Supreme Court holding that racial segregation in the public schools was unconstitutional).
106. S.C. Acts of 1956, No. 712 (authorizing the transfer of pupils in public schools where their enrollment may threaten the public peace as a way of maintaining racial segregation).

107. Bowen v. Independent Publishing Company, 230 S.C. 509, 96 S.E. 564 (1957) (holding that it was "libelous per se to publish in print of a white person that she is a Negro," because "such publication is calculated to affect her standing in society and to injure her in the estimation of her friends and acquaintances").
108. S.C. Acts of 1957, No. 223, p. 234 (requiring applications for public employment to "include information as to . . . membership in or affiliation with all . . . associations and organizations").
109. Bryan v. Austin, 148 F. Supp. 563 (E.D.S.C. 1957) (staying a challenge to state law requiring teachers to disclose their membership in the NAACP pending the plaintiffs' exhaustion of state remedies).
110. S.C. Acts of 1957, No. 347, pp. 425-427 (authorizing appropriations to the University of South Carolina, the Citadel, Clemson College, Winthrop College, and the State Medical College "on a racially segregated basis only," and authorizing appropriations to a "Special Segregation Committee").
111. S.C. Acts of 1957, No. 25, p. 23 (providing that "any person who shall wilfully . . . maintain an action[,] or "who shall wilfully solicit or incite another to . . . maintain an action . . . in any court . . . within this State, and who . . . has no . . . interest in the relief thereby sought, or . . . does so with intent to distress or harass any party . . . shall be

- guilty of the crime of barratry[,]. . . [which] shall be punishable by a fine . . . or by imprisonment of not more than two years").
112. S.C. Acts of 1957, No. 349 (granting emergency military powers to the governor "to avert any threatened danger and to maintain peace and good order").
113. Henry v. Greenville Airport Commission, 284 F.2d 631 (4th Cir. 1960) (directing the district court to enter a preliminary injunction desegregating the airport at Greenville).
114. S.C. Acts of 1960, p. 1889 (appropriating money to the state's colleges and universities "on a racially segregated basis only").
115. S.C. Acts of 1960, No. 743, p. 1729 (providing that "[a]ny person who . . . enters into the dwelling house, place of business, or on the premises of another . . . after having been warned . . . not to do so[,] or any person[] who, having entered . . . , fails and refuses . . . to leave immediately upon being ordered or requested to do so . . . , shall, on conviction, be fined . . . or imprisoned for not more than thirty days").
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116. S.C. Acts of 1960, No. 674, p. 1628 (providing that if "any . . . employee of the State . . . or any political subdivision thereof be prosecuted . . . by reason of any act done . . . in the course of his employment, . . . the Attorney General . . . [shall] appear and defend the action or proceeding on his behalf").

117. S.C. Acts 1960, p. 2049, Joint Resolution (authorizing the purchase and distribution of 1,000 copies of The Case for the South by W.D. Workman, Jr., a defense of racial segregation, "in fostering a better understanding for the cause of the South").
118. Cummings v. City of Charleston, 288 F.2d 817 (4th Cir. 1961) (ordering the desegregation of the municipal golf course operated by the City of Charleston).
119. State v. Edwards, 239 S.C. 339, 123 S.E.2d 247 (1961) (affirming the convictions of 187 blacks for breach of the peace in connection with a demonstration at the State Capitol protesting racial segregation).
120. City of Greenville v. Peterson, 239 S.C. 298, 122 S.E.2d 826 (1961) (upholding the constitutionality of the state's trespass-after-notice law and affirming the convictions of several blacks who refused to leave the segregated lunch counter at the S.H Kress Store in Greenville).
121. City of Charleston v. Mitchell, 239 S.C. 376, 123 S.E.2d 512 (1961) (upholding the constitutionality of the state's trespass-after-notice law and affirming the convictions of 24 blacks who refused to leave the segregated lunch counter at the S.H Kress Store in Charleston).
122. City of Columbia v. Barr, 239 S.C. 395, 123 S.E.2d 521 (1961) (upholding the constitutionality of the state's trespass-after-notice law and affirmed the convictions of five blacks

- who refused to leave the segregated lunch counter at the Taylor Street Pharmacy in Columbia).
123. City of Columbia v. Bouie, 239 S.C. 570, 124 S.E.2d 332 (1962) (upholding the constitutionality of the state's trespass-after-notice law and affirming the convictions of two blacks who refused to leave the segregated luncheonette at Eckerd's drugstore in Columbia).
124. State v. Brown, et al., 240 S.C. 357, 126 S.E.2d 1 (1962) (affirming the convictions of 349 blacks in Orangeburg for breach of the peace in connection with their protests of segregation).
125. City of Rock Hill v. Henry, 241 S.C. 427, 128 S.E.2d 775 (1962) (affirming the breach of the peace convictions of 65 black civil rights protesters for singing patriotic and religious songs on the sidewalk and in the street outside city hall in Rock Hill).
126. Walker v. Shaw, 209 F. Supp. 569, 570 (W.D.S.C. 1962) (finding that "the City of Greenville had been operating a skating rink for the exclusive use of White citizens").
127. City of Sumter v. McAllister, 241 S.C. 355, 128 S.E.2d 419 (1962) (reversing the convictions of 42 black students in Sumter on the grounds that there was no evidence that they had breached the peace by seeking service at local lunch counters and soda fountains).

128. City of Sumter v. Gregg, 241 S.C. 409, 128 S.E.2d 685 (1962) (reversing the convictions of black protesters in Sumter on the grounds that the trial court lacked jurisdiction).
129. Brown v. South Carolina State Forestry Comm'n, 226 F.Supp. 646, 647, 650 (E.D.S.C. 1963) (invalidating state laws requiring the operation of parks on a racially segregated basis).
130. Peterson v. City of Greenville, 373 U.S. 244, 248 (1963) (invalidating a City of Greenville ordinance requiring segregation of the races in restaurants).
131. Monteith v. University of South Carolina, 8 Race.Rel.L.Rep. 886 (1963) (enjoining the University of South Carolina from denying admission on the basis of race).
132. Edwards v. South Carolina, 372 U.S. 229 (1963) (reversing the convictions of civil rights demonstrators in State v. Edwards, 239 S.C. 339, 123 S.E.2d 247 (1961), on the grounds that the behavior of the demonstrators was peaceful and protected by the First Amendment).
133. State v. Fields, 375 U.S. 44 (1963) (reversing the convictions of civil rights demonstrators in State v. Fields, 240 S.C. 366, 126 S.E.2d 6 (1963), in light of Edwards v. South Carolina, 372 U.S. 229 (1963)).
134. S.C. Acts of 1963, No. 297, p. 498 (authorizing "scholarship grants for children entitled to attend . . . public schools who wish to attend private or independent institutions").

135. City Council of Charleston v. NAACP, 8 Race Rel.L.Rep. 877 (1963). (injunction by the Charleston County court of common pleas against black demonstrators prohibiting "mass demonstrations" and engaging in "conduct creating tensions and probable violations of law").
136. Gantt v. Clemson Agricultural College, 320 F.2d 611 (4th Cir. 1963) (ordering a black applicant (Harvey Gantt) admitted to Clemson College).
137. Bouie v. City of Columbia, 378 U.S. 347 (1964) (reversing the convictions of civil rights demonstrators in City of Columbia v. Bouie, 239 S.C. 570, 124 S.E.2d 332 (1962), on the grounds that the state court's construction of state law violated the due process rights of the defendants protected by the Fourteenth Amendment).
138. Barr v. City of Columbia, 378 U.S. 146 (1964) (reversing the convictions of civil rights demonstrators in City of Columbia v. Barr, 239 S.C. 395, 123 S.E.2d 521 (1961), on the grounds that there was no evidence that the protestors committed a breach of the peace, and remanding for further consideration in light of Bouie v. City of Columbia, 378 U.S. 347 (1964)).
139. Mitchell v. City of Charleston, 378 U.S. 551 (1964) (reversing the convictions of civil rights demonstrators in City of Charleston v. Mitchell, 239 S.C. 376, 123 S.E.2d 512 (1961), relying upon Bouie v. City of Columbia, 378 U.S. 347 (1964)).
140. Henry v. City of Rock Hill, 375 U.S. 776 (1964) (reversing the convictions of civil rights demonstrators in City of Rock

- Hill v. Henry, 241 S.C. 427, 128 S.E.2d 775 (1962), on the grounds that the Fourteenth Amendment did not permit a state to make criminal the peaceful expression of unpopular views).
141. S.C. Acts of 1964, p. 2391 (providing that in "all parks belonging to the State, . . . swimming and rental or use of park cabins shall not be allowed. . . all publicly owned buildings and structures within the parks shall be closed to entry by the general public").
142. Brown v. School District No. 20, Charleston, South Carolina, 328 F.2d 618 (4th Cir. 1964) (appeal by school officials in Charleston of a district court order requiring them to enroll eleven black children in schools attended by white children).
143. Adams v. School District Number 5, Orangeburg County, South Carolina, 232 F.Supp. 692, 695 (E.D.S.C. 1964) (finding that "the Orangeburg School District No. 5 [was] completely segregated," and that the "authorities of School District No. 5 have apparently made no effort to comply with the Supreme Court's ruling in the Brown decisions and subsequent decisions of the Courts").
144. Randall v. Sumter School District Number 2, Sumter, South Carolina, 232 F.Supp. 786, 788 (E.D.S.C. 1964) (finding that after the Brown decision, "the defendants took no action to change the racially separate character of Sumter Schools").
145. Whittenberg v. School District of Greenville County, 9 Race Rel.L.Rep. 719 (1964) (enjoining segregation of the public schools in Greenville County).

146. Boineau v. Thornton, 235 F. Supp. 175 (E.D.S.C. 1964) (rejecting a challenge to the state's full slate law).
147. Brown v. Lee, 9 Race Rel.L.Rep. 878 (1964) (enjoining racial segregation in South Carolina state parks).
148. James v. Carnegie Public Library, 235 F. Supp. 911 (E.D.S.C. 1964) (defendants agreed to desegregate the Carnegie Public Library in Sumter).
149. Hamm v. City of Rock Hill, 379 U.S. 306 (1964) (vacating in light of the Civil Rights Act of 1964 the trespass convictions of blacks who has participated in lunch counter sit-ins in Rock Hill).
150. Rackley v. Board of Trustees of the Orangeburg Regional Hospital, 238 F.Supp. 512, 515 (E.D.S.C. 1965) (finding that the public hospital in Orangeburg County "practices a policy of segregating the races").
151. Brunson v. Board of Trustees of School District No. 1 of Clarendon County, School District, 244 F.Supp. 859, 860, 861 (E.D.S.C. 1965) (finding that the defendants "made no substantial effort to comply with the Supreme Court's rulings in the Brown decisions and subsequent decisions of the Courts. Neither have they proposed any plan to implement these desegregation decisions, and have indicated through counsel that they have no present intention to do so").
152. Miller v. School District Number 2, Clarendon County, South Carolina, 253 F.Supp. 552, 556-57 (D.S.C. 1966) (finding that "in School District No. 2, Clarendon County, South Carolina

every aspect, every facet, of school planning, administration, operation, policy, and practice, has, by design and purpose, racial characteristics," that "district facilities for Negro students [were] inferior to those for white students", that "[w]ide differences between the salaries of white teachers and Negro teachers continue[d] to exist," and that "there [was] no credible evidence of a bona fide attempt to comply with Brown v. Board of Education of Topeka").

153. Orville Vernon Burton, et. al., "South Carolina," in Chandler Davidson and Bernard Grofman (eds.), Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990 199 (Princeton, N.J.; Princeton University Press, 1994) (noting that no blacks were elected to public office in South Carolina in the twentieth century before passage of the Voting Rights Act of 1965).
154. Williams v. Sumter School District Number 2, 255 F. Supp. 397 (D.S.C. 1966) (finding that a black teacher had been wrongfully denied employment based on her participation in the civil rights movement).
155. Newman v. Piggie Park Enterprises, Inc., 256 F. Supp. 941 (D.S.C. 1966) (ordering the desegregation of Piggie Park restaurants in Columbia and other locations in the state in light of the Civil Rights Act of 1964).
156. S.C. Acts of 1967, No. 540 (adopting multi-member districts with numbered seats and at-large voting for the state senate).

157. O'Shields v. McNair, 254 F. Supp. 708, 715 (D.S.C. 1966)
(approving state senate redistricting as an interim measure and emphasizing "its dubious validity under the federal and state constitutions").
158. Brown v. South Carolina State Board of Education, 296 F. Supp. 199, 202-03 (D.S.C. 1968) (invalidating state law providing for the payment of scholarship grants to children who desired to attend private schools on the grounds that "[a] review of the record, including the historical background of the Act, clearly reveals that the purpose, motive and effect of the Act is to unconstitutionally circumvent the requirement . . . that the State of South Carolina not discriminate on the basis of race in its public educational system").
159. Lefebvre v. McNair, Civ. No. 68-259 (D.S.C. Nov. 10, 1970)
(holding unconstitutional state laws and practices requiring racial segregation in state, county, and city prisons and jails).
160. S.C. Acts of 1971, No. 932, p. 2071 (establishing a "numbered seat" requirement for the state senate under which each seat was designated as a separate office to be filled and voted for individually).
161. Bright v. Thurmond, Civ. No. 71-459 (D.S.C. May 4, 1973)
(challenge to the exclusion of blacks from grand and trial juries in Edgefield County dismissed as moot following reconstitution of jury lists by county jury commissioners).

162. Carracter v. Morgan, Civ. No. 71-311 (D.S.C. Nov. 12, 1971, and Aug. 29, 1973) (holding that continued segregation in the Edgefield County chain gang was unconstitutional).
163. S.C. Acts of 1972, pp. 2383, 2384, 2387, 2389 (establishing numbered seat requirements for every multiple office in the state that had not previously had a numbered seat requirement).
164. Stevenson v. West, No. 72-45 (D.S.C. April 7, 1972) (invalidating the state's full slate law on the ground that it was redundant in light of the numbered seat law).
165. DeLee v. Branton, Civ. No. 73-902 (D.S.C. Oct. 7, 1974) (ordering into effect single member districts for the Dorchester County Council).
166. Jones v. Tedder, Civ. No. 76-831 (D.S.C. 1977) (approving a combination plan using single member and multi-member districts for the Florence city council).
167. Horry County v. United States, 449 F.Supp. 990 (D.D.C. 1978) (enjoining the use of at-large elections adopted by the Horry County Council because of failure to comply with the preclearance provisions of Section 5).
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168. King v. Roddey, Civ. No. 78-839 (D.S.C. June 8, 1978) (enjoining at-large elections for the Chester County council and board of education for failure to comply with Section 5), and United States v. Chester County, Civ. No. 78-881 (D.S.C. Nov. 12, 1979) (approving a single member district plan for the Chester County council and board of education).

169. McCain v. Lybrand, Civ. No. 74-281 (D.S.C. Apr. 17, 1980) (finding that "[n]o black has ever received a Democratic nomination or been elected to public office in a contested election in Edgefield," that after the decision in Elmore v. Rice, 72 F. Supp. 516 (E.D.S.C. 1974), "blacks in Edgefield County found it very difficult to register and threats were made against some blacks who did register," that until 1970 "no blacks had ever served as a precinct election official," that "blacks were virtually totally excluded [from the political process] up to 1970, and that since that time they have progressed to minimal tokenism," that "[b]lacks were historically excluded from jury service in Edgefield County," that "[b]lacks have been excluded from county employment by the County Council, even up to the present," that "whites absolutely refuse to vote for a black," that "the majority vote requirement, run-off elections and even staggered terms of the members of council tend to dilute the voting strength of the blacks").
170. United States v. Board of Commissioners of Colleton County, 509 F. Supp. 1329 (D.S.C. 1981) (noting the objection of the Attorney General under Section 5 of the Voting Rights Act to the adoption of at-large elections by Colleton County and enjoining the county from further use of at-large voting).
171. Blanding v. DuBose, 454 U.S. 393 (1982) (enforcing a Section 5 objection by the Attorney General and enjoining further use of at-large voting in Sumter County absent preclearance).

172. County Council of Sumter County, South Carolina v. United States, 596 F. Supp. 35, 38 (D.D.C. 1984) (finding that Sumter County failed to carry its burden under Section 5 of the Voting Rights Act of proving that its system of at-large elections did not have a racially discriminatory purpose or effect, and noting that South Carolina "has a history of segregation and pervasive racial discrimination which has been an important factor in detrimentally affecting the political participation of black South Carolinians").
173. McCain v. Lybrand, 465 U.S. 236 (1984) (holding that the adoption of at-large voting by Edgefield County in 1966 was a change in voting subject to preclearance under Section 5 of the Voting Rights Act).
174. Lewis v. Saluda County, South Carolina, Civ. No. 83-1514-3 (D.S.C. July 19, 1985) (finding that "the plaintiffs have established a prima facie case that the present method of at-large elections for the [Saluda] County Council is in violation of 42 U.S.C. § 1973"), and statements of Saluda County attorney in Transcript of Hearing, July 24, 1984, p. 3 ("I'm very willing, Judge, to be very candid with you, to stipulate to about ninety percent of his case. I can't argue that in the forties, fifties, sixties, and early seventies that there wasn't racial discrimination that affected black voting rights in my county. For me to do so would be ludicrous, to be very candid with you").

175. Jackson v. Edgefield County, South Carolina School District, 650 F.Supp. 1176, 1180-81, 1198, 1204 (D.S.C. 1986) (invalidating at-large elections for the Edgefield County school board, and finding that: "a review of the history on racial discrimination in South Carolina is a useful starting point in fathoming the degree of its lingering effects that impairs the present day ability of blacks to participate on an equal basis in the political processes" in Edgefield County, that until the mid-1960's, the state "enforced a number of discriminatory statutes aimed to perpetuate racial segregation" in marriage, education, public accommodations, business licensing, and employment, that "the post-Civil War history of South Carolina has demonstrated that there were policies of racial discrimination, either officially or tacitly endorsed by the State, against blacks in practically all areas of their common life," that the court invalidated at-large elections for the county school board concluding that "the legal significance of racial bloc voting is such that the degree of its persistence and severity indicates that race still is a predominant influence over the electorate's preferences," that "[f]rom approximately 1900 to 1945, virtually no blacks were registered to vote in Edgefield County," that prior to 1965, only 17.3% of black voting age population was registered to vote while 96.3% of eligible whites were registered to vote, that until 1970, no blacks had ever served as precinct workers in Edgefield County, that

"there is credible and substantial evidence showing that a pervasive racial discrimination has left [Edgefield] County's black citizens economically, socially, and politically disadvantaged"), and Order of July 27, 1987 (implementing a single member district plan).

176. Thomas v. Mayor and Town Council of Edgefield, South Carolina, Civ. No. 9:86-2901-16 (D.S.C. May 27, 1987), slip op. at 1-2 (finding that "[p]laintiffs have established a prima facie case that at-large elections for the Mayor and Town Council [of Edgefield] violate Section 2").
177. Owens v. City Council of Orangeburg, Civ. No. 5:86-1564-6 (D.S.C. June 3, 1987), slip op. at 1 (finding that "plaintiffs would present a prima facie case under their First Cause of Action that at-large voting in Orangeburg violated Section 2 of the Voting Rights Act").
178. Jackson v. Johnston, South Carolina, Civ. No. 9:87-955-3 (D.S.C. Sept. 30, 1987), slip op. at 1 (finding that "[p]laintiffs have established a prima facie case that at-large elections for the Mayor and Town Council [of Johnston] violate Section 2").
179. Beasley v. Laurens County, South Carolina, Civ. No. 6-87-1817-3 (D.S.C. Nov. 17, 1987), slip op. at 2 (finding that "black voters [in Laurens County] have never been able to elect candidates of their choice under the at-large system").
180. Smith v. Laurens County, South Carolina School District 55, Civ. No. 6:87-512-1 (D.S.C. Dec. 10, 1987) (action under

Section 2 of the Voting Rights Act in which the defendants agreed to adopt a remedial district plan for the Laurens County school board).

181. Glover v. Laurens, South Carolina Mayor and City Council, Civ. No. 6:87-1663-17 (D.S.C. Mar. 18, 1988), slip op. at 1 (finding that "at-large elections for the Mayor and City Council [of Laurens] are in violation of 42 U.S.C. §1973"), and Order of July 13, 1988 (implementing a single member district plan).
182. Reaves v. City Council of Mullins, South Carolina, C.A. No. 4:85-1533-2 (D.S.C., August 5, 1988) (invalidating at-large elections for Mullins and finding "racially polarized voting in Mullins and the general inability of the minority-preferred candidates to win elections," South Carolina's "historical use of such discriminatory devices as the poll tax, literacy tests, and the anti-single shot voting law is undisputed; it has directly affected the rights of black voters to register, to vote, and to otherwise participate in the democratic process in Mullins as well as throughout the state. Other official acts of discrimination, such as statutory segregation, have indirectly affected the rights of black citizens in Mullins"), and Order of February 6, 1990 (implementing a single member district plan).
183. Broome v. Winnsboro, South Carolina, Civ. No. 0-88-1160-16 (D.S.C. July 20, 1988), slip op. at 1 (finding that "[i]t appears after reasonable discovery, the Plaintiffs can present

- a prima facie case that the at-large elections for the Mayor and Town Council of Winnsboro, South Carolina, are in violation of Section 2"), and Order of Jan. 31, 1989 (implementing a single member district plan).
184. Robinson v. Abbeville, South Carolina, Civ. No. 9-88-0096-17 (D.S.C. Feb. 11, 1988) (a suit under Section 2 of the Voting Rights Act in which defendants agreed to adopt a remedial system of district elections for the Abbeville County and City Councils).
185. Holloway v. Board of Trustees for School District Number One, Civ. No. 9-88-638-3 (D.S.C. Oct. 20, 1988) (holding that "Plaintiffs have established a prima facie case that the present method of at-large elections for the Board of Trustees [of Saluda County] is in violation of 42 U.S.C. § 1973," and implementing a single member district plan).
186. Houston v. Barnwell County, South Carolina, Civ. No. 1-88-1321-8 (D.S.C. Aug. 21, 1989) (enjoining at-large elections in Barnwell County, and implementing a single member district plan for the county council).
187. NAACP v. City of Bennettsville, Civ. No. 4:89-1655-2 (D.S.C.), and United States v. City of Bennettsville, No. 4:89-2363-2 (D.S.C. 1989) (approving a settlement adopting single-member districts for the City of Bennettsville).
188. NAACP v. Spartanburg County Board of Education, Civ. No. 7:91-3111-20 (D.S.C. October 11, 1991) (adopting single-member districts for the Spartanburg County board of education).

189. Burton v. Sheheen, 793 F. Supp. 1329, 1357-1358 (D.S.C. 1992) (three-judge court) (noting the stipulation of the parties that "since 1984 there is evidence of racially polarized voting in South Carolina").
190. Stanley v. Darlington County School District, 879 F.Supp. 1341, 1390 (D.S.C. 1995) (finding that before and after Brown South Carolina "took actions to perpetuate racially dual school systems; that the effects of the State's actions persist to the present; and that, although most active resistance had ceased by the mid-1970s, the State of South Carolina has done little or nothing since then to eliminate the vestiges of the dual school system by them, despite an affirmative duty to do so").
191. Smith v. Beasley, 946 F.Supp. 1174, 1202 (D.S.C. 1996) (finding that "[i]n South Carolina, voting has been, and still is, polarized by race. This voting pattern is general throughout the state").
192. Vander Linden v. Hodges, 193 F.3d 268, 270 (4th Cir. 1999) (finding that "the legislative delegation system [in South Carolina], which developed in place of locally elected county government, was similarly created out of fear of African-American voting power," and "arose against the backdrop of a white supremacist movement led by Governor Ben Tillman, that sought to diminish African-American voting power").
193. Colleton County Council v. McConnell, 201 F.Supp.2d 618, 641 (D.S.C. 2002) (three-judge court) (finding that "[v]oting in

South Carolina continues to be racially polarized to a very high degree, in all regions of the state and in both primary and general elections").

194. United States v. Charleston County, 316 F.Supp.2d 268, 271, 282, 286 n.23 (D.S.C.), aff'd, 365 F.3d 341 (4th Cir. 2004) (invalidating Charleston County's at-large election system because it "unlawfully exacerbates the disadvantaged political posture inherited by generations of African-Americans through centuries of institutional discrimination." The evidence relied upon by the court included: "the South Carolina Constitution of 1895 included a literacy test, a poll tax, disfranchisement for certain enumerated crimes, and long residency requirements;" blacks "were subject to segregation laws which had a discriminatory effect on most aspects of their lives;" "African Americans have suffered a pronounced and protracted history of past discrimination;" and "[d]uring the first half of the twentieth century, African-American citizens in Charleston as in other areas of South Carolina, were subject to segregation laws which had a discriminatory effect on most aspects of their lives").
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Respectfully submitted,

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Georgia General Assembly

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05 LC 18 4013
Senate Bill 45

By: Senators Rogers of the 21st, Johnson of the 1st, Stephens of the 27th, and Seabaugh of the 28th

A BILL TO BE ENTITLED AN ACT

To amend Title 21 of the Official Code of Georgia Annotated, relating to elections, and Title 28 of the Official Code of Georgia Annotated, relating to the General Assembly, so as to specify requirements applicable to legislative and congressional reapportionment; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 21 of the Official Code of Georgia Annotated, relating to elections, is amended by adding a new subsection at the end of Code Section 21-1-1, relating to definitions and descriptions for use in designating congressional districts, to be designated subsection (d), to read as follows:

(d)(1) The General Assembly shall by general law apportion congressional districts in accordance with the following:

- (A) All districts shall comply with the United States Constitution and the federal Voting Rights Act of 1965, as amended;
 - (B) All districts shall be composed of contiguous territory. Districts that connect on a single point are not contiguous;
 - (C) All districts shall be compact in form. Bizarre shapes shall be avoided;
 - (D) No district shall divide a community of interest unless necessary to comply with federal standards. A community of interest may be defined by a variety of factors, including, but not limited to, economic, social, and cultural factors, government services, and location;
 - (E) Districts shall divide as few counties and recognized political boundaries as is practicable to comply with the other requirements in this subsection; and
 - (F) No district shall be established with the intent or effect of diluting the voting strength of any person, group of persons, or members of any political party. Data reflecting past partisan voting behavior shall not be solely considered.
- (2) None of the criteria specified in paragraph (1) of this subsection shall be afforded greater weight than any other criteria. Minor deviations from one or more of such criteria shall be permitted if necessary to conform a plan to the other criteria specified in paragraph (1) of this subsection. The requirements, however, of the United States Constitution and the federal Voting Rights Act of 1965, as amended, shall be given priority should those requirements conflict with any other criteria..

SECTION 2.

Title 28 of the Official Code of Georgia Annotated, relating to the General Assembly, is amended by adding a new subsection at the end of Code Section 28-1-1, relating to membership and apportionment of the General Assembly, to be designated subsection (c), to read as follows:

(c)(1) The General Assembly shall by general law apportion representative districts and senatorial districts in accordance with the following:

- (A) All districts shall comply with the United States Constitution and the federal Voting Rights Act of 1965, as amended;
- (B) All districts in an apportionment plan for the Senate or House of Representatives shall have a deviation of not more than plus or minus 2.5 percent from the ideal population size to ensure that each person to be elected under such plan represents, as nearly as possible, an equal number of inhabitants of the state;
- (C) All districts shall be composed of contiguous territory. Districts that connect on a single point are not contiguous;
- (D) All districts shall be compact in form. Bizarre shapes shall be avoided;
- (E) No district shall divide a community of interest unless necessary to comply with federal standards. A community of interest may be defined by a variety of factors, including, but not limited to, economic, social, and cultural factors, government services, and location;
- (F) Districts shall divide as few counties and recognized political boundaries as is practicable to comply with the other requirements in this subsection;
- (G) No district shall be established with the intent or effect of diluting the voting strength of any person, group of persons, or members of any political party. Data reflecting past partisan voting behavior shall not be solely considered; and

(H) Single-member districts shall be used in all cases and multimember districts shall be prohibited.
(2) None of the criteria specified in paragraph (1) of this subsection shall be afforded greater weight than any other criteria. Minor deviations from one or more of such criteria shall be permitted if necessary to conform a plan to the other criteria specified in paragraph (1) of this subsection. The requirements, however, of the United States Constitution and the federal Voting Rights Act of 1965, as amended, shall be given priority should those requirements conflict with any other criteria..

SECTION 3.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.

□

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**Report to Commissioners: Southern
Regional Hearing**

Report to the Commissioners

**SOUTHERN REGIONAL HEARING
OF THE NATIONAL COMMISSION
ON THE VOTING RIGHTS ACT**

prepared by:

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ALABAMA EXECUTIVE SUMMARY**DEMOGRAPHICS:**

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
Total population	4,447,100	100.0	3,323,628	100.0
Hispanic or Latino (of any race)	75,830	1.7	50,955	1.5
Not Hispanic or Latino	4,371,270	98.3	3,272,723	98.5
One race	4,402,921	99.0	3,296,426	99.2
White	5,162,808	71.1	2,440,176	73.4
Black or African American	1,155,930	26.0	796,342	24.0
American Indian and Alaska Native	22,430	0.5	16,144	0.5
Asian	31,346	0.7	23,724	0.7
Native Hawaiian and Other Pacific Islander	1,409	0.0	1,063	0.0
Some other race	28,998	0.7	18,977	0.6
Two or more races	44,179	1.0	27,252	0.8

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File.

MINORITY REPRESENTATION IN FEDERAL & STATE LEGISLATURE:

There are currently zero minorities in the United States Senate and one minority in the House of Representatives, African-American: Artur Davis-Democrat) from Alabama.

There are 8 minority members of the state Senate as follows: Sundra Escott, African-American, Democrat; Vivian Figures, African-American, Democrat; Edward B. McClain, African-American, Democrat; Myron C. Penn, African-American, Democrat; Quinton T. Ross Jr., African-American, Democrat; Henry Sanders, African-American, Democrat; Bobby Singleton, African-American, Democrat; and Rodger Mell Smitherman, African-American, Democrat.

There are 27 minority members of the state House of Representatives as follows: Lucy Baker, African-American, Democrat; George Bandy, African-American, Democrat; Lucius Black, African-American, Democrat; Barbara B. Boyd, African-American, Democrat; James E.

Buskey, African-American, Democrat; William Clark, African-American, Democrat; Linda Coleman, African-American, Democrat; Merika Coleman, African-American, Democrat; Priscilla Dunn, African-American, Democrat; Laura Hall, African-American, Democrat; Alvin A. Holmes, African-American, Democrat; Ralph Howard, African-American, Democrat; Thomas E. Jackson, African-American, Democrat; Yvonne Kennedy, African-American, Democrat; John F. Knight Jr., African-American, Democrat; Eric Major, African-American, Democrat; Thad McClammy, African-American, Democrat; Bryant Melton, African-American, Democrat; Joseph Mitchell, African-American, Democrat; Mary Moore, African-American, Democrat; Demetrius C. Newton, African-American, Democrat; George Purdue, African-American, Democrat; Oliver Robinson, African-American, Democrat; John W. Rogers Jr., African-American, Democrat; Yusuf Salaam, African-American, Democrat; James L. Thomas, African-American, Democrat; Pebblin W. Warren, African-American, Democrat.

Source: http://www.legislature.state.al.us/house/representatives/houseroster_alpha.html; Joanne, Executive Secretary, (334) 242-7768

SECTION 5 RELATED MATTERS:

Alabama is covered under Section 5 of the Voting Rights Act.

SECTION 203 AND OTHER MINORITY LANGUAGE MATTERS

Alabama is not covered under Section 203 of the Voting Rights Act.

REPORTED INSTANCES OF VOTER SUPPRESSION AND INTIMIDATION

After repeated allegations of intimidation of voters in Alabama's "black belt counties", an agency of the United Church of Christ organized "freedom rides" to protest such incidents. The freedom rides were meant to mirror those of the 1960's civil rights era. Alabama's black belt contains several counties with significantly high numbers of black elected

officials. The agency claimed that the FBI and state officials interrogated hundreds of African-Americans who voted via absentee ballot in an effort to establish claims of voter fraud.

Reported in: *The Associated Press* (February 28, 1986)

STATE VOTING LAWS

1. Voter Identification Requirements

Alabama currently has several statutes that require proof of identification in order for people to be allowed to vote. Primarily, Alabama Code Section 17-11A-1 provides a list of forms of identification that must be presented in order to vote. ALA. CODE § 17-11A-1 (2003). A voter who does not provide identification, however, will be allowed to vote provided that they (1) are on the poll list as an eligible voter, and (2) is positively identified by two election officials who sign the voter list next to the elector. ALA. CODE § 17-11A-1(f) (2003). This year, a bill was introduced in the house to amend the current provisions of Section 17-11A-1 so that it excludes Social Security cards as a valid form of identification. H.B. 218, 2005 Reg. Sess. (Al. 2005). This bill was originally introduced on February 1, 2005, and was most recently reported favorably upon by the Senate Committee on Constitution, Campaign Finance, Ethics and Elections in May 2005. Bill Tracking H.B. 218, 2005 Reg. Sess. (Al. 2005).

In addition, Alabama law includes several statutes dealing with identification requirements for voter registration. Voters who register via mail are then required to present identification at the time they vote. ALA. CODE § 17-10A-1 (2005). These voters may provide a variety of forms of identification, including a copy of a current utility bill, bank statement, government check, paycheck, or other government document bearing the name and address of the voter. *Id.* Once a voter has presented such identification, they will be exempt from further identification requirements. Still, a voter who remains inactive from the voting list for four years

in his or her county is struck from the voting list and placed on an inactive list. 17 ALA. CODE § 17-4-213 (2005). A voter will have to go through a reidentification process with the local board of registrars, but can still fill out a reidentification form at the polling place and will be permitted to vote. Id.

2. Proof of Citizenship Requirements

Alabama does not have proof of citizenship requirements, although its state constitution envisions that U.S. citizenship is a fundamental prerequisite to the right to vote. ALABAMA CONST., ART. VIII, § 196A (2005). The state constitution further specifies the legislature retains the authority to promulgate regulations regarding the registration of voters.

3. English Literacy Requirements

Although not specified as such, Alabama law contained a provision that prohibited voters from speaking or receiving assistance with anyone within the voting area. ALA. CODE § 17-8-29 (2003). Additionally, voters could only occupy the booth or compartment for five minutes. Id. If a voter took longer than the five minutes, they were required to leave the polling area. Id. This provision, however, was found to violate § 2 of the Voting Rights Act, as it evidenced a discriminatory effect against non-English speakers, as well as physically disabled voters. In Harris v. Siegelman, 695 F.Supp. 517 (M.D. Ala. 1988), a federal court found this provision could be used to deny assistance to black voters who were in clear need of additional assistance. This law was amended in 2003 to include new provisions, which allow for voters, “who shall state to any of the inspectors that by reason of his inability to write the English language or by reason of blindness or the loss of the use of his hand or hands he is unable to prepare his ballot may have the assistance of any person he may select.” ALA. CODE § 17-8-29

(2005). The provisions which still require that voters not remain in the polling area for more than five minutes, however, is still applicable.

DOJ OBSERVER/MONITOR COVERAGE

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
Barbour		October 11, 1994	Special	19	Alabama Democratic Conference asked for monitors; some local county leaders feared racial unrest at the polls on election day; a black commission had received harassing phone calls and personal threats because of his role in a new redistricting plan
Barbour		June 2, 1998	Primary	9	Ensure that African American voters with limited literacy and failing eyesight receive assistance from a person of their choice; determine whether African American voters on the registration rolls are allowed to cast their ballots.
Bullock		November 7, 1978	Federal	32	
Bullock		June 7, 1994	Primary	22	
Bullock		June 28, 1994	Primary Runoff	16	
Chambers	Lafayette	July 31, 1984	Mun Runoff	5	Ensure voters do not encounter racial discrimination; after previous elections, citizens in Lafayette

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
					complained of confusion at the polls over who was registered to vote and over the fact that there was only one black among 16 poll officials.
Chambers		June 4, 2002	Primary	6	
Choctaw		May 2, 1972	Primary	20	
Choctaw		May 7, 1974	Primary	24	
Choctaw		May 25, 1976	Primary Runoff	14	
Choctaw		June 3, 1986	Primary	4	
Conecuh		September 2, 1980	Primary	68	Guard against possible voting rights violations.
Conecuh		September 23, 1980	Primary Runoff	25	
Conecuh		September 7, 1982	Primary	80	
Conecuh		September 28, 1982	Primary	45	Monitor counties where there were contests between blacks and whites.
Conecuh		October 12, 1982	Runoff	28	
Conecuh		November 2, 1982	Federal	58	
Conecuh		November 8, 1983	General	50	
Conecuh		March 13, 1984	Primary	25	Ensure that that there was no interference with black voters. Decision to send observers was based on past experience, including complaints by black voters who said they had difficulty casting ballots. Blacks only comprised 20% of poll workers, and the DOJ had previously sued the

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
					county alleging black voters had been intimidated and harassed and discriminated against in the selection of poll officials.
Conecuh		September 4, 1984	Primary	40	
Conecuh		September 25, 1984	Runoff	18	
Conecuh		November 6, 1984	Federal	11	Make sure voters have a fair chance to cast their ballots; in most instances, local officials requested the aid.
Conecuh		June 3, 1986	Primary	25	
Conecuh		June 24, 1986	Primary Runoff	20	
Crenshaw		January 6, 1987	Special	14	
Dallas		May 3, 1966	Primary	48	
Dallas		May 31, 1966	Primary Runoff	48	
Dallas		November 8, 1966	Federal	8	
Dallas		November 5, 1968	Federal	8	
Dallas		August 8, 1972	Special	10	
Dallas		May 4, 1976	Primary	42	
Dallas		September 7, 1982	Primary	48	
Dallas		September 28, 1982	Primary Runoff	48	Monitor counties where there were contests between blacks and whites.
Dallas		November 2, 1982	Federal	19	
Dallas		November 8, 1983	General	16	
Dallas	Selma	July 10, 1984	Municipal	7	Watch for improper balloting; election was mayoral contest between black and white candidate marked by bitter campaign.
Dallas	Selma	July 31, 1984	Mun Runoff	11	Ensure voters do not encounter racial discrimination. The city was chosen on

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
					the basis of reports from federal observers at the July 10 primary. Election involved black and white candidates opposing each other.
Dallas		November 22, 1988	Primary	38	
Dallas		December 13, 1988	Primary Runoff	24	
Dallas		December 27, 1988	General	22	
Dallas		June 5, 1990	Primary	2	
Dallas		June 26, 1990	Primary Runoff	23	Assure that black voters in Dallas County will be able to vote without interference.
Dallas		June 2, 1992	Primary	12	
Dallas	Selma	August 25, 1992	Municipal	35	Observers sent based upon investigations that include discussions with election officials and community leaders regarding potentially discriminatory practices in the election process.
Dallas	Selma	August 24, 1993	Mun Primary	11	
Dallas		June 7, 1994	Primary	12	
Dallas		June 28, 1994	Primary Runoff	14	
Dallas	Selma	August 27, 1996	Municipal	14	Detect any evidence of harassment and intimidation of black voters, as well as interference with voter assistance.
Dallas		November 5, 1996	Federal	13	Ensure that African

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
					American voters are not disadvantaged by the failure of polling officials to provide appropriate assistance and information to voters.
Dallas		June 2, 1998	Primary	20	Ensure that African American voters with limited literacy and failing eyesight receive assistance from a person of their choice; determine whether African American voters on the registration rolls are allowed to cast their ballots.
Greene		May 3, 1966	Primary	60	
Greene		May 31, 1966	Primary Runoff	58	
Greene		November 8, 1966	Federal	24	
Greene		May 7, 1968	Primary	22	
Greene		November 5, 1968	Federal	42	
Greene		July 29, 1969	Special	44	
Greene		May 5, 1970	Primary	48	
Greene		November 3, 1970	Federal	40	
Greene		November 5, 1974	Federal	18	
Hale		May 3, 1966	Primary	19	
Hale		May 31, 1966	Primary Runoff	18	
Hale		November 8, 1966	Federal	6	
Hale		May 5, 1970	Primary	16	
Hale		November 3, 1970	Federal	18	
Hale		November 7, 1972	Federal	42	
Hale		May 7, 1974	Primary	30	
Hale		September 5, 1978	Primary	47	
Hale		September 26, 1978	Primary Runoff	35	
Hale		September 2, 1980	Primary	49	Guard against possible voting rights violations.

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
Hale		September 7, 1982	Primary	61	
Hale		September 28, 1982	Primary Runoff	43	Monitor counties where there were contests between blacks and whites
Hale		November 8, 1983	General	12	
Hale	Greensboro	July 10, 1984	Municipal	3	Watch for improper balloting.
Hale		June 3, 1986	Primary	12	
Hale		January 10, 1989	Primary	13	
Hale	Greensboro	June 3, 1997	Municipal	5	
Hale		June 6, 2000	Primary	10	Ensure that African American voters are not subject to discriminatory treatment at voting sites and are not prevented from receiving assistance from the person of their choice.
Hale		June 27, 2000	Runoff	13	Ensure that African American voters are not subject to discriminatory treatment at voting sites and are not prevented from receiving assistance from the person of their choice.
Hale		November 7, 2000	Federal	13	Monitor treatment of African-American voters.
Hale		June 4, 2002	Primary	15	
Jefferson	Birmingham	October 11, 1983	Mun Primary	72	The decision to send the observers followed requests by city officials and candidates and a field investigation

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
					by attorneys in the department's civil rights division; elections for mayor and city council members included contests between black and white candidates
Jefferson		June 3, 1986	Primary	12	
Jefferson	Bessemer	August 5, 1986	Primary	34	
Jefferson	Bessemer	August 26, 1986	Mun Runoff	34	
Jefferson	Bessemer	August 28, 1990	Mun Primary	34	The decision to send the observers was based upon investigations that include discussions with election officials and community leaders regarding potentially discriminatory practices in the election process.
Lowndes		May 3, 1966	Primary	18	
Lowndes		May 31, 1966	Primary Runoff	18	
Lowndes		November 8, 1966	Federal	8	
Lowndes		May 7, 1968	Primary	24	
Lowndes		November 5, 1968	Federal	34	
Lowndes		May 5, 1970	Primary	34	
Lowndes		November 3, 1970	Federal	34	
Lowndes		May 7, 1974	Primary	18	
Lowndes		November 5, 1974	Federal	24	
Lowndes		September 7, 1982	Primary	41	
Lowndes		September 28, 1982	Primary Runoff	8	
Lowndes	Hayneville	July 10, 1984	Municipal	4	Watch for improper balloting.
Lowndes		September 4, 1984	Primary	20	
Lowndes		June 7, 1988	Primary	28	
Lowndes	Fort Deposit	August 25, 1992	Municipal	6	The decision to send observers was based upon

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
					investigations that include discussions with election officials and community leaders regarding potentially discriminatory practices in the election process.
Lowndes	Fort Deposit	August 27, 1996	Municipal	6	Detect any evidence of harassment and intimidation of black voters, as well as interference with voter assistance.
Lowndes	Fort Deposit	September 17, 1996	Mun Runoff	6	
Lowndes		November 7, 2000	Federal	8	Monitor treatment of African-Americans
Marengo		May 3, 1966	Primary	104	
Marengo		May 31, 1966	Primary Runoff	104	
Marengo		November 8, 1966	Federal	16	
Marengo		November 5, 1968	Federal	14	
Marengo		May 5, 1970	Primary	55	
Marengo		November 3, 1970	Federal	54	
Marengo		September 5, 1978	Primary	101	
Marengo		September 26, 1978	Primary Runoff	94	
Marengo		September 7, 1982	Primary	41	
Marengo		September 28, 1982	Primary Runoff	35	Monitor counties where there were contests between blacks and whites
Marengo		June 5, 1990	Primary	2	
Marengo		June 28, 1994	Primary Runoff	12	
Monroe		September 4, 1984	Primary	41	
Monroe		June 7, 1988	Primary	15	
Perry		May 31, 1966	Primary Runoff	68	
Perry		November 2, 1976	Federal	25	
Pickens		September 5, 1978	Primary	27	
Pickens	Aliceville	July 8, 1980	Municipal	15	

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
Pickens		September 2, 1980	Primary	16	Guard against possible voting rights violations.
Pickens		September 7, 1982	Primary	14	
Pickens		September 28, 1982	Primary Runoff	4	Monitor counties where there were contests between blacks and whites
Pickens		November 2, 1982	Federal	19	
Pickens	Aliceville	July 10, 1984	Municipal	13	Watch for improper balloting.
Pickens	Aliceville	July 31, 1984	Mun Runoff	8	Ensure voters do not encounter racial discrimination. The city was chosen on the basis of reports from federal observers at the July 10 primary. Black and white candidates opposing each other.
Pickens		September 4, 1984	Primary	6	
Pickens		June 24, 1986	Primary Runoff	8	
Pickens		January 20, 1987	Special Primary	37	
Russell		September 26, 1978	Primary Runoff	65	
Russell		September 7, 1982	Primary	15	
Sumter		May 3, 1966	Primary	38	
Sumter		November 8, 1966	Federal	10	
Sumter		May 7, 1968	Primary	28	
Sumter		November 5, 1968	Federal	28	
Sumter		June 4, 1974	Primary Runoff	22	
Sumter	Gainesville	August 10, 1976	Municipal	3	
Sumter		November 2, 1976	Federal	21	
Sumter		September 5, 1978	Primary	48	
Sumter		September 26, 1978	Primary Runoff	7	
Sumter	Epes	July 8, 1980	Municipal	3	
Sumter	Geiger	July 8, 1980	Municipal	3	
Sumter		November 4, 1980	Federal	63	Based on a pre-election survey by the Civil Rights Division to ensure

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
					the integrity of the election, give minorities confidence in the electoral process and record any irregularities that might develop.
Sumter		September 7, 1982	Primary	61	
Sumter		September 28, 1982	Primary Runoff	50	Monitor counties where there were contests between blacks and whites
Sumter		November 2, 1982	Federal	36	
Sumter		November 8, 1983	General	37	Requested by a white state representative, who was running against a black opponent.
Sumter	York	July 10, 1984	Municipal	8	Watch for improper balloting.
Sumter	Livingston	July 10, 1984	Municipal	8	Watch for improper balloting.
Sumter	Livingston	July 31, 1984	Mun Runoff	4	Ensure voters do not encounter racial discrimination; chose the cities on the basis of reports from federal observers at the July 10 primary; black and white candidates opposing each other.
Sumter	York	July 31, 1984	Mun Runoff	3	Ensure voters do not encounter racial discrimination; city chosen on the basis of reports from federal observers at the July 10 primary; black and white

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
					candidates opposing each other.
Sumter		September 4, 1984	Primary	25	
Talladega		November 5, 1974	Federal	54	
Wilcox		May 3, 1966	Primary	70	
Wilcox		May 31, 1966	Primary Runoff	68	
Wilcox		November 8, 1966	Federal	12	
Wilcox		May 7, 1968	Primary	24	
Wilcox		November 5, 1968	Federal	28	
Wilcox		May 5, 1970	Primary	52	
Wilcox		November 3, 1970	Federal	52	
Wilcox		November 7, 1972	Federal	68	
Wilcox		May 7, 1974	Primary	30	
Wilcox		November 5, 1974	Federal	14	
Wilcox		May 4, 1976	Primary	44	
Wilcox		May 25, 1976	Primary Runoff	20	
Wilcox		November 2, 1976	Federal	12	
Wilcox		September 5, 1978	Primary	16	
Wilcox		September 26, 1978	Primary Runoff	21	
Wilcox		November 7, 1978	Federal	105	
Wilcox		September 2, 1980	Primary	30	Guard against possible voting rights violations.
Wilcox		September 7, 1982	Primary	100	
Wilcox		September 28, 1982	Primary Runoff	60	Monitor counties where there were contests between blacks and whites.
Wilcox		November 2, 1982	Federal	59	

ALABAMA REPORTED VRA CASES

Dillard v. Baldwin County Commissioners, 376 F.3d 1260 (11th Cir. 2004)

Majority: Dubina (Circuit Judge), Carnes (Circuit Judge) and Mills (District Judge).

Facts: Plaintiffs, a class of African-American citizens, obtained an injunction in 1988 requiring a change in election districts for the county commission. Intervenors challenged the propriety of those districts. Their claims were dismissed, but they succeeded on appeal and the matter was remanded for consideration of their claims. On remand, the court reversed the injunction, finding that the injunction changing the size of the county commission was an improper remedy

under the Voting Rights Act and the Fourteenth and Fifteenth Amendments. Further, the Court found that no additional relief was available, and it ordered the reinstatement of the former election system. The African-American voters appealed the District Court's dissolution of its permanent injunction.

VRA Claim: The at-large election scheme denies African-Americans equal opportunity to elect a representative of their choice in violation of § 2 of the VRA.

Issues: Whether a federal court must award relief on a vote dilution claim brought under § 2 of the VRA where the circumstances of the case make clear that no form of relief available under § 2 will empower the protected minority group with any meaningful opportunity to elect the candidate of its choice.

Majority: The court affirmed previous decisions. A protected minority group under § 2 of the VRA had no right to relief unless the plaintiff could demonstrate that, in the absence of the challenged voting structure or practice, its members would have had the ability to elect the candidate of its choice. This case, overturned a district court permanent injunction increasing a four commissioner system elected at-large to numbered-post positions, to a seven member commission with seven single-member districts. The court held that the diminished minority population, which now comprised less than 10% of the relevant electorate, was too small to be able to satisfy the elements of proof of voter dilution. "If the group is too small to elect candidates of its choice in the absence of a challenged structure or practice, then it is the size of the minority population that results in the plaintiff's injury, and not the challenged structure or practice." Dillard, 376 F.3d at 1269.

See also Holder v. Halls, 512 U.S. 874 (1994); Nipper v. Smith, 39 F.3d (11th Cir. 1994).

Wilson v. Minor, 220 F.3d 1297 (11th Cir. 2000)

Majority: Marcus, Carnes, and Barkett (Circuit Judges).

Facts: In response to a Voting Rights Act challenge to a scheme for electing members of the county commission, in which four members were elected at large and the county probate judge was the fifth member, the District Court proposed the election of four members from specific districts and retention of the probate judge as the fifth member. On appeal, the Court of Appeals ordered the election of five members from districts without the probate court judge, and the order was implemented on remand by the District Court. Thereafter, voters sued claiming that the injunction was invalid.

VRA Claim: The election scheme remedy adopted by the court in response to a suit regarding an at-large election scheme is a remedy that violates § 2 of the VRA.

Issues: Whether the court's proposed new election scheme is an impermissible alteration of the size of a governing body and thus an impermissible remedy under section 2 of the VRA.

Majority: The court held that the new election scheme, which increased the County Commission of Dallas County from four members elected at large with the fifth member being

the county probate judge to a scheme that elected five members from districts without the probate judge being a member, was an impermissible alteration of the size of the commission and thus an impermissible remedy under §2 of the VRA.

See also Holder v. Halls, 512 U.S. 874 (1994); Nipper v. Smith, 39 F.3d (11th Cir. 1994).

White v. State of Alabama, 74 F.3d 1058 (11th Cir. 1996)

Majority: Tjoflat (Chief Judge), Goodwin (Senior Circuit Judge). Black (Circuit Judge) specially concurring.

Facts: The members of Alabama's appellate courts were elected to office in at-large partisan elections. Original plaintiffs brought a lawsuit against defendant challenging these procedures. Plaintiffs contended that this scheme diluted the voting strength in violation of § 2 of the VRA, because it afforded African American voters "less opportunity to participate in the political process..." They also claimed that the legislature's alteration of the structure and composition of Alabama's appellate courts were not precleared under § 5 of the VRA and they sought an order declaring the legislature's actions inoperative. Several other plaintiffs were given leave to join as intervenors. Original plaintiffs and defendant entered into a settlement agreement, which the lower court approved. The agreement would restructure Alabama's Supreme Court and the Court of Appeals by increasing the size of the courts, and creating a selection process to "ensure" that the African-American voters of Alabama had at least two "representatives of their choice" on the court. Intervenors contend that this violated § 2 of the VRA.

VRA Claim: The at-large election scheme denies African-Americans equal opportunity to elect their representatives in violation of § 2 of the VRA.

Issues: Whether the relief fashioned by the district court in settling this lawsuit exceeded its authority under § 2 of the VRA.

Majority: The remedy proposed, creating proportional representation, was not a proper remedy under the VRA. The court held that the district court lacked the authority to increase the size of the Alabama appellate courts. The case was vacated and remanded.

See also Holder v. Halls, 512 U.S. 874 (1994); Nipper v. Smith, 39 F.3d (11th Cir. 1994).

United States v. Jones, 57 F.3d 1020 (11th Cir. 1995)

Majority: Kravitch and Birch (Circuit Judges) and Goodwin (Senior Circuit Judge for the Ninth Circuit, sitting by designation).

Facts: A white candidate was eventually declared the winner of the election for the commissioner of Dallas County over a minority candidate by a 10 vote margin. The government, through the course of an FBI investigation eventually discovered 52 illicit votes that had been counted despite being cast by non-residents of the district. The inclusion allegedly happened when the county precleared a new redistricting plan and had to redistribute thousands of voters. The new plan broke the district up into 5 single member districts. Because of the short time frame between the pre-clearance of the new plan and the disputed election, these 52

voters appeared as registered in the wrong location and were permitted to vote in this election. These voters voted for the white candidate and had they not been permitted to participate, the minority candidate would have won. At the time of the election, the Board of Registrars who oversaw the election was comprised of 2 African-American and 1 white member. The Commission at the time had 3 African-American and 2 white members. This case is an appeal from a District Court case finding no Section 2 violation.

VRA Claim: The events which led to out-of-district voting constituted a standard, practice, or procedure under § 2 of the VRA and thus were in violation of the VRA.

Issues: Whether votes cast by voters assigned to the wrong district constituted a violation of the Voting Rights Act.

Majority: The Court held that there was no Section 2 violation because the Voting Rights Act did not apply to inadvertent mistakes characteristic of a complicated redistricting effort. In order to find a violation, there must be some conscious action rather than an inadvertent mistake. A mistake cannot be characterized as a standard, practice, or procedure and therefore falls outside the protections of the Voting Rights Act. Here, since there was no intent to disenfranchise African-American voters, there was no Section 2 violation. Further, even if the practice had the result of denying minorities the opportunity to elect the representative of their choice, Section 2 would only be violated if the totality of the circumstances showed that the minority group did not have an equal chance to participate in the political process. In this case, the totality of the circumstances showed that the minority group still had an active and equal opportunity to participate in the political process.

Southern Christian Leadership Conference of Alabama v. Sessions, 56 F.3d 1281 (11th Cir. 1995)

Majority: Tjoflat (Chief Judge), Kravitch, Hatchett, Anderson, Edmondson, Cox, Birch and Black (District Judges).

Facts: A class of African-American voters in Alabama challenged the district court's decision in Southern Christian Leadership Conference v. Evans, 758 F. Supp. 1469 (M.D. Ala. 1992). They claimed that Alabama's system for electing District Court judges in four Counties and Circuit Court judges in ten Circuits was unconstitutional. They claimed that the at-large election system, coupled with the numbered place requirements, minimized African-American voters' opportunity to participate in the political process and elect the representatives of their choice. They also claimed that the judicial circuit boundary lines were drawn with a racially discriminatory intent to fragment the African-American population so that they could not elect African-American judges to office.

VRA Claims: The at-large election scheme coupled with a numbered place requirement denies African-Americans equal opportunity to elect representatives of their choice in violation of § 2 of the VRA.

Issues: Whether Alabama's system for electing circuit and district judges in ten of Alabama's judicial circuits violates § 2 of the VRA by giving African-American voters less opportunity, on account of their race, to participate in the political process than other members of the electorate.

Majority: The court affirmed the district court's decision that the appellants could not establish a Section 2 claim because they failed to show racially polarized voting and the remedies sought by appellants were not feasible alternatives to the current election scheme. The court held that factors other than race were driving results of elections for Alabama trial judges and thus racially polarized voting did not violate the VRA by leaving minorities with less opportunity than other members of the electorate to participate in the political process.

ARKANSAS EXECUTIVE SUMMARY**DEMOGRAPHICS:**

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
Total population	2,673,400	100.0	1,993,031	100.0
Hispanic or Latino (of any race)	86,866	3.2	54,850	2.8
Not Hispanic or Latino	2,586,534	96.8	1,938,181	97.2
One race	2,637,656	98.7	1,971,376	98.9
White	2,138,598	80.0	1,639,443	82.3
Black or African American	418,950	15.7	278,007	13.9
American Indian and Alaska Native	17,808	0.7	12,490	0.6
Asian	20,220	0.8	15,177	0.8
Native Hawaiian and Other Pacific Islander	1,668	0.1	1,057	0.1
Some other race	40,412	1.5	25,202	1.3
Two or more races	35,744	1.3	21,655	1.1

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File.

MINORITY REPRESENTATION IN FEDERAL & STATE LEGISLATURE:

There are currently no minorities in the United States Senate or the House of Representatives from Arkansas.

There are three minority members of the state Senate as follows: Irma Hunter Brown, African-American, Democrat; Tracy Steele, African-American, Democrat; and Hank Wilkins IV, African-American, Democrat.

There are eleven minority members of the state House of Representatives as follows: Nancy Duffy Blount, African-American, Democrat; Linda Chesterfield, African-American, Democrat; Booker T. Clemons, African-American, Democrat; Otis Davis, African-American, Democrat; Joyce Elliott, African-American, Democrat; Stephanie Flowers, African-American, Democrat; Kevin Goss, African-American, Democrat; Willie Hardy, African-

American, Democrat; Wilhelmina Lewellen, African-American, Democrat; David Rainey, African-American, Democrat; and Arnell Willis, African-American, Democrat.

Source: <http://www.arkansas.gov/house/rebs.php>, Kaye Donham, Executive Secretary, (501) 682-7771

SECTION 5 RELATED MATTERS:

Arkansas is not covered under Section 5 of the Voting Rights Act.

SECTION 203 AND OTHER MINORITY LANGUAGE MATTERS

Arkansas is not covered under Section 203 of the Voting Rights Act.

REPORTED INSTANCES OF VOTER SUPPRESSION AND INTIMIDATION

The Democratic National Committee reported to the U.S. Justice Department an incident in Pine Bluff County (comprised primarily of registered democrats) where poll watchers showed up for the first day of early voting in the state's senate race to question voters, mainly African-Americans, about proper identification and to take pictures of those IDs deemed questionable. According to the article, Donna Brazile, chairman of the Democratic Party's Voting Rights Institute likened the incident in Pine Bluff to "a scene from the 1960's" and cautioned that such activities "humiliated potential voters and were meant to suppress turnout." Reported in: *The New York Times* (October 24, 2002)

STATE VOTING LAWS

1. Voter Identification Requirements

Arkansas state law contains provisions which require that before allowing a person to vote, election officials shall request the voter to verify his or her existence on the registered voter's list. ARK. CODE ANN. § 7-5-305 (2005). Should, however, a voter's name fail to appear on the registered voter's list, election officials will still allow the person to vote if they are able to provide information regarding their identity for the purposes of determining if they

are simply reporting to the wrong polling location, or have been omitted from the registration list. ARK. CODE ANN. § 7-5-306 (2005).

2. Proof of Citizenship Requirements

Article 3, Section 1 of the Arkansas state constitution states that persons of appropriate age who are United States citizens are given the right to vote. ARK. CONST., ART. III, § 1 (2005). This section also specifies that the “purpose of this amendment to deny the right of suffrage to aliens.” *Id.* This bill was amended in order to strike a provision that called for a poll tax imposed in order to vote.

3. English Literacy Requirements

There are statutes in Arkansas that allow for voters to have the privacy to mark their ballots. If the voter, however, indicates to the election officials that they need assistance to vote because of physical, sensory, or other disability or legal cause, they may receive assistance. ARK. CODE ANN. § 7-5-310 (2005). A voter who establishes such need may either receive assistance from two election officials, or a person of the voter’s choice. *Id.* Should the voter choose to receive assistance from the two election officials, one will assist the voter, and the other will observe the voting process. *Id.* This provision was amended in 2003 to add the substantive law providing the procedures for election official assistance. *Id.* Whichever option the party chooses, the statute is quite specific that the assistance shall be given “without comment or interpretation.” *Id.*

DOJ OBSERVER/MONITOR COVERAGE

None.

ARKANSAS REPORTED VRA CASES**Jeffers v. Tucker, 847 F. Supp. 655 (E.D. Ark. 1994)****Decision:** Arnold (Chief Circuit Judge), Howard (District Judge)**Concurrence:** Eisele (District Judge)

Facts: In 1989, the District Court found that portions of Arkansas' state-legislative-redistricting plan violated § 2 of the VRA. Jeffers v. Clinton, 730 F. Supp. 196 (E.D. Ark. 1989). The Court ordered the State to remedy these violations by creating additional black-majority legislative districts. Jeffers v. Clinton, 740 F. Supp. 585 (E.D. Ark. 1990). In 1990, the Court approved with modifications, the remedial redistricting scheme proposed by the Arkansas Board of Apportionment ("Board"). Jeffers v. Clinton, 756 F. Supp. 1195 (E.D. Ark. 1990). After the 1990 elections, under which a total of twelve black persons were elected to the 1991 Arkansas General Assembly, a group of residents of the Mississippi Delta filed suit challenging the redistricting scheme. They argued that the Board's plan did not go far enough in its efforts to remedy past discrimination. Specifically, they argued that the plan for the Delta provided for only four House of Representative districts in which a majority of the voting-age population is black, when five could have been drawn. Additionally, the plan created only one such Senate district, when two were possible.

VRA Claims: Redistricting scheme violates § 2 of the VRA.**Issue(s):** Whether a state's redistricting plan violated § 2 of the VRA because it failed to create additional black-majority districts.

Holding: When a political jurisdiction responds to a prior judicial finding of vote dilution with a proposed remedy, the Court cannot simply substitute its judgment of a more equitable remedy for that of the legislative body. Instead, it can consider whether the proffered remedial plan is legally unacceptable because it violates constitutional or statutory voting rights. Here, plaintiffs failed to prove that the Board's plan resulted in less opportunity for blacks who resided in plaintiff's area to participate in the political process and to elect representatives of their choice. The black population in this area was simply too widely dispersed for the Court to hold that the Board violated § 2 by refusing to draw the additional House and Senate districts which plaintiffs had requested.

See also Harvell v. Blytheville Sch. Dist. No.5, 126 F.3d 1038 (8th Cir. 1997) (District Court did not err in adopting redistricting plan proposed by minority voters to remedy § 2 violation over the school board's proposed plan. While the minority voters' plan was aware of racial considerations, its features were not subordinated to race, and the plan did not violate equal protection).

West v. Clinton, 786 F. Supp. 803 (W.D. Ark. 1992)

Decision: Arnold (Chief Circuit Judge), Waters (Chief District Judge), Arnold (District Judge)

Facts: Plaintiffs, voting rights advocates, sought to change a legislative district from a multimember district to three single member districts, which would have resulted in one district having a larger, although not majority, black population.

VRA Claims: Multimember district for electing state representatives violates § 2 of the VRA.

Issue(s): Whether a multimember district, as opposed to three single member districts, violates the VRA by reducing the opportunities of minorities to participate in elections and to elect representatives of their choice.

Holding: Plaintiff's suit was based on the "influence" theory that although blacks were not a majority, coupled with other voters, they could have elected a candidate of their choice. The Court assumed that an "influence" theory was viable, although there was no controlling case law holding as much. However, the Court held that the VRA did not require that districts be redrawn to maximize minority political power. Moreover, assuming that such a theory was viable, plaintiffs offered no facts that showed that the "influence" theory would have worked in the particular district.

Smith v. Clinton, 687 F. Supp. 1310 (E.D. Ark. 1988)

Decision: Arnold (Circuit Judge), Harris (Senior District Judge), Woods (District Judge)

Facts: District 48-49, located within Crittenden County, is a single geographic entity from which two state representatives are elected through at-large voting. Approximately 42% of the population of the district is black, and about 37% of the district residents who are of voting age are black. No black candidate has been elected state representative from the district, nor has any black person been elected to the Arkansas General Assembly from Crittenden County in the 20th Century. Black registered voters filed suit challenging, on statutory and constitutional grounds, the multimember structure of the district.

VRA Claims: Multimember structure of District 48-49 adversely affects the opportunity for black residents to participate in the political process, in violation of § 2 of the VRA, the Fourteenth and Fifteenth Amendments, and section 1983.

Issue(s): Whether at-large voting for two seats in the Arkansas House of Representatives from a dual-member district denies black voters an equal opportunity to participate in the political process, in violation of § 2 of the VRA.

Holding: At-large election of representatives in multimember structure dilutes the voting strength of black residents of the district to virtually guarantee that no black person will ever be elected state representative in Crittenden County. Because it is feasible to divide the district into two contiguous, rationally sized legislative districts, the primary election for state representative from the district must be set aside.

See also Whitfield v. Democratic Party of the State of Arkansas, 890 F.2d 1423 (8th Cir. 1989); Williams v. City of Texarkana, 861 F. Supp. 756 (W.D. Ark. 1992).

But see Turner v. Arkansas, 784 F. Supp. 553 (E.D. Ark. 1991) (court dismissed suit brought by black voters challenging a state statute which provided for the redistricting of congressional districts, holding that black voters could not show that they constituted a majority in a single district, racial polarization, or bloc voting nor could they show that the statute resulted in them having less opportunity to participate in the political process or less opportunity to elect representatives of their choice); Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No.1, 831 F. Supp. 1453 (E.D. Ark. 1993).

Other Arkansas Reported Cases of Interest:

Hoyle v. Priest, 59 F. Supp. 2d 827 (W.D. Ark. 1999) (plaintiff's challenge to state-wide initiative petition procedure that permitted a proposed constitutional amendment to be placed on the general election ballot for direct "grass roots" approval did not implicate the VRA because signing an initiative petition is not tantamount to voting in an election).

Conway Sch. Dist. v. Wilhoit, 854 F. Supp. 1430 (E.D. Ark. 1994) (court dismissed plaintiff's lawsuit requesting a declaration that it was in compliance with the VRA and therefore did not have to elect by single-member zones as required by a state statute because: (1) plaintiff lacked standing to sue under the VRA since it was not an agent of the Attorney General nor was it suing as an aggrieved voter; (2) the alleged injury of a reduction in state funding was not related to a denial or the impairment of voting rights; (3) there was no evidence of any injury fairly traceable to the Director's conduct; (4) neither the addition of a federal question statute as a basis for jurisdiction nor the declaratory judgment statute created a right to an advisory opinion absent a case or controversy; (5) there was no reason to intervene against the legislature's preference for single-member zones because the state statute did not involve racial gerrymandering; and (6) the pre-clearance requirements of the Act did not apply to the state because it no longer had a poll tax or a literacy test for voting).

ARKANSAS UNREPORTED VRA CASES

Moore v. Helena-West School District #2, No. H-C-85-134 (E.D. Ark. 1986)

Decision: Woods (District Judge)

Facts: A hardship was imposed on the plaintiffs because their children were not bused to school due to a newly adopted school board policy limiting the busing of children to those outside of a two-mile radius from school. The town area and school district were in a depressed economic state. In an attempt to meet the fiscal crisis, the Board proposed a 12 million dollar increase in the 1985 election, which was defeated. Plaintiffs argue that this defeat within a school district where blacks are a majority was the reason for the new policy abrogating busing within a two-mile radius. Plaintiffs also argue that whites dominate the district election.

VRA Claims: Violations of the Fourteenth and Fifteenth Amendments, 42 U.S.C. § 1981 and the VRA were claimed, but proof was directed at the two issues below.

Issue(s): (1) Discontinuance by the school board of its policy of busing high school and junior high school students who lived within a two-mile radius of their school; and (2) election of school board members in at-large elections.

Holding: The decision to discontinue busing for junior and senior high school students was motivated entirely by the school's economic crisis. There was no discriminatory intent involved, thus no violations of the Fourteenth and Fifteenth Amendments or the Civil Rights Statute. The court also found that in the context of the particular school district, there was no constitutional infirmity in at-large elections. In response to Plaintiff's request to enjoin holding the next month's school election, the court found no justification for doing so.

GEORGIA EXECUTIVE SUMMARY**DEMOGRAPHICS:**

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
Total population	8,186,453	100.0	6,017,219	100.0
Hispanic or Latino (of any race)	435,227	5.3	299,258	5.0
Not Hispanic or Latino	7,751,226	94.7	5,717,961	95.0
One race	8,072,265	98.6	5,949,808	98.9
White	5,327,281	65.1	4,064,946	67.6
Black or African American	2,349,542	28.7	1,602,985	26.6
American Indian and Alaska Native	21,737	0.3	16,104	0.3
Asian	173,170	2.1	129,659	2.2
Native Hawaiian and Other Pacific Islander	4,246	0.1	3,124	0.1
Some other race	196,289	2.4	132,990	2.2
Two or more races	114,188	1.4	67,411	1.1

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File.

MINORITY REPRESENTATION IN FEDERAL & STATE LEGISLATURE:

There are currently zero minorities in the United States Senate and four minorities in the House of Representatives (African-American: Sanford D. Bishop Jr.- D; John Lewis- D; David Scott- D; Cynthia McKinney- D) from Georgia.

There are twelve minority members of the state Senate (African American: Robert Brown; Gloria Butler; Vincent Fort; Ed Harbison; Emanuel Jones; Steen Miles; Kasim Reed; Valencia Seay; Horacena Tate; Regina Thomas; Charles Walker. Hispanic American: Sam Zamarripa).

There are forty-one minority members of the state House of Representatives (African American: Roberta Abdul Salaam; Alberta Anderson; Sharon Beasley-Teague; Tyrone Brooks; Roger Bruce; Bob Bryant; Douglas Dean; Winfred Dukes; Carl Epps; Virgil Fludd; Keith Heard; Joe Heckstall; Bob Holmes; Henry Howard; Carolyn Hugley; Lester Jackson;

Lynmore James; Sheila Jones; Darryl Jordan; David Lucas; Randal Mangham; Jo Ann McClinton; Billy Mitchell; Howard Mosby; Quincy Murphy; Freddie Powell-Sims; Nikki Randall; Ron Sailor; Georganna Sinkfield; Calvin Smyre; Lanett Stanley-Turner; Pam Stephenson; Willie Lee Talton; "Able" Mable Thomas; Alisha Thomas Morgan; Stan Watson; Earnest "Coach" Williams; Al Williams. Hispanic American: David Casas; Pedro "Pete" Marin. Asian American: Charlice H. Byrd).

Source: http://www.legis.state.ga.us/legis/2005_06/house/05alpha.htm; House Clerk's Office, (404) 656-5015; Stan Watson, chair of Georgia Legislative Black Caucus, (404) 656-0220, (678) 361-0742; Georgia Legislative Black Caucus, (404) 651-5569

SECTION 5 RELATED MATTERS:

Georgia is covered under Section 5 of the Voting Rights Act.

SECTION 203 AND OTHER MINORITY LANGUAGE MATTERS

Georgia is not covered under Section 203 of the Voting Rights Act.

REPORTED INSTANCES OF VOTER SUPPRESSION AND INTIMIDATION

On the official website for the Georgia Republican Party, poll watchers were encouraged to take a still or video camera with them on Election Day to the polls in an attempt to discourage African-Americans from voting. The state's Republican Chairman argued that those web instructions were **four** years old and were ordered removed from the site, where they were left inadvertently. Discovery of the instructions on the website was made on the same day that the Republican National Committee launched ads in Spanish in order to draw the attention of Latino voters in Georgia and in six other states.

Reported in: *The Florida Times-Union* (October 21, 2000)

STATE VOTING LAWS

1. Voter Identification Requirements

Voters in Georgia are subject to identification requirements through the registration process, where identification is a key component of successfully completing the registration process. GA. CODE ANN. § 21-2-220 (2005). The statute allows people wishing to register to vote in person to do so at the Department of Motor Vehicles, and as of July 1, 2005, at the Department of Natural Resources. Id. Should a voter fail to provide identification when registering, their application may eventually be rejected if they do not provide the information upon request. Id. Among the accepted forms of identification are driver's licenses, passports, and other government or employer-issued identification. GA. CODE ANN. § 21-2-417 (2005). If a voter does not have such identification, he or she may sign a form affirming that they are the person identified on the voter's certificate. Id. First time voters are specifically required to provide current and valid identification when registering to vote by mail or in person. GA. CODE ANN. § 21-2-220 (2005). In a 2003 amendment, first time voters who do not provide identification are allowed to vote in a provisional ballot, which is only counted if the registrars are able to verify the information on the certificate is correct. GA. CODE ANN. § 21-2-417 (2005).

2. Proof of Citizenship Requirements

In Georgia, voters must be eighteen and a citizen of both the United States and Georgia in order to qualify to vote. GA. CODE ANN. § 21-2-216 (2005). Georgia statute specifically states that voters applying to register in person are subject to inquiry on the subject of "whether the individual seeking registration is a citizen of the United States, and the person

offering registration shall not be required to offer registration to an individual," who does not answer in the affirmative. GA. CODE ANN. § 21-2-220 (2005).

3. English Literacy Requirements

Voters who are "disabled or illiterate may request assistance in completing the form for registration," but must also sign the form in order to document the person providing assistance's identity. GA. CODE ANN. § 21-2-220 (2005). In addition, voters who further need assistance due to either physical disability or inability to read English may obtain assistance from either a relative or any elector except for poll watchers and poll officers. GA. CODE ANN. § 21-2-409 (2005). In order to qualify for such assistance, the voter must take an oath giving the reason why the voter needs such assistance. Id. No person providing such assistance may do so to more than ten voters, and no candidate or relative of a candidate is allowed to provide assistance. Id.

DOJ OBSERVER/MONITOR COVERAGE

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
Baker		November 5, 1968	Federal	10	
Baker		August 8, 1972	Primary	6	
Baker		August 14, 1984	Primary	9	
Baker		September 4, 1984	Runoff	12	
Baldwin		August 14, 1984	Primary	24	
Baldwin		November 6, 1984	Federal	18	Make sure voters have a fair chance to cast their ballots; in most instances, local officials requested the aid.
Brooks		July 17, 1990	Primary	34	
Brooks		August 7, 1990	Primary Runoff	34	
Brooks		July 18, 2000	Primary	13	
Bulloch		August 5, 1990	Primary	9	

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County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
Burke		November 2, 1982	Federal	36	
Burke		November 16, 1982	Runoff	22	
Burke		August 14, 1984	Primary	15	
Burke		August 12, 1986	Primary	15	
Burke	Keysville	January 4, 1988	Special Mun	2	
Calhoun		August 5, 1980	Primary	18	
Calhoun		January 4, 1994	Runoff	7	
Calhoun		July 9, 1996	Primary	13	
Chattahoochee		August 14, 1984	Primary	3	
Early		August 5, 1980	Primary	19	
Hancock		November 8, 1966	Federal	22	
Hancock		September 11, 1968	Primary	36	
Hancock		November 5, 1968	Federal	16	
Hancock		August 13, 1974	Primary	30	
Hancock		November 5, 1974	Federal	34	
Hancock	Sparta	April 10, 1978	Mun General	4	
Jefferson		August 14, 1984	Primary	12	
Jefferson		November 5, 1996	Federal	3	Make sure that black voters are given appropriate assistance and information by local polling officials.
Johnson		August 5, 1980	Primary	33	
Johnson		August 14, 1985	Special	19	
Johnson	Wrightsville	January 24, 1991	Special Mun	4	
Johnson		November 3, 1992	Federal	10	Ensure that black voters are afforded their fair opportunity to cast their ballot, including those who require assistance in

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
					casting their ballot because of an inability to read or write, blindness or disability.
Johnson		July 9, 1996	Primary	12	
Johnson		August 6, 1996	Primary Runoff	13	
Johnson		August 27, 1996	Special Runoff	10	Ensure that the county complies with a consent decree requiring that poll officials are fairly selected and trained.
Johnson		November 5, 1996	Federal	10	County failed to appoint African American poll watchers in the past.
Lee		September 11, 1968	Primary	12	
McIntosh		July 21, 1992	Primary	18	
McIntosh		August 11, 1992	Primary Runoff	18	
McIntosh		January 26, 1993	Runoff	18	Repeat of run-off between black candidate and white candidate; in previous election, the black candidate appeared to have won by one vote.
Meriwether		August 10, 1976	Primary	15	
Meriwether		August 9, 1988	Primary	10	
Meriwether		October 15, 1991	Special	8	
Meriwether		August 6, 1996	Primary Runoff	4	
Mitchell		August 5, 1980	Primary	19	
Peach		November 7, 1972	Federal	20	
Peach		July 21, 1992	Primary	17	
Pike		August 14, 1984	Primary	17	

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
Pike	Zebulon	March 13, 1990	Special Mayoral	4	Originally scheduled election was enjoined in light of the conduct by the city of an illegal, after-hours voter registration session for white persons only.
Randolph		August 11, 1992	Primary Runoff	18	
Randolph		November 3, 1992	Federal	12	To ensure that black voters are afforded their fair opportunity to cast their ballot, including those who require assistance in casting their ballot because of an inability to read or write, blindness or disability.
Randolph		December 7, 1993	Special	12	
Randolph		November 5, 2002	Federal	11	Observers watching for any signs of discrimination based on race or problems encountered by the disabled, as well as whether all eligible voters are able to cast a ballot.
Randolph		August 10, 2004	Primary Runoff		Complaints by citizens and local officials of racial tensions in the county.
Screven		September 11, 1968	Primary	12	
Stewart		August 10, 1976	Primary	13	
Stewart		August 31, 1976	Primary Runoff	12	
Stewart		July 21, 1992	Primary	13	

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
Stewart		June 29, 1993	Special	22	Rerun of primary between black and white candidate; in the past the race for sheriff has been marked by events that impeded black participation in the electoral process such as meeting the needs of blacks who request assistance.
Sumter		August 5, 1980	Primary	26	
Sumter		August 8, 2000	Primary Runoff	14	Monitor treatment of African-Americans, including whether they are allowed assistance from a person of their choice or are improperly turned away from polls.
Talbot		August 9, 1988	Primary	15	
Talbot		August 30, 1988	Primary Runoff	17	
Talbot		July 21, 1992	Primary	17	
Talbot		August 10, 1993	Special	13	
Taliaferro		November 5, 1968	Federal	10	
Taliaferro		September 9, 1970	Special	6	
Taliaferro		August 8, 1972	Primary	6	
Taliaferro		August 29, 1972	Primary Runoff	12	
Taliaferro		August 11, 1992	Primary Runoff	8	
Taliaferro		July 19, 1994	Primary	6	Past elections in Taliaferro County had been marred by events that impeded full participation by black voters.
Taliaferro		November 8,	Federal	5	A white and an

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
		1994			African-American were vying for a seat on the board of commissioners. In previous elections, black voters were denied to right to be assisted by persons they chose.
Taliaferro		July 21, 1998	Primary	6	
Telfair		August 5, 1980	Primary	18	
Telfair		August 9, 1988	Primary	21	
Terrell		September 11, 1968	Primary	32	
Terrell		November 5, 1968	Federal	10	
Terrell	Dawson	December 10, 1975	Municipal	11	
Terrell		August 10, 1976	Primary	27	
Tift		August 5, 1980	Primary	14	
Twiggs	Jeffersonville	July 14, 1992	Special Mun	4	City's failed to prepare absentee ballots in a timely fashion in previous election so that 16 black voters, enough to change the result of the election, were denied the right to vote. In addition, a Justice Department investigation found that within three weeks of the election nearly 20% of the city's registered voters received notices telling them they were not eligible to vote in the special election. Over 70% of the people who received these notices

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
Twiggs		July 21, 1992	Primary	16	were black voters.
Twiggs		June 15, 1993	Special	19	The timing of the referendum and procedures employed may have been chosen in order to diminish black voting potential.
Twiggs		November 5, 1996	Federal	11	County failed to appoint African American poll watchers in the past.
Twiggs	Jeffersonville	November 2, 1999	Mun General	5	Ensure that African American voters receive assistance from the person of their choice and are not intimidated by white poll workers when asking for assistance.
Twiggs		July 18, 2000	Primary	15	
Worth		August 14, 1984	Primary	20	
Worth		September 4, 1984	Runoff	7	

GEORGIA REPORTED VRA CASES

Georgia v. Ashcroft, 539 U.S. 461 (2003)

Majority: O'Connor (Justice), Rehnquist (Chief Justice), Scalia, Kennedy, Thomas (Justices)

Concurrence: Kennedy and Thomas (Justices)

Dissent: Souter, Stevens, Ginsburg, and Breyer (Justices)

Facts: After the 2000 census, Georgia adopted a new state voter redistricting plan and sought, pursuant to § 5 of the VRA, to have the plan precleared. The district court denied preclearance, holding that the state failed to demonstrate that the plan would not have a retrogressive effect on African-American voters' effective exercise of the right to vote. Thus the plan violated § 5.

Issue(s): Whether Georgia's state senate redistricting plan should have been precleared under § 5 of the VRA. Whether Georgia's state senate redistricting plan is retrogressive as compared to its previous, benchmark districting plan.

Holding: The Court vacated and remanded the judgment of the district court. According to the Court, the district court failed to consider all the relevant factors when it examined whether the plan resulted in a retrogression of African-American voters' effective exercise of the electoral franchise. First, while the district court acknowledged the importance of assessing the statewide plan as a whole, it focused too narrowly on three proposed districts. It did not examine the increases in the African-American voting age population that occurred in many of the other districts. Second, the district court did not explore in depth any other factor beyond the comparative ability of African-American voters in the majority-minority districts to elect a candidate of their choice. In doing so, it paid inadequate attention to the support of legislators representing the benchmark majority-minority districts and the maintenance of the legislative influence of those representatives.

City of Monroe v. United States, 522 U.S. 34 (1997)

Majority: Rehnquist (Chief Justice), Kennedy, Thomas, O'Connor, Stevens, Ginsburg, (Justices)

Concurrence: Scalia (Justice)

Dissent: Souter and Breyer (Justices)

Facts: Prior to 1966, the City used plurality voting in mayoral elections. In 1966, the General Assembly amended the City's charter to require majority voting. The amendment was never precleared. In 1968 the General Assembly passed a comprehensive Municipal Election Code ("Code") which was precleared and is still in effect. The Code contained a majority-vote provision. In 1971, the General Assembly passed a revision of the City's charter which included an explicit provision for majority voting. The revisions were never precleared. In 1990, the General Assembly again amended the City's charter which included the majority-vote requirement. When the submission was submitted for preclearance the Attorney General objected, interpreting the submission as effecting a change from plurality to majority voting. The Government filed suit against the City seeking to enjoin majority voting.

VRA Claims: City did not seek preclearance for majority voting in mayoral elections, as required by § 5 of the VRA.

Issue(s): Whether the City was precluded from using majority voting in mayoral elections because it failed to comply with the preclearance requirement of § 5 of the VRA.

Holding: The 1968 Code controlled the disposition of this case. Section 34A-1407(a) of the Code deferred to the City's charter when the charter was specific as to the method of voting, and provided a default rule of majority voting when a charter made no such provision. The 1966 and 1971 charters were invalid, and could not provide for plurality voting. Thus the default rule applied.

But see Caudell v. Toccoa, 153 F. Supp. 2d 1371 (N.D. Ga. 2001) (holding Georgia state law which constituted a change affecting the eligibility of plaintiff and others to become or remain candidates for election to the city commission was invalid because the state failed to comply with the preclearance requirements of § 5).

Miller v. Johnson, 515 U.S. 900 (1995)

Majority: Kennedy (Justice); Rehnquist (Chief Justice), Scalia, O'Connor and Thomas (Justices)

Concurrence: O'Connor (Justice)

Dissent: Stevens (Justice) dissented and filed opinion and Justice Ginsburg dissented and filed an opinion in which Justices Stevens and Breyer joined and in which Justice Souter joined in part.

Facts: In 1990, the decennial census indicated that Georgia's population of 6,478,216 persons entitled it to an additional eleventh congressional seat. As a result, the House and Senate adopted redistricting guidelines which required single-member districts of equal population, contiguous geography, non-dilution of minority voting strength, fidelity to precinct lines, and compliance with §§ 2 and 5 of the VRA. Only after these requirements were met did the guidelines permit drafters to consider other ends. In 1992, the Attorney General precleared a congressional redistricting plan. After African-American candidates were elected to Congress from all three majority-black districts, five white voters from the Eleventh District filed suit alleging that the Eleventh District was a racial gerrymander and thus a violation of the Fourteenth Amendment. The Eleventh District contained African-American communities 260 miles apart, covered thousands of square miles and connected distant urban African-American communities through land bridges that ran through rural areas.

VRA Claims: Redistricting plan conforms to the requirements of § 5 of the VRA but violates the Fourteenth Amendment.

Issue(s): Whether Georgia's new Eleventh District gives rise to a valid equal protection claim, under the principles announced in Shaw v. Reno, 509 U.S. 630 (1993), and if so, whether it can be sustained nonetheless as narrowly tailored to serve a compelling governmental interest.

Holding: Georgia's congressional redistricting plan violates the Fourteenth Amendment. The plan is so bizarre on its face that it is unexplainable on grounds other than race. Although Georgia's true interest in designing the plan was to satisfy preclearance demands under the VRA, compliance with federal antidiscrimination laws alone is not a compelling state interest. Moreover, the plan was not reasonably necessary even if it was required to obtain preclearance. The Court left open the possibility that compliance with the VRA could be a compelling state interest, but found that the Georgia redistricting plan was not narrowly tailored because the VRA does not require three majority-black districts.

Holder v. Halls, 512 U.S. 874 (1994)

Plurality: Justice Kennedy, Chief Justice Rehnquist, and Justice O'Connor in part. Justice O'Connor concurring in part and concurring in judgment. Justice Thomas, joined by Justice Scalia, concurring in judgment.

Dissent: Justice Blackmun, joined by Justices Stevens, Souter, and Ginsburg, dissenting. Justice Ginsburg filed a separate dissent. Justice Stevens, joined by Justices Blackmun, Souter and Ginsburg, filed a separate dissent.

Facts: Bleckley County, a rural county in central Georgia, had a single-commissioner form of government. No African-American had run for or been elected to the office of Bleckley County Commissioner. Respondents argued that this form of government diluted the vote of African-Americans and advocated for a five member commission with single-member election districts. Respondents also brought a constitutional claim alleging that the county's single-member commission was enacted or maintained with an intent to exclude or limit the political influence of the county's African-American community in violation of the Fourteenth and Fifteenth Amendments.

VRA Claim: The single-commissioner form of government violates §2 of the VRA by diluting the vote of African-Americans.

Issues: Whether the size of a governing authority is subject to a vote dilution challenge under §2 of the VRA.

Majority: The size of a governing authority is not subject to a vote dilution challenge under §2 of the VRA because there is no objective and workable standard for choosing a reasonable benchmark against which to measure the existing voting practice. The Court found that there was no principled reason why one size should be picked over another as the benchmark for comparison. Because the Court of Appeals had concluded that a §2 violation had occurred and did not consider the respondents' constitutional claims, the Court remanded for consideration of respondents' constitutional claims.

Dejulio v. Georgia, 290 F.3d 1291 (11th Cir. 2002)

Decision: Birch, Cox, and Alarcon (Circuit Judges)

Facts: The House and Senate adopted local delegations for the consideration of local legislation. Each county, municipality, or other jurisdiction has a local delegation and any legislator whose district encompasses territory within a specific city or county is a member of the local delegation for that entity. The local delegations make recommendations to the House and Senate standing committees, which then recommend local legislation to the entire body. If local legislation has received the requisite number of signatures of representatives and senators whose districts lie partially or wholly within the locality which the legislation affects, it is ordinarily passed on an uncontested basis as a matter of local courtesy. Plaintiffs filed a voting rights action pursuant to § 1983 and the Fourteenth Amendment, and an action to enforce the provisions of the Fourteenth Amendment and the VRA, alleging that the procedures for enactment of local legislation violated the "one man, one vote" standard and that the changes in the General Assembly's internal rules were subject to the preclearance requirement of § 5 of the VRA.

VRA Claims: The procedures for enactment of local legislation by the Georgia General Assembly violate the “one person, one vote” standard, and the changes in the General Assembly’s internal rules are subject to the preclearance requirement of § 5 of the VRA.

Issue(s): (1) Whether the procedures by which the Georgia General Assembly considers local legislation violates the principle of “one person, one vote,” and (2) whether the changes in internal rules and procedures by which the General Assembly enacts local legislation are subject to the preclearance requirement of the VRA.

Holding: The General Assembly’s local delegations are not subject to the “one person, one vote” requirements because they do not perform governmental functions. Additionally, the changes in internal rules and procedures by which the General Assembly enacts local legislation is not subject to the VRA’s preclearance requirements because changes in the decision-making authority of elected officials are not changes in voting practices or procedures.

Lucas v. Townsend, 967 F.2d 549 (11th Cir. 1992)

Decision: Edmonson (Circuit Judge), Roney and Gibson (Senior Circuit Judges)

Facts: In 1987, the Bibb County Board of Education (“Board”) began planning to call for a school bond referendum to provide funds to build a new high school and middle school. The Board decided to submit the bond issue to the electorate as a single question during the November 8, 1988 general election. Plaintiffs, representing African-American citizens, challenged the Board’s action as a violation of the First, Thirteenth, Fourteenth, and Fifteenth Amendments and § 2 of the VRA.

VRA Claims: Board’s actions violated § 2 of the VRA.

Issue(s): Whether the bond referendum constitutes a standard, practice or procedure under § 2 of the VRA.

Holding: The district court rejected plaintiffs’ § 2 claims and further determined that plaintiffs failed to prove their claims of constitutional violations. This Court affirmed, holding that, assuming without deciding that the form and timing of the bond referendum can constitute a standard, practice, or procedures as contemplated by § 2 of the VRA, the district court’s factual findings regarding plaintiffs’ failure to show either discriminatory effect or intent with respect to their claim that racial polarization infects voting on referenda in the county, was equally fatal to their § 2 claims.

Other Georgia § 2 Reported VRA Cases:

Brooks v. Miller, 158 F.3d 1230 (11th Cir. 1998) (despite evidence of a history of racial discrimination in state government, majority vote requirement for primary elections, requiring a runoff unless a candidate received a majority vote had neither a discriminatory purpose or effect and was valid)

Cofield v. City of LaGrange, 969 F. Supp. 749 (N.D. Ga. 1997) (court rejected voters’ claim that the at-large voting system violated § 2 of the VRA because although voters demonstrated

that they were sufficiently large and geographically compact to constitute a majority in a single-member district and that they were politically cohesive, they failed to establish that the white majority voted sufficiently as a block to enable it usually to defeat their preferred candidate).

Other Georgia Reported VRA Cases of Interest:

Larios v. Cox, 314 F. Supp. 2d 1357 (N.D. Ga. 2004) (The court was obliged to appoint a special master to draw interim redistricting plans for the General Assembly after the state legislature failed to adopt new plans that did not violate the Fourteenth Amendment. The special master's plan complied fully with the U.S. Constitution, the VRA, and traditional redistricting guidelines).

Smith v. Cobb County Bd. of Elections and Registrations, 314 F. Supp. 2d 1274 (N.D. Ga. 2002) (preclearance not required when court fashions its own plan to remedy unconstitutional electoral voting districts).

GEORGIA UNREPORTED VRA CASES

Woodward v. Mayor and City Council of the City of Lumber City, CV387-027 (M.D. Ga. August 3, 1990)

Facts: On November 25, 1987, the Court enjoined elections for the mayor and city council on the ground that the defendants had failed to comply with § 5 of the VRA in the adoption and implementation of changes in the city's voting process. In response, the defendants submitted a number of voting practices to the Attorney General for preclearance. The Attorney General objected to the voting practices on the ground that they would only serve to enhance discriminatory features of the system. The Court entered another order in 1989 holding that at-large elections violate § 2 of the Act and enjoining defendants from holding elections. Again, the defendants submitted a plan to the Attorney General for § 5 preclearance, but it was struck down because it retained a majority vote requirement. The Court then directed the parties to submit independently new remedial plans.

VRA Claims: At-large elections, majority vote and numbered post provisions for election of the mayor and city council violate §§ 2 and 5 of the VRA.

Issue(s): Whether the city's governmental voting provisions violate the VRA.

Holding: Given the existence of polarized voting and the history of discrimination, the Court rejected the majority vote requirement reasoning that its use could enhance the opportunity for racial discrimination and submerge African-American voting strength.

City of Rome v. Bell, C-76-159-R (N.D. Ga. February 21, 1977)

Facts: The City submitted a proposed annexation plan for administrative approval. A year later, the Attorney General interposed objections to the annexations. The following year, the City sought reconsideration of the objections and ultimately brought the instant action seeking to compel the Attorney General to withdraw his remaining objections on the grounds that the Attorney General failed to perform his duty to object in a procedurally proper manner.

VRA Claims: Attorney General failed to follow the procedural dictates of § 5.

Issue(s): Whether this Court has jurisdiction under the preclearance procedures of § 5.

Holding: A challenge to an Attorney General's findings of fact or law can only be resolved by a three-judge court in the District of Columbia. Additionally, the express terms of § 14(b) of the VRA requires that suits seeking declaratory or injunctive relief against enforcement of the VRA be brought in the District of Columbia. Constitutional challenges to the Act must also be brought in the District of Columbia. Plaintiffs argue that this action does not challenge a substantive aspect of the interposed objections but rather seeks only mandamus relief. As such, they argue, the action is not within the jurisdictional limitations imposed by § 5. The Court disagreed, reasoning that a mandate directing the Attorney General to withdraw his objections is effectively a declaratory judgment that his actions were improper and outside the scope of authority. Where the distinction between declaratory judgment and an injunction, on one hand, and mandamus on the other, is material to the court's jurisdiction, mandamus should not lie to direct the reversal of an action already taken. Because the action was properly for the District of Columbia, the Court lacked subject matter jurisdiction.

KENTUCKY EXECUTIVE SUMMARY**DEMOGRAPHICS:**

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
Total population	4,041,769	100.0	3,046,951	100.0
Hispanic or Latino (of any race)	59,939	1.5	41,061	1.3
Not Hispanic or Latino	3,981,830	98.5	3,005,890	98.7
One race	3,999,326	98.9	3,024,030	99.2
White	3,640,889	90.1	2,772,539	91.0
Black or African American	295,994	7.3	206,858	6.8
American Indian and Alaska Native	8,616	0.2	6,546	0.2
Asian	29,744	0.7	22,572	0.7
Native Hawaiian and Other Pacific Islander	1,460	0.0	1,048	0.0
Some other race	22,623	0.6	14,467	0.5
Two or more races	42,443	1.1	22,921	0.8

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File.

MINORITY REPRESENTATION IN FEDERAL & STATE LEGISLATURE:

There are currently no minorities in the United States Senate or the House of Representatives from Kentucky

There is one minority members of the state Senate as follows: Gerald Neal, African-American, Democrat.

There are five minority members of the state House of Representatives as follows: Jesse Crenshaw, African-American, Democrat; Derrick Graham, African-American, Democrat; Reginald K. Meeks, African-American, Democrat; Darryl T. Owens, African-American, Democrat; and Arnold Simpson, African-American, Democrat.

Source: http://www.lrc.ky.gov/house/hseadd_05.htm; <http://www.lrc.ky.gov/pubinfo/staff.htm>, Susan Kennedy, (502) 564-8100

SECTION 5 RELATED MATTERS:

Kentucky is not covered under Section 5 of the Voting Rights Act.

SECTION 203 AND OTHER MINORITY LANGUAGE MATTERS

Kentucky is not covered under Section 203 of the Voting Rights Act.

REPORTED INSTANCES OF VOTER SUPPRESSION AND INTIMIDATION

Kwesi Mfume, President and CEO of the NAACP, called for an end to blatant voter intimidation at predominantly black voting precincts throughout the state. The NAACP reported that the Republican Party placed challengers at 59 precincts during the state's gubernatorial election, frightening away many voters. Leaders in Kentucky's local chapter of the NAACP called the move "racist" because poll watchers were not sent to all polling places, just those located in predominately black areas. Mfume encouraged black voters in the state to carry photo identification with them in the future because such voters must be "prepared to defend" their right to vote.

Reported in: *The Jackson Advocate* (October - November 2003)

STATE VOTING LAWS**1. Voter Identification Requirements**

Kentucky state law requires election officials to confirm the identity of voters either through acquaintance, or by a document. KY. REV. STAT. ANN. § 117.227 (2004). Last amended in 2002, this law provides that proper documentation may include driver's licenses, social security cards, or credit cards. *Id.* The election official must sign the voter roster list, documenting the type of identification provided. *Id.* A related statute requires that voters must provide their name and address to the election clerk, and sign the roster in a space opposite their printed name. KY. REV. STAT. ANN. § 117.225 (2004). Signing the list is considered by Kentucky courts as a prerequisite to the right to vote. *Sims v. Atwell*, 556 S.W.2d 929 (Ky. Ct. App. 1977).

2. Proof of Citizenship Requirements

Section 145 of the Kentucky constitution states that “every citizen of the United States of the age of eighteen years who has resided in the state one year, and in the county six months” shall have the right to vote. KY. CONST. § 145 (2004). In addition, the constitution empowers the Kentucky Secretary of State to promulgate regulations regarding the registration of voters. KY. CONST. § 147 (2004).

3. English Literacy Requirements

Although Kentucky law prohibits people other than the voter from being in the voting room other than a minor child, KY. REV. STAT. § 117.235 (2004), physically or mentally disabled voters, or those unable to read English may receive assistance in casting their votes. KY. REV. STAT. § 117.255 (2004). Voters who are unable to read English may receive assistance after making and filing an oath with the precinct clerk as to their need for assistance. *Id.* A precinct judge may assist the voter in casting a ballot, or the voter may choose someone to give assistance. *Id.* Persons not eligible to give assistance in these situations include the “voter’s employer, an agent of the voter’s employer, or an officer or agent of the voter’s union.” *Id.*

DOJ OBSERVER/MONITOR COVERAGE

None.

KENTUCKY UNREPORTED VRA CASES

West v. Warren County Independent Political Council, 802 F.2d 461 (6th Cir. 1986) (not selected for publication).

Decision: DeMascio (District Judge) and Wellford and Milburn (Circuit Judges).

Facts: Plaintiff alleged that the at-large voting scheme for the Board of Commissioners in Bowling Green County violated § 2 of the VRA. The county government consisted of a five-member legislative board comprised of the mayor and four commissioners. The district court dismissed the suit for failure to state a claim upon which relief could be granted.

VRA claim: The at-large election scheme violated § 2 of the VRA by denying African-Americans an equal opportunity to participate in elections.

Issue: Whether plaintiffs needed to present direct evidence of discriminatory intent to challenge an election scheme.

Holding: The district court dismissed plaintiff's claim pursuant to the Supreme Court's decision in Mobile v. Bolden, 446 U.S. 55 (1980). Since that time, the Court decided Rogers v. Lodge, 458 U.S. 613 (1982), which adopted the "totality of the circumstances" approach to proof of discriminatory intent. Thus, the court of appeals remanded to the district court for reconsideration in light of Lodge.

LOUISIANA EXECUTIVE SUMMARY**DEMOGRAPHICS:**

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
Total population	4,468,976	100.0	3,249,177	100.0
Hispanic or Latino (of any race)	107,738	2.4	77,083	2.4
Not Hispanic or Latino	4,361,238	97.6	3,172,094	97.6
One race	4,420,711	98.9	3,219,218	99.1
White	2,856,161	63.9	2,174,322	66.9
Black or African American	1,451,944	32.5	965,052	29.7
American Indian and Alaska Native	25,477	0.6	17,247	0.5
Asian	54,758	1.2	40,038	1.2
Native Hawaiian and Other Pacific Islander	1,240	0.0	913	0.0
Some other race	31,131	0.7	21,646	0.7
Two or more races	48,265	1.1	29,959	0.9

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File.

MINORITY REPRESENTATION IN FEDERAL & STATE LEGISLATURE:

There are currently zero minorities in the United States Senate and three minorities in the House of Representatives (African-American: William J. Jefferson- Democrat Indian American; Bobby Jindal-Republican Arab-American; Charles Bousanty, Jr.- Republican) from Louisiana.

There are nine minority members of the state Senate (African-American: Diana E. Bajoie- Democrat; Sharon Weston Broome- Democrat; Donald R. "Don" Cravins- Democrat; Ann Duplessis- Democrat; Cleo Fields- Democrat; Lydia P. Jackson- Democrat; Charles D. "C.D." Jones- Democrat; Edwin R. Murray- Democrat; Derrick Shepherd- Democrat).

There are twenty-three minority members of the state House of Representatives (African-American: Cedric Richmond- Democrat; Michael Jackson- Democrat; Austin Badon- Democrat; Regina Barrow- Democrat; Ernest Baylor, Jr.- Democrat; Roy Burell- Democrat;

Karen R. Carter- Democrat; Donald Cravins, Jr.- Democrat; Israel B. Curtis- Democrat; Yvonne Dorsey- Democrat; Richard "Rick" Gallot, Jr.- Democrat; Cedric Bradford Glover- Democrat; Cheryl Artise Gray- Democrat; Elcie J. Guillory- Democrat; Terrell L. Harris- Democrat; Avon R. Honey- Democrat; Willie Hunter, Jr.- Democrat; Jalila Jefferson-Bullock- Democrat; Charmaine L. Marchand- Democrat; Arthur A. Morrell- Democrat; Wilfred T. Pierre- Democrat; Roy J. Quezaire, Jr.- Democrat; Hispanic American: Juan A. LaFonta- Democrat).

Source: <http://house.louisiana.gov/H-Reps/hdemograph.asp>; <http://house.legis.state.la.us/H-Reps/members-special-info.asp>

SECTION 5 RELATED MATTERS:

Louisiana is covered under Section 5 of the Voting Rights Act.

SECTION 203 AND OTHER MINORITY LANGUAGE MATTERS

Avoyelles Parish is covered under Section 203 for French language.

REPORTED INSTANCES OF VOTER SUPPRESSION AND INTIMIDATION

In an interview, Julian Bond, chairman of the NAACP, discussed his concerns about efforts to suppress the black vote. Bond opined that although nearly forty years have passed since the Voting Rights Act's enactment, voter intimidation is alive and well. Bond noted that in *Louisiana* in 2002, fliers were passed out in African-American neighborhoods advertising the wrong date for a key U.S. Senate runoff election in an effort to confuse black voters.

Reported by: *Salon.com* (October 28, 2004)

STATE VOTING LAWS

1. Voter Identification Requirements

In Louisiana, voters are required to provide identification when registering to vote. LA. REV. STAT. ANN. § 18:105 (2004). Among the accepted forms of identification are current Louisiana driver's licenses, birth certificates, or some other documentation that

“reasonably and sufficiently” establishes the voter’s age, identity, and residence. Id. Discretion is given to the electors in accepting the forms of identification, and should an official determine there is inadequate proof of identification; the voter may be required to produce two witnesses who reside in the voting precinct to attest to the voter’s age, identity, and residency. Id. According to a recent Attorney General opinion, photo identification is “a mandatory prerequisite” to voting in Louisiana, and thus, election officials are to decide whether the form of identification is adequate. Op. Att’y Gen. No.02-0372 (2002).

Additionally, Louisiana law authorizes the secretary of state to implement a voter registration form that requires several forms of identification. LA. REV. STAT. ANN. § 18:104 (2004). In 2003, Section 104 was rewritten so that in lieu of social security number, an applicant could provide either a Louisiana driver’s license number, or alternatively, the last four digits of the applicant’s social security number. Id. Otherwise, applicants are required to provide a copy of current photo identification, or a bank statement, utility bill, government check, paycheck, or some other government-issued document with the applicant’s name and address. Id.

2. Proof of Citizenship Requirements

The Louisiana state constitution provides that citizens of the state who have reached the age of eighteen shall be permitted to register to vote. LA. CONST. ART. I, § 10 (2005). Still, Section 105 of the election code anticipates that applicants of foreign birth need to provide proof of naturalization. LA. REV. STAT. ANN. § 18:105 (2004). Should an election official receive any voter registration card demonstrating the voter is of foreign birth, they may additionally require further proof of U.S. citizenship. Op. Att’y Gen. No. 00-48-A (2000). In addition, presentation of a valid United States passport is necessary for those who have not previously registered or is not registered at the time of application, if the person claims to be a

naturalized United States citizen. LA. REV. STAT. ANN. § 18:105 (2004). Any person wishing to register to vote who is claims United States citizenship by some method other than birth or naturalization must also provide proof of such citizenship. Id.

3. English Literacy Requirements

Section 106 of the Louisiana election code provides that if a voter is unable to read or write English, the registrar or any other election official authorized to accept voter registrations may assist the applicant by reading the documents and executing the same according to the applicant's wishes. LA. REV. STAT. ANN. § 18:106 (2004). If the voter does not speak English adequately, the dictation may be taken and given through an interpreter. Id. A voter unable to provide a signature may instead make a mark in the presence of two witnesses, who shall also sign the application as having witnessed the application. Id. Section 106 also provides that pursuant to the Voting Rights Act, if a voter is part of a language minority group, they shall be provided the appropriate materials in the language covered in the act. Id.

DOJ OBSERVER/MONITOR COVERAGE

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
De Soto		November 4, 1967	Primary	27	
De Soto		August 17, 1968	Primary	22	
De Soto		August 19, 1972	Primary	16	
De Soto		November 7, 1972	Federal	14	
De Soto		November 1, 1975	Primary	5	
East Carroll		August 13, 1966	Primary	20	
East Carroll		September 24, 1966	Primary Runoff	10	
East Carroll		November 8, 1966	Federal	10	

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
East Carroll		November 4, 1967	Primary	24	
East Carroll		December 16, 1967	Primary Runoff	24	
East Carroll	Lake Providence	March 23, 1974	Mun Primary	12	
East Carroll	Lake Providence	May 4, 1974	Mun Prim Runoff	12	
East Carroll		November 1, 1975	Primary	38	
East Carroll		August 14, 1976	Primary	30	
East Carroll		October 27, 1979	Primary	11	
East Carroll		December 8, 1979	Primary Runoff	34	
East Carroll	Lake Providence	May 15, 1982	Mun Runoff	23	
East Carroll		October 1, 1994	Primary	11	Previous elections in the county were marred by events that impeded the full participation of black voters in the electoral process, such as denying black voters their right to be assisted by a person of their choice.
East Carroll		October 9, 1995	Early Voting	2	
East Carroll		October 21, 1995	Primary	11	
East Carroll		November 18, 1995	General Runoff	6	
East Carroll		October 23, 1999	Primary	11	Monitor treatment of African American voters, including whether they are able to receive assistance from the person of their choice and whether they are improperly turned away by poll

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
					workers.
East Carroll		November 20, 1999	Runoff	6	Monitor treatment of African American voters, including whether they are able to receive assistance from the person of their choice, whether they are improperly turned away by poll workers, whether they are incorrectly told their affidavit ballots are invalid, and whether they are intimidated by white poll workers when asking for assistance.
East Feliciana		August 13, 1966	Primary	42	
East Feliciana		September 24, 1966	Primary Runoff	26	
East Feliciana		November 8, 1966	Federal	26	
East Feliciana		December 13, 1975	Primary Runoff	13	
East Feliciana		August 14, 1976	Primary	3	
Madison		August 13, 1966	Primary	53	
Madison		September 24, 1966	Primary Runoff	33	
Madison		November 8, 1966	Federal	23	
Madison		November 4, 1967	Primary	44	
Madison		December 16, 1967	Primary Runoff	34	
Madison		April 9, 1968	Special	18	
Madison		August 17, 1968	Primary	18	
Madison		November 5, 1968	Federal	18	
Madison		May 20, 1969	Special	20	
Madison		August 15, 1970	Primary	16	

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
Madison		November 6, 1971	Primary	28	
Madison		December 18, 1971	Primary Runoff	6	
Madison	Tallulah	March 23, 1974	Mun Primary	20	
Madison		November 1, 1975	Primary	56	
Ouachita		August 13, 1966	Primary	20	
Plaquemines		August 13, 1966	Primary	34	
Plaquemines		September 24, 1966	Primary Runoff	20	
Plaquemines		November 8, 1966	Federal	20	
Plaquemines		November 4, 1967	Primary	28	
Plaquemines		February 6, 1968	Primary	16	
Plaquemines		October 27, 1979	Primary	27	
Sabine		September 28, 1974	Runoff	12	
St. Helena		August 19, 1972	Primary	24	
St. Helena		September 20, 1972	Primary Runoff	6	
St. Helena		December 13, 1975	Primary Runoff	4	
St. Helena		October 27, 1979	Primary	44	
St. Helena		December 8, 1979	Primary Runoff	14	
St. Helena		October 22, 1983	Primary	3	
St. Landry		April 5, 1980	Special	12	
Tensas		October 23, 1999	Primary	24	Monitor treatment of African American voters, including whether they are able to receive assistance from the person of their choice and whether they are improperly turned away by poll workers.
Tensas		November 20,	Runoff	15	Monitor treatment of

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
		1999			African American voters, including whether they are able to receive assistance from the person of their choice, whether they are improperly turned away by poll workers, whether they are incorrectly told their affidavit ballots are invalid, and whether they are intimidated by white poll workers when asking for assistance.
Tensas	St. Joseph	October 7, 2000	Mun Primary	8	Monitor treatment of African American voters, including whether they are able to receive assistance from the person of their choice and whether they are improperly turned away by poll workers.
West Feliciana		August 13, 1966	Primary	26	
West Feliciana		September 24, 1966	Primary Runoff	22	
West Feliciana		November 8, 1966	Federal	12	
West Feliciana		November 4, 1967	Primary	34	
West Feliciana		February 6, 1968	Primary	18	
West Feliciana		August 17, 1968	Primary	9	
West Feliciana		November 6, 1971	Primary	9	

LOUISIANA REPORTED VRA CASES**Reno v. Bossier Parish School Board, 528 U.S. 320 (2000).**

Majority: Scalia (Justice), Rehnquist (Chief Justice), O'Connor, Kennedy, and Thomas (Justices)

Concurrence: Thomas (Justice)

Concurrence in part and dissent in part: Souter, Stevens, Ginsburg, and Breyer (Justices)

Dissent: Stevens and Ginsburg (Justices); Breyer (Justice)

Facts: In deciding Bossier Parish I, the Court left open the question of whether the § 5 of the VRA “purpose” inquiry extended beyond the search for retrogressive intent. The district court on remand concluded that the record presented no evidence of discriminatory but nonretrogressive intent and again granted preclearance, but failed to address whether § 5 prohibits preclearance of a plan enacted with a discriminatory but nonretrogressive purpose.

VRA Claims: Adoption of the redistricting plan would violate § 5 if it had not been precleared by the Justice Department.

Issues: Whether the “purpose” prong of § 5 prohibits preclearance of a redistricting plan enacted with discriminatory but nonretrogressive purposes.

Majority: To obtain preclearance of a plan under § 5 of the VRA, a jurisdiction must show that the change “does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.” As established by Beer v. United States, 425 U.S. 130 (1976), the phrase “abridging the right to vote on account of race or color” limited the term “effect” to effects that were retrogressive because they worsened the position of the minority voter. The purpose prong is also qualified by the abridgment language and the limitation must be interpreted in the same way as in Beer. Consequently, § 5 only covers retrogressive purposes and does not prohibit preclearance of a redistricting plan enacted with a discriminatory but nonretrogressive purpose. The context of § 5 is addressed to the baseline of the status quo and the determination that the voting change is no more dilutive than what it replaces.

Dissent: Dilutive purpose and dilutive effect are different inquiries and should not be interpreted in the same way. A broader interpretation of the purpose to abridge would give the purpose prong the intended effect demonstrated by the VRA’s legislative history and would preserve the capacity of § 5 to bar preclearance to all intended violations of the Fifteenth Amendment. The purpose prong of § 5 should be interpreted to bar plans conceived with discriminatory but nonretrogressive intent.

Reno v. Bossier Parish School Board, 520 U.S. 471 (1997).

Majority: O'Connor (Justice), Rehnquist (Chief Justice), Scalia, Kennedy, and Thomas (Justices).

Concurrence: Thomas (Justice).

Concurrence in part and concurrence in judgment: Breyer and Ginsburg (Justices).

Dissent in part and concurrence in part: Stevens and Souter (Justices).

Facts: In 1991, the police jury of Bossier Parish in Louisiana was granted preclearance on a new redistricting plan that had no majority black districts. The Bossier Parish school board covered the same geographic area as the police jury and also needed to redraw its districts following the 1990 census. The school board considered two plans: the police jury plan and a plan that showed two majority-black districts could be drawn. The school board ultimately adopted the police jury's plan, but the Attorney General denied preclearance because the second plan had shown the possibility of majority black districts. The school board filed an action in the District Court of the District of Columbia to compel preclearance. Opponents to the plan conceded it did not have a retrogressive effect, but argued that it should be denied preclearance because it did not create majority black districts and that it violated § 5 of the VRA because it was enacted for a discriminatory purpose. The district court granted preclearance and held that it could not deny preclearance of a voting change simply because the change violated § 2 of the VRA. It also stated it would not permit § 2 evidence of a dilutive effect to prove a discriminatory purpose under § 5.

VRA Claims: Adoption of the redistricting plan would violate § 5 if it had not been precleared by the Justice Department.

Issues: (1) Whether a voting change can be denied preclearance under § 5 simply because it violates § 2 and (2) whether evidence of dilutive effect is relevant to prove purpose under § 5.

Majority: A proposed voting change cannot be denied preclearance simply because it violates § 2. Section 5 has different purposes and benchmarks than § 2, so to make compliance with § 5 contingent on compliance with § 2 would collapse the two sections into one inquiry. However, evidence of vote dilution that would be examined under § 2 is also relevant in § 5 questions because a dilutive impact makes it more probable that the board acted with a retrogressive purpose forbidden by § 5.

St. Bernard Citizens for Better Government v. St. Bernard Parish School Board, No. 02-2209, 2002 U.S. Dist. LEXIS 16540 (E.D. La. 2002)

Decision: Berrigan (District Judge).

Facts: Plaintiffs filed suit alleging that a plan to reduce the parish school board from eleven to seven members denied African-Americans an equal opportunity to elect representatives of their choice through vote dilution. The parish school board had had eleven members elected from single-member districts since its inception. Following the 2000 census, the board hired a demographer to draft redistricting plans. The demographer proposed an eleven-district plan that would include a majority black voting age population. However, a referendum then passed requiring the parish to adopt a plan consisting of seven total members with five seats represented by single-member districts and two at-large seats. Under these limits it would be impossible to design a district that had more than a 38% black population.

VRA Claim: The seven-member plan denied African-Americans equal opportunity to elect a representative of their choice in violation of § 2.

Issues: (1) Whether consideration of the 11-member district was an impermissible consideration of size of governing body in choosing the benchmark for comparison, and (2) whether the seven-member plan violated § 2.

Holding: The 11-member proposed African-American majority district was an objective, workable, and reasonable benchmark to compare the 7-member plan against because it had been in existence since the board's inception and was currently functioning. Consequently, the plaintiff had established that the first Gingles factor had been met because it was large and compact enough to constitute a majority in a single member district under the eleven-district plan. The second and third Gingles factors of political cohesion and racial bloc voting were also established. The court also considered: (1) the history of official discrimination in the parish; (2) the extent to which voting was racially polarized; (3) the extent to which the parish had used practices and procedures that may enhance the opportunity for discrimination; (4) candidate slating processes; (5) the extent to which minorities bear the effects of discrimination in education, employment, and health, hindering their ability to participate effectively in the political process; (6) whether political campaigns had been characterized by overt or subtle racial appeals; and (7) the extent to which members of the minority group had been elected to public office in the parish. These factors indicated African-Americans were denied the equal opportunity to elect their representatives, and consequently the seven-member plan violated § 2.

See also Citizens For a Better Gretna v. City of Gretna, 636 F. Supp. 1113 (E.D. La. 1986); Major v. Treen, 574 F. Supp. 325 (E.D. La. 1983).

U.S. v. Louisiana, 952 F. Supp. 1151 (W.D. La. 1997).

Decision: Steward (Circuit Judge), Little and Doherty (District Judges).

Facts: The city of Shreveport, Louisiana made various annexations that affected elections to the Shreveport City Court. When it learned of these annexations, the Justice Department refused preclearance. Despite the failure to obtain preclearance, the city proceeded with candidate qualification. The United States filed suit for a preliminary injunction to prevent the judges deemed elected from receiving their commissions to take office. The city of Shreveport and the state of Louisiana moved to dismiss, arguing that the three-judge panel did not have subject matter jurisdiction.

VRA Claims: The standard of judicial review in obtaining injunctions under § 5 of the VRA.

Issue: (1) Whether the three-judge panel could review the Attorney General's decision denying preclearance and (2) what requirements the United States had to satisfy in order to obtain a preliminary injunction.

Holding: Because a three-judge panel's jurisdiction under the VRA is limited to deciding (1) whether a change was covered by § 5, (2) if the change was covered, whether § 5's approval requirements were satisfied, and (3) if the requirements were not satisfied, what remedy is appropriate, the court did not have jurisdiction to review the Attorney General's decision. The

jurisdictional limits on the panel also precluded it from using the traditional four-part test for preliminary injunctions because to do so would allow it to consider the merits of the case.

Hays v. Louisiana, 936 F. Supp. 360 (W.D. La. 1996).

Decision: Wiener (Circuit Judge), Shaw (Chief District Judge), and Walter (District Judge).

Facts: Following the 1990 census, Louisiana needed to redraw its Congressional districts. The Attorney General advised the state that only plans with two majority-minority districts would be precleared. The state developed a plan establishing a majority-minority district that zigzagged across the state to comply with this requirement, and the Attorney General precleared it. The district court struck down the plan as violating the Fourteenth Amendment. The state then developed a new plan that, like the old plan, included a majority-minority district cutting across geographic and political lines.

VRA Claims: Intersection between the VRA and the Constitution.

Issue: Whether a district created to comply with the Attorney General's requirements for preclearance was a racial gerrymander violating the Equal Protection Clause of the Fourteenth Amendment.

Holding: The new plan violated the district residents' rights under the Equal Protection of the Fourteenth Amendment clause. Following Shaw v. Reno, 509 U.S. 630 (1993), strict scrutiny must be applied to a districting plan if it is shown that race was a predominant factor in including or excluding voters from a district. The court recognized that the state needed to comply with the VRA, but the resulting plan was not narrowly tailored to further a compelling state interest and resulted in a racial gerrymander. The contested district was not necessary to prevent retrogression, and the minority was too widespread to meet the first prong of the Gingles test so as to make a § 2 claim. The court supplied a redistricting plan to be used.

Knight v. McKeithen, 903 F. Supp. 999 (M.D. La. 1995)

Decision: Parker (District Judge).

Facts: Following the 1990 census, the school boards determined that the existing election districts were malapportioned. Plaintiff filed an action claiming that the school boards failed to timely adopt and obtain preclearance of reapportionment plans in violation of § 2 and § 5 of the VRA. After filing all of the school boards adopted reapportionment plans and obtained "no objection" letters from the Justice Department. Plaintiffs alleged that defendants had a policy of postponing indefinitely elections by cancellation, allowing incumbents to hold over in their offices.

VRA Claim: The cancellation of elections was a change in voting practices without preclearance violating § 5 of the VRA.

Issues: Whether cancellation of regularly scheduled elections and extension of the terms of incumbents was a change in state election law practices under § 5 of the VRA.

Holding: The postponement of elections was not a change in election practices. The Attorney General had notified the parishes that elections could be cancelled when the new redistricting plan had not been precleared. Because elections could not occur under either the malapportioned plan or the non-cleared redistricting plan, cancellation of elections was not a voting change.

See also Landry v. City of Kenner, No. 04-0085, 2004 U.S. Dist. LEXIS 812 (E.D. La. 2004) (proclamation issued by mayor after resigning from office deviated from state procedures and was not a change in voting procedures covered by § 5 of the VRA).

Carr v. Edwards, No. 94-1280, 1994 U.S. Dist. LEXIS 11097 (E.D. La. 1994).

Decision: Clement (District Judge).

Facts: Plaintiff had three cases pending in court from which the entire bench recused itself. The Louisiana Supreme Court then appointed a judge ad hoc to preside over the cases.

VRA Claim: The appointment of a judge ad hoc violated § 2 and § 5 of the VRA.

Issues: Whether the appointment of a judge ad hoc is a voting standard, practice, or procedure subject to § 2 or a voting change subject to § 5 of the VRA.

Holding: The appointment of a judge ad hoc was not a matter subject to § 2 or § 5 of the VRA. The judge's appointment followed a recusal, not an election. An indirect implication of voting did not create a cause of action under the VRA.

See also Association of Community Organizations for Reform Now v. Fowler, No. 95-614, 1995 U.S. Dist. LEXIS 10626 (E.D. La. 1995).

Clark v. Roemer, 751 F. Supp. 586 (M.D. La. 1990).

Decision: Polozola (District Judge).

Facts: Louisiana used a multimember election district system in judicial elections. Plaintiffs alleged this system violated § 2 of the VRA by diluting the votes of African-Americans and the court agreed. The plaintiffs then moved to enjoin the election for any judgeship which had not been precleared by the Attorney General under § 5 of the VRA. The defendants argued that § 5 did not apply to judicial elections.

VRA Claims: The use of multimember election districts to elect judicial officers diluted African-American voting strength in violation of § 2 of the VRA.

Issue: Whether § 5 of the VRA applies to judicial elections.

Holding: Section 5 applies where additional judgeships have been added to a district or circuit which has previously been precleared by the Attorney General. However, where the Attorney General precleared the statute creating judicial positions that preclearance applied to the total

number of judicial positions cleared even if a specific position was not expressly cleared. For the judicial positions not so cleared it was proper to allow elections to proceed and seat the judges provisionally until preclearance was obtained.

See also Clark v. Roemer, 777 F. Supp. 471 (M.D. La. 1991); Clark v. Roemer, 777 F. Supp. 445 (M.D. La. 1990); Clark v. Roemer, 725 F. Supp. 285 (M.D. La. 1988).

Chisom v. Edwards, 690 F. Supp. 1524 (E.D. La. 1988).

Decision: Schwartz (District Judge).

Facts: Louisiana's Supreme Court consisted of seven judges, five of which were elected by five respective districts, and two of which were both elected by one district, the First District. This district was composed of four parishes, three of which were majority white, and one, New Orleans Parish, which was majority African-American. Plaintiffs alleged that the system of one large district electing two judges unfairly diluted the strength of African-American voters in New Orleans Parish. They moved for a preliminary injunction to stay an upcoming election for one of the district's two seats while the court considered the fairness of the election system.

VRA Claim: The method of electing two seats from one district violates § 2 of the VRA and denies African-American voters equal opportunity to participate in the election system.

Issues: Whether plaintiffs established a substantial likelihood of success on the merits and irreparable harm so as to justify a preliminary injunction.

Holding: Plaintiffs established a likelihood of their § 2 claim succeeding on its merits and were entitled to injunction staying an upcoming election. The harm to plaintiffs was held to be irreparable if the election was indeed discriminatory and allowed to continue because the right to vote was not pecuniary and compensation could not redress its deprivation. The temporary injunction was granted while litigation proceeded.

MISSISSIPPI EXECUTIVE SUMMARY**DEMOGRAPHICS:**

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
Total population	2,844,658	100.0	2,069,471	100.0
Hispanic or Latino (of any race)	39,569	1.4	27,509	1.3
Not Hispanic or Latino	2,805,089	98.6	2,041,962	98.7
One race	2,824,637	99.3	2,057,431	99.4
White	1,746,099	61.4	1,340,870	64.8
Black or African American	1,033,809	36.3	685,259	33.1
American Indian and Alaska Native	11,652	0.4	7,629	0.4
Asian	18,626	0.7	13,604	0.7
Native Hawaiian and Other Pacific Islander	667	0.0	494	0.0
Some other race	13,784	0.5	126,833	6.1
Two or more races	20,021	0.7	57,747	2.8

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File.

MINORITY REPRESENTATION IN FEDERAL & STATE

There are currently zero minorities in the United States Senate and one minority in the House of Representatives (African-American: Bennie Thompson, Democrat) from Mississippi.

There are 11 minority members of the state Senate (African-American: Kevin Butler, Democrat; Hillman Terome Frazier, Democrat; Alice Vernardo Harden, Democrat; John A. Horhn, Democrat; Robert L. Jackson, Democrat; Sampson Jackson II, Democrat; David Lee Jordan, Democrat; Willie Lee Simmons, Democrat; Joseph C. Thomas, Democrat; Bennie L. Turner, Democrat; Johnie E. Walls, Democrat).

There are 35 minority members of the state House of Representatives (African-American: Willie L. Bailey, Democrat; Earl S. Banks, Democrat; Edward Blackmon, Jr., Democrat; Billy Frank Broomfield, Democrat; Kevin O. Buck, Democrat; Clara Henderson

Burnett, Democrat; Credell Calhoun, Democrat; Bryan W. Clark, Democrat; Alyce Griffin Clarke, Democrat; Linda F. Coleman, Democrat; Mary H. Coleman, Democrat; Reecy L. Dickson, Democrat; Tyrone Ellis, Democrat; Chuck Espy, Democrat; James Evans, Democrat; George Flaggs Jr., Democrat; Erik R. Fleming, Democrat; Frances M. Fredericks, Democrat; David Gibbs, Democrat; Esther M. Harrison, Democrat; John Wesley Hines, Democrat; Gregory L. Holloway Sr., Democrat; Robert E. Huddleston, Democrat; Robert L. Johnson III, Democrat; America Chuck Middleton, Democrat; Leonard Morris, Democrat; David W. Myers, Democrat; Willie J. Perkins, Democrat; Walter L. Robinson Jr., Democrat; Omeria McDonald Scott, Democrat; Rufus E. Slaughter, Democrat; Ferr Smith, Democrat; Sarah R. Thomas, Democrat; Percy W. Watson, Democrat; Charles L. Young Sr., Democrat).

Source: http://www.ls.state.ms.us/ss_membs.htm; http://www.ls.state.ms.us/hr_membs.htm

SECTION 5 RELATED MATTERS:

Mississippi is covered under Section 5 of the Voting Rights Act.

SECTION 203 AND OTHER MINORITY LANGUAGE MATTERS:

The following counties are covered under Section 203 for the American Indian (Choctaw) language: Jones County, Kemper County, Leake County, Neshoba County, Newton County and Winston County.

REPORTED INSTANCES OF VOTER SUPPRESSION AND INTIMIDATION

In the state's primary election for state governor, numerous complaints of voter intimidation were reported to the voter-fraud unit of the U.S. Justice Department. Counties throughout the state reported instances of candidate representatives "hawking" nursing home halls and other polling locations on the day of the election. Mississippi's then-Secretary of State Dick Molpus even expressed an urgency to update the state's antiquated election laws in order to ward off this kind of behavior in future elections.

Reported by: *The Associated Press* (September 25, 1991)

STATE VOTING LAWS

1. Voter Identification Requirements

Mississippi has implemented a series of provisions in enacting the Help America Vote Act and requires the completion and provision of driver's license information in order to register to vote. These provisions generally call for the use of driver's license numbers in filling out applications for voter registration in person, as well as through the mail. MISS. CODE ANN. § 23-15-39 (2005), MISS. CODE ANN. § 23-15-347 (2005).

The registration process requires proof of either a valid driver's license or social security number.

2. Proof of Citizenship Requirements

Mississippi election code requires voters to be over eighteen years of age and a citizen of the United States. MISS. CODE ANN. § 23-15-11 (2004).

In addition, any voter who is a naturalized U.S. citizen must present proof of such naturalization in order to vote. MISS. CODE ANN. § 23-15-15 (2004). Forms of proof include a certified copy of the final order or decree of naturalization, or a certificate of naturalization or some other certified copy of a certificate of naturalization. *Id.* Otherwise, the person will not be given permission to vote. *Id.*

3. Voter Assistance

Enacted in 1986, the Mississippi Election Code provides that voters, who by reason of "blindness, disability or inability to read or write" may be given assistance in voting. MISS. CODE ANN. § 23-15-549 (2004).

The voter may choose any person to provide assistance, except for the voter's employer, employer's agent, or some other officer or agent of the voter's union. Id.

Additionally, in registering to vote, if a person is unable to read or write English, that person may allow and direct another to complete the application at their direction. MISS.

CODE ANN. § 23-15-39 (2005).

DOJ OBSERVER/MONITOR COVERAGE

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
Adams		September 17, 1991	Primary	32	
Adams		October 8, 1991	Primary Runoff	9	
Adams		November 5, 1991	General	19	Assignment of monitors was based upon investigations that included discussions with election officials and community leaders regarding potentially discriminatory practices in the election process.
Adams		November 2, 1999	General	10	Monitor treatment of African American voters, including whether they are improperly turned away from the polls and are incorrectly told their affidavit ballots are invalid. Observers will also monitor activities to ensure that voters are not harassed at the polls and receive assistance from the person of their choice.
Adams		November 5, 2002	Federal	22	Observers watching

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
					for any signs of discrimination based on race or problems encountered by the disabled, as well as whether all eligible voters are able to cast a ballot.
Amite		August 8, 1967	Primary	24	
Amite		February 27, 1968	Special Federal	16	
Amite		March 12, 1968	Federal Runoff	10	
Amite		November 5, 1968	Federal	16	
Amite		May 13, 1969	Primary	10	
Amite		June 3, 1969	General	4	
Amite		June 21, 1969	General Runoff	4	
Amite		November 3, 1970	Federal	20	
Amite		August 13, 1971	Primary	12	
Amite		November 8, 1988	Federal	20	
Amite		August 3, 1999	Primary	17	Monitor the treatment of African American voters, including whether they are able to receive assistance from the person of their choice and whether they are improperly turned away by poll workers.
Amite		August 24, 1999	Primary Runoff	13	Monitor the treatment of African American voters, including whether they are able to receive assistance from the person of their choice and whether they are improperly turned away by poll workers.
Amite		November 5, 2002	Federal	18	Observers watching

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
					for any signs of discrimination based on race or problems encountered by the disabled, as well as whether all eligible voters are able to cast a ballot.
Benton		June 7, 1966	Primary	10	
Benton		August 8, 1967	Primary	10	
Benton		August 29, 1967	Primary Runoff	20	
Benton		November 5, 1968	Federal	8	
Benton		August 13, 1971	Primary	10	
Benton		November 2, 1971	General	10	
Benton		August 5, 1975	Primary	11	
Benton		August 26, 1973	Primary Runoff	6	
Benton		November 4, 1975	General	12	
Benton		August 2, 1983	Primary	28	To determine whether minorities are able to vote without interference.
Benton		August 23, 1983	Primary Runoff	32	
Benton		August 25, 1987	Primary Runoff	21	
Bolivar		November 7, 1967	General	42	
Bolivar		June 3, 1969	General	4	
Bolivar	Shelby	June 18, 1969	Municipal	8	
Bolivar		June 21, 1969	General Runoff	4	
Bolivar		November 3, 1970	Federal	18	
Bolivar		November 2, 1971	General	48	
Bolivar		November 4, 1975	General	55	
Bolivar	Shaw	May 10, 1977	Mun Primary	4	
Bolivar	Shaw	May 17, 1977	Primary Runoff	5	
Bolivar	Shaw	June 7, 1977	Mun General	5	
Bolivar	Rosedale	December 11, 1978	Municipal	5	
Bolivar		August 7, 1979	Primary	13	
Bolivar		November 6, 1979	General	32	

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
Bolivar		August 2, 1983	Primary	76	A pre-election survey of the state determined that an undisclosed number of Mississippi counties were likely to be trouble spots; monitors were to determine whether minorities were able to vote without interference.
Bolivar		August 23, 1983	Primary Runoff	64	
Bolivar		November 8, 1983	General	56	
Bolivar		November 6, 1984	Federal	43	Problems were anticipated by local election officials and minority community leaders; the decision to send observers also was based on reports from federal observers in previous elections; black-white candidate contest for Congress, county office or the local school board.
Bolivar		November 20, 1984	Runoff	15	Election pitted pits a black candidate against a white candidate in a race which will determine the racial majority on the election commission in the county.
Bolivar		December 4, 1984	General	57	
Bolivar		November 5, 1985	Special	19	To watch special elections where black and white candidates were on the ballot in local races.

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
Bolivar		November 4, 1986	Federal	22	
Bolivar		August 4, 1987	Primary	38	
Bolivar		November 3, 1987	General	24	
Bolivar		November 8, 1988	Federal	11	
Bolivar		September 17, 1991	Primary	30	
Bolivar		October 8, 1991	Primary Runoff	16	
Bolivar		November 5, 1996	Federal	12	To ensure black voters were being given proper assistance and information; obtain information on the state's dual voter registration system.
Bolivar		November 2, 1999	General	15	Monitor treatment of African-American voters, including whether they are improperly turned away from the polls and are incorrectly told their affidavit ballots are invalid. Observers will also monitor activities to ensure that voters are not harassed at the polls and receive assistance from the person of their choice.
Bolivar		February 1, 2000	Special	3	Monitor treatment of African American voters, including whether they are able to receive assistance from the person of their choice and whether they are improperly turned away by poll workers.
Carroll		June 7, 1966	Primary	10	

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
Carroll		November 8, 1966	Federal	10	
Carroll		August 8, 1967	Primary	22	
Carroll		August 29, 1967	Primary Runoff	22	
Carroll		November 7, 1967	General	16	
Carroll		June 3, 1969	General	6	
Carroll	North Carrollton	June 18, 1969	Municipal	2	
Carroll		November 8, 1983	General	28	
Carroll		November 6, 1984	Federal	19	Problems were anticipated by local election officials and minority community leaders; the decision to send observers also was based on reports from federal observers in previous elections; black-white candidate contest for Congress, county office or the local school board.
Carroll		August 8, 1995	Primary	24	At previous elections poll workers denied black voters their right to be assisted by a person of their choice.
Carroll		November 2, 1999	General	4	Monitor treatment of African American voters, including whether they are improperly turned away from the polls and are incorrectly told their affidavit ballots are invalid. Observers will also monitor activities to ensure that voters are not harassed at the

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
					polls and receive assistance from the person of their choice.
Chickasaw		August 3, 1999	Primary	19	Monitor the treatment of African American voters, including whether they are able to receive assistance from the person of their choice and whether they are improperly turned away by poll workers.
Chickasaw		November 2, 1999	General	15	Monitor treatment of African American voters, including whether they are improperly turned away from the polls and are incorrectly told their affidavit ballots are invalid. Observers will also monitor activities to ensure that voters are not harassed at the polls and receive assistance from the person of their choice.
Claiborne		June 7, 1966	Primary	22	
Claiborne		November 8, 1966	Federal	22	
Claiborne		August 8, 1967	Primary	32	
Claiborne		August 29, 1967	Primary Runoff	32	
Claiborne		February 27, 1968	Special Federal	32	
Claiborne		March 12, 1968	Federal Runoff	18	
Claiborne		November 5, 1968	Federal	32	
Claiborne	Port Gibson	December 7, 1970	Municipal	8	

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
Claiborne		November 2, 1971	General	26	
Claiborne		November 7, 1972	Federal	38	
Claiborne		August 5, 1975	Primary	38	
Claiborne		November 4, 1975	General	38	
Claiborne		November 6, 1979	General	73	
Claiborne		November 4, 1980	Federal	54	Based on a pre-election survey by the Civil Rights Division; the monitors were to ensure the integrity of the election, give minorities confidence in the electoral process and record any irregularities that might develop.
Claiborne		November 8, 1983	General	42	
Claiborne		November 3, 1987	General	30	
Clay		June 7, 1966	Primary	14	
Clay		November 8, 1966	Federal	14	
Clay		November 2, 1971	General	24	
Clay		August 26, 1975	Primary Runoff	16	
Clay		November 2, 1976	Federal	16	
Clay		November 4, 1980	Federal	36	Based on a pre-election survey by the Civil Rights Division; the monitors were to ensure the integrity of the election, give minorities confidence in the electoral process and record any irregularities that might develop.
Coahoma		August 8, 1967	Primary	32	
Coahoma		August 29, 1967	Primary Runoff	32	
Coahoma		May 13, 1969	Primary	24	
Coahoma	Friars Point	June 18, 1969	Municipal	2	
Coahoma		June 21, 1969	General Runoff	4	
Coahoma		November 3, 1970	Federal	16	

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
Coahoma		August 13, 1971	Primary	30	
Coahoma		November 2, 1971	General	92	
Coahoma	Clarksdale	September 23, 1986	Mun General	14	
Coahoma		November 5, 1996	Federal	12	Monitors were to determine whether black voters are being given proper assistance and information and obtain information on the state's dual voter registration system.
Coahoma	Clarksdale	May 6, 1997	Primary	13	
Coahoma		August 3, 1999	Primary	17	Monitor the treatment of African American voters, including whether they are able to receive assistance from the person of their choice and whether they are improperly turned away by poll workers.
Coahoma	Clarksdale	May 1, 2001	Mun Primary	10	
Coahoma	Clarksdale	May 15, 2001	Mun Prim Runoff	15	Monitor treatment of African American voters, including whether they are able to receive assistance from the person of their choice and whether they are improperly turned away by poll workers.
Copiah		December 13, 1983	Runoff	6	
Copiah		December 27, 1983	Special General	6	
Copiah		November 5, 1985	Special	6	To watch special

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
					elections where black and white candidates were on the ballot in local races.
Covington		August 7, 1979	Primary	21	
Covington		August 28, 1979	Primary Runoff	8	
Covington		November 6, 1979	General	12	
Covington		November 8, 1983	General	12	
Covington		November 6, 1984	Federal	12	Problems were anticipated by local election officials and minority community leaders; the decision to send observers also was based on reports from federal observers in previous elections; black-white candidate contest for Congress, county office or the local school board.
Covington		November 4, 1986	Federal	10	
Covington		October 8, 1991	Primary Runoff	12	
Covington		August 3, 1999	Primary	10	Monitor the treatment of African American voters, including whether they are able to receive assistance from the person of their choice and whether they are improperly turned away by poll workers.
Covington		August 24, 1999	Primary Runoff	12	Monitor the treatment of African American voters, including whether they are able to receive assistance from the person of their choice and

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
					whether they are improperly turned away by poll workers.
Desoto		June 7, 1966	Primary	8	
Desoto		November 8, 1966	Federal	8	
Desoto		August 8, 1967	Primary	8	
Desoto		November 2, 1976	Federal	8	
Desoto	Hernando	May 10, 1977	Mun Primary	2	
Franklin		August 8, 1967	Primary	12	
Franklin		February 27, 1968	Special Federal	10	
Franklin		March 12, 1968	Federal Runoff	8	
Greene		August 7, 1979	Primary	15	
Greene		August 28, 1979	Primary Runoff	8	
Greene		November 6, 1979	General	10	
Grenada		February 13, 1967	Special	20	
Grenada		February 27, 1967	Special Runoff	24	
Grenada		August 8, 1967	Primary	28	
Grenada		August 29, 1967	Primary Runoff	16	
Grenada	Grenada	September 7, 1976	Special	9	
Grenada	Grenada	September 14, 1976	Special Runoff	10	
Grenada		August 2, 1983	Primary	30	A pre-election survey of the state determined that an undisclosed number of Mississippi counties are likely to be trouble spots. Monitors were to determine whether minorities are able to vote without interference.
Grenada		August 23, 1983	Primary Runoff	11	
Grenada		November 8, 1983	General	13	

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
Grenada		November 7, 2000	Federal	10	Monitor treatment of African American voters, including whether they are able to receive assistance from the person of their choice and whether they are improperly turned away by poll workers.
Hinds		August 8, 1967	Primary	36	
Hinds		February 27, 1968	Special Federal	16	
Hinds		March 12, 1968	Federal Runoff	23	
Hinds		May 13, 1969	Primary	14	
Hinds		June 3, 1969	General	8	
Hinds	Edward s	June 18, 1969	Municipal	12	
Hinds		June 21, 1969	General Runoff	7	
Hinds		August 5, 1975	Primary	14	
Hinds		August 26, 1975	Primary Runoff	12	
Hinds	Edward s	May 10, 1977	Mun Primary	3	
Hinds		November 6, 1984	Federal	52	Problems were anticipated by local election officials and minority community leaders; the decision to send observers also was based on reports from federal observers in previous elections; black-white candidate contest for Congress, county office or the local school board.
Hinds	Utica	June 4, 1985	Municipal	3	
Hinds		November 4, 1986	Federal	7	
Holmes		June 7, 1966	Primary	22	

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
Holmes		November 8, 1966	Federal	22	
Holmes		August 8, 1967	Primary	22	
Holmes		August 29, 1967	Primary Runoff	22	
Holmes		November 7, 1967	General	42	
Holmes		November 5, 1968	Federal	37	
Holmes		May 13, 1969	Primary	12	
Holmes		June 3, 1969	General	10	
Holmes	Tchula	June 18, 1969	Municipal	2	
Holmes	Pickens	June 18, 1969	Municipal	2	
Holmes	Lexington	June 18, 1969	Municipal	4	
Holmes		June 21, 1969	General Runoff	8	
Holmes		November 3, 1970	Federal	10	
Holmes		November 2, 1971	General	14	
Holmes		August 26, 1975	Primary Runoff	14	
Holmes		November 4, 1975	General	20	
Holmes	Tchula	June 7, 1977	Mun General	5	
Holmes		November 6, 1979	General	33	
Holmes	Tchula	June 2, 1981	Mun General	4	
Holmes		August 2, 1983	Primary	33	A "pre-election survey" of the state determined that an undisclosed number of Mississippi counties are likely to be trouble spots. Monitors were to determine whether minorities are able to vote without interference.
Holmes		August 23, 1983	Primary Runoff	16	
Holmes	Lexington	July 20, 1993	Spec Mun Primary	4	Previous elections were marked by events that impeded full black participation in the electoral process such as denying black voters their right to

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
					be assisted by a person of their choice.
Holmes		November 5, 1996	Federal	11	Monitors were to determine whether black voters are being given proper assistance and information and obtain information on the state's dual voter registration system.
Holmes	Lexington	May 6, 1997	Primary	5	
Humphreys		June 7, 1966	Primary	20	
Humphreys		November 8, 1966	Federal	20	
Humphreys		August 8, 1967	Primary	28	
Humphreys		August 29, 1967	Primary Runoff	10	
Humphreys		December 2, 1968	Special	8	
Humphreys		May 13, 1969	Primary	12	
Humphreys		June 3, 1969	General	4	
Humphreys	Belzoni	June 18, 1969	Municipal	4	
Humphreys		June 21, 1969	General Runoff	6	
Humphreys		September 23, 1971	Special	6	
Humphreys		November 2, 1971	General	30	
Humphreys		August 24, 1972	Special Runoff	6	
Humphreys		August 26, 1975	Primary Runoff	8	
Humphreys		November 4, 1975	General	59	
Humphreys		August 7, 1979	Primary	30	
Humphreys		August 28, 1979	Primary Runoff	38	
Humphreys		November 6, 1979	General	38	
Humphreys		May 13, 1980	Special	21	
Humphreys		November 4, 1980	Federal	27	Decision to send monitors was based on a pre-election survey by the Civil Rights Division; monitors were to ensure the integrity of

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
					the election, give minorities confidence in the electoral process and record any irregularities that might develop.
Humphreys		August 23, 1983	Primary Runoff	25	
Humphreys		November 8, 1983	General	30	
Humphreys		November 6, 1984	Federal	27	Problems were anticipated by local election officials and minority community leaders; the decision to send observers also was based on reports from federal observers in previous elections; black-white candidate contest for Congress, county office or the local school board.
Humphreys		November 3, 1987	General	12	
Humphreys		November 21, 1989	Special	13	
Humphreys	Isola	June 8, 1993	Mun General	4	Actions by polling place officials that put black voters at a disadvantage, including rude treatment and harassment of black voters, denying illiterate black voters their right to assistance in voting by a person of their choice and failing to include eligible black votes on the cities' poll lists.
Humphreys	Belzoni	May 6, 1997	Primary	9	
Humphreys	Isola	June 3, 1997	General	3	
Humphreys		August 3, 1999	Primary	13	Monitor the treatment

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
					of African American voters, including whether they are able to receive assistance from the person of their choice and whether they are improperly turned away by poll workers.
Humphreys		November 2, 1999	General	9	Monitor treatment of African American voters, including whether they are improperly turned away from the polls and are incorrectly told their affidavit ballots are invalid. Observers will also monitor activities to ensure that voters are not harassed at the polls and receive assistance from the person of their choice.
Humphreys	Isola	June 5, 2001	Mun General	3	Monitor treatment of African American voters, including whether they are able to receive assistance from the person of their choice and whether they are improperly turned away by poll workers.
Humphreys		November 4, 2003	General	8	Ensure access to the polls and prevent discrimination.
Issaquena		August 8, 1967	Primary	10	
Issaquena		November 7, 1967	General	9	
Issaquena		November 5, 1968	Federal	10	

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
Issaquena		August 13, 1971	Primary	14	
Issaquena		August 24, 1971	Primary Runoff	14	
Issaquena		November 7, 1972	Federal	14	
Issaquena		November 21, 1972	Special Runoff	5	
Issaquena		November 4, 1975	General	2	
Issaquena		November 2, 1976	Federal	4	
Issaquena		November 6, 1984	Federal	13	Problems were anticipated by local election officials and minority community leaders; the decision to send observers also was based on reports from federal observers in previous elections; black-white candidate contest for Congress, county office or the local school board.
Jasper		June 7, 1966	Primary	14	
Jasper		August 8, 1967	Primary	10	
Jasper		August 7, 1979	Primary	18	
Jasper		August 23, 1983	Primary Runoff	36	
Jasper		October 8, 1991	Primary Runoff	18	
Jefferson		June 7, 1966	Primary	14	
Jefferson		November 8, 1966	Federal	14	
Jefferson		August 8, 1967	Primary	34	
Jefferson		August 29, 1967	Primary Runoff	33	
Jefferson		February 27, 1968	Special Federal	24	
Jefferson		March 12, 1968	Federal Runoff	20	
Jefferson		November 5, 1968	Federal	22	
Jefferson		May 13, 1969	Primary	16	
Jefferson		June 21, 1969	General Runoff	8	
Jefferson		November 4, 1975	General	26	
Jefferson	Fayette	August 20, 1985	Special Mun	4	

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
Jefferson Davis		June 7, 1966	Primary	10	
Jefferson Davis		August 24, 1971	Primary Runoff	6	
Jefferson Davis		August 4, 1987	Primary	22	
Jefferson Davis		August 25, 1987	Primary Runoff	20	
Jones		June 7, 1966	Primary	8	
Jones		August 8, 1967	Primary	8	
Jones		January 16, 1984	Special Primary	38	
Jones		January 30, 1984	Special Runoff	7	
Jones		February 13, 1984	Special General	7	
Jones	Laurel	May 14, 1985	Mun Primary	12	
Jones		August 3, 1999	Primary	4	
Jones		November 2, 1999	General	2	Monitor whether the county is providing information and assistance in the Choctaw language.
Jones		November 4, 2003	General	2	To ensure access to the polls and prevent discrimination.
Jones		November 2, 2004	General	2	
Kemper		November 5, 1974	Federal	48	
Kemper		December 17, 1974	Special	24	
Kemper		August 7, 1979	Primary	44	
Kemper		August 28, 1979	Primary Runoff	11	
Kemper		August 3, 1999	Primary	2	Monitor whether the county is providing information and assistance in the Choctaw language.
Kemper		August 5, 2003	Primary	3	
Kemper		November 4, 2003	General	3	To ensure access to the polls and prevent discrimination.
Kemper		November 2, 2004	General	2	
Leake		August 3, 1999	Primary	3	Monitor whether the county is providing

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
					information and assistance in the Choctaw language.
Leake		August 5, 2003	Primary	5	
Leake		November 4, 2003	General	5	To ensure access to the polls and prevent discrimination.
Leake		November 2, 2004	General	4	
Leflore		June 7, 1966	Primary	28	
Leflore		November 8, 1966	Federal	28	
Leflore	Greenwood	November 22, 1966	Mun Runoff	59	
Leflore		August 8, 1967	Primary	34	
Leflore		August 29, 1967	Primary Runoff	34	
Leflore		November 5, 1968	Federal	24	
Leflore		May 13, 1969	Primary	10	
Leflore	Greenwood	June 18, 1969	Municipal	12	
Leflore		June 21, 1969	General Runoff	6	
Leflore		November 18, 1969	Special	2	
Leflore		November 2, 1971	General	34	
Leflore		August 5, 1975	Primary	81	
Leflore		November 4, 1975	General	81	
Leflore	Itta Bena	May 10, 1977	Mun Primary	4	
Leflore	Sidon	September 13, 1977	Mun General	3	
Leflore		November 8, 1983	General	72	
Leflore		November 6, 1984	Federal	50	Problems were anticipated by local election officials and minority community leaders; the decision to send observers also was based on reports from federal observers in previous elections; black-white candidate contest for Congress, county office or the local school board.
Leflore	Greenw	June 4, 1985	Municipal	19	

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
Leflore	ood	March 4, 1986	Special Primary	44	
Leflore		November 3, 1987	General	21	
Leflore		November 8, 1988	Federal	32	
Leflore		November 22, 1988	Primary	19	
Leflore		November 5, 1991	General	59	Assignment based upon investigations that include discussions with election officials and community leaders regarding potentially discriminatory practices in the election process.
Leflore	Greenwood	June 8, 1993	Mun General	23	Actions by polling place officials that put black voters at a disadvantage, including rude treatment and harassment of black voters, denying illiterate black voters their right to assistance in voting by a person of their choice and failing to include eligible black votes on the cities' poll lists.
Leflore	Sideon	June 8, 1993	Mun General	3	Actions by polling place officials that put black voters at a disadvantage, including rude treatment and harassment of black voters, denying illiterate black voters their right to assistance in voting by a person of their

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
					choice and failing to include eligible black votes on the cities' poll lists.
Leflore	Greenwood	March 8, 1994	Special Mun	4	
Leflore		November 5, 1996	Federal	11	To determine whether black voters are being given proper assistance and information and obtain information on the state's dual voter registration system.
Lowndes		August 23, 1983	Primary Runoff	48	
Lowndes		November 8, 1983	General	46	
Lowndes		August 4, 1987	Primary	32	
Lowndes		November 5, 1996	Federal	11	To determine whether black voters are being given proper assistance and information and obtain information on the state's dual voter registration system.
Madison		June 7, 1966	Primary	16	
Madison		November 8, 1966	Federal	20	
Madison		August 8, 1967	Primary	16	
Madison		August 29, 1967	Primary Runoff	16	
Madison		June 3, 1969	General	4	
Madison		November 3, 1970	Federal	12	
Madison		August 13, 1971	Primary	22	
Madison		November 2, 1971	General	42	
Madison		November 7, 1972	Federal	47	
Madison		August 5, 1975	Primary	63	
Madison		August 26, 1975	Primary Runoff	67	
Madison		November 4, 1975	General	57	
Madison		January 23, 1984	Special Runoff	8	
Madison		November 6, 1984	Federal	10	Problems were anticipated by local

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
					election officials and minority community leaders; the decision to send observers also was based on reports from federal observers in previous elections; black-white candidate contest for Congress, county office or the local school board.
Madison	Canton	August 30, 1994	Special	5	
Madison	Canton	October 11, 1994	Special	12	
Madison		November 5, 1996	Federal	11	To determine whether black voters are being given proper assistance and information and obtain information on the state's dual voter registration system.
Madison	Canton	May 6, 1997	Primary	14	
Madison	Canton	May 20, 1997	Runoff	4	
Marshall		August 8, 1967	Primary	38	
Marshall		August 29, 1967	Primary Runoff	30	
Marshall		November 5, 1968	Federal	40	
Marshall		May 13, 1969	Primary	14	
Marshall		June 21, 1969	General Runoff	8	
Marshall		November 3, 1970	Federal	14	
Marshall		August 13, 1971	Primary	84	
Marshall		August 24, 1971	Primary Runoff	48	
Marshall		November 2, 1971	General	87	
Marshall		May 28, 1974	Special	20	
Marshall		August 5, 1975	Primary	65	
Marshall		August 26, 1975	Primary Runoff	42	
Marshall		November 4, 1975	General	110	
Marshall	Holly Springs	May 17, 1977	Primary Runoff	5	
Marshall		August 16, 1977	Special	14	

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
Marshall		August 7, 1979	Primary	105	
Marshall		August 28, 1979	Primary Runoff	136	
Marshall		November 6, 1979	General	136	
Marshall	Holly Springs	May 12, 1981	Mun Primary	11	
Marshall	Holly Springs	May 14, 1985	Mun Primary	11	
Marshall	Holly Springs	May 21, 1985	Mun Runoff	6	
Marshall		August 25, 1987	Primary Runoff	55	
Marshall	Holly Springs	May 6, 1997	Primary	5	
Marshall		August 3, 1999	Primary	17	Monitor the treatment of African American voters, including whether they are able to receive assistance from the person of their choice and whether they are improperly turned away by poll workers.
Monroe		September 17, 1991	Primary	17	
Monroe		August 8, 1995	Primary	7	
Monroe		August 24, 1999	Primary Runoff	8	At previous elections poll workers denied black voters their right to be assisted by a person of their choice.
Neshoba		November 8, 1966	Federal	14	
Neshoba		August 8, 1967	Primary	6	
Neshoba		August 29, 1967	Primary Runoff	16	
Neshoba		August 3, 1999	Primary	6	Monitor whether the county is providing information and assistance in the Choctaw language.
Neshoba		November 2, 1999	General	10	Monitor whether the county is providing

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
					information and assistance in the Choctaw language.
Neshoba		November 7, 2000	Federal	6	Monitor treatment of Native Americans.
Neshoba		August 5, 2003	Primary	5	
Neshoba		November 4, 2003	General	9	To ensure access to the polls and prevent discrimination.
Neshoba		November 2, 2004	General	8	
Newton		August 3, 1999	Primary	2	Monitor whether the county is are providing information and assistance in the Choctaw language
Newton		November 2, 1999	General	3	Monitor whether the county is providing information and assistance in the Choctaw language
Newton		November 7, 2000	Federal	5	Monitor treatment of Native Americans
Newton		August 5, 2003	Primary	3	
Newton		November 4, 2003	General	3	To ensure access to the polls and prevent discrimination.
Newton		November 2, 2004	General	4	
Noxubee		June 7, 1966	Primary	9	
Noxubee		November 8, 1966	Federal	22	
Noxubee		August 8, 1967	Primary	6	
Noxubee		August 29, 1967	Primary Runoff	16	
Noxubee		November 5, 1968	Federal	21	
Noxubee		August 13, 1971	Primary	38	
Noxubee		August 24, 1971	Primary Runoff	56	
Noxubee		November 2, 1971	General	26	
Noxubee		August 5, 1975	Primary	57	
Noxubee		August 26, 1975	Primary Runoff	12	
Noxubee		November 4, 1975	General	57	
Noxubee		November 2, 1976	Federal	26	
Noxubee	Macon	May 10, 1977	Mun Primary	7	

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
Noxubee		November 6, 1979	General	65	
Noxubee		November 4, 1980	Federal	71	Based on a pre-election survey by the Civil Rights Division; monitors were to ensure the integrity of the election, give minorities confidence in the electoral process and record any irregularities that might develop.
Noxubee		November 18, 1980	General Runoff	15	
Noxubee		November 2, 1982	Federal	37	
Noxubee		August 2, 1983	Primary	48	A "pre-election survey" of the state determined that an undisclosed number of Mississippi counties are likely to be trouble spots; monitors to determine whether minorities are able to vote without interference.
Noxubee		August 23, 1983	Primary Runoff	33	
Noxubee		November 8, 1983	General	59	
Noxubee	Shuqualak	June 4, 1985	Municipal	3	
Noxubee		December 17, 1985	Special	41	
Noxubee		October 8, 1991	Primary Runoff	36	
Noxubee		November 5, 1991	General	41	Assignment based upon investigations that include discussions with election officials and community leaders regarding potentially discriminatory practices in the election process.

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
Noxubee		November 2, 1993	General	8	
Noxubee		June 21, 1994	Special Recall	10	
Noxubee		August 8, 1995	Primary	8	At previous elections poll workers denied black voters their right to be assisted by a person of their choice.
Noxubee		November 7, 1995	General	8	The observers will provide basic information regarding procedures or activities that could disadvantage or result in the harassment or intimidation of African-American voters, including denials of requests for assistance or denial of voting eligibility for African-American voters.
Noxubee		November 5, 1996	Federal	9	To determine whether black voters are being given proper assistance and information.
Noxubee	Shuqualak	June 3, 1997	General	3	
Noxubee		August 3, 1999	Primary	8	Monitor the treatment of African American voters, including whether they are able to receive assistance from the person of their choice and whether they are improperly turned away by poll workers.
Noxubee	Macon	May 1, 2001	Mun Primary	3	

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
Noxubee		November 4, 2003	General	15	To ensure access to the polls and prevent discrimination.
Noxubee	Macon	May 17, 2005	Local		Monitors will focus on voting and ballot counting procedures, as well potential voter intimidation.
Oktibbeha		June 21, 1969	General Runoff	4	
Oktibbeha		November 2, 1971	General	18	
Oktibbeha		August 26, 1975	Primary Runoff	16	
Oktibbeha		November 8, 1983	General	20	
Oktibbeha		November 5, 1996	Federal	11	To determine whether black voters are being given proper assistance and information and obtain information on the state's dual voter registration system.
Pearl River	Picayune	May 19, 1981	Mun Runoff	26	
Pearl River	Picayune	May 14, 1985	Mun Primary	11	
Pearl River	Picayune	May 21, 1985	Mun Runoff	7	
Quitman		June 21, 1969	General Runoff	4	
Quitman		November 4, 1980	Federal	20	Based on a pre-election survey by the Civil Rights Division; monitors were to ensure the integrity of the election, give minorities confidence in the electoral process and record any irregularities that might develop.
Quitman	Marks	May 12, 1981	Mun Primary	5	
Quitman		August 2, 1983	Primary	68	A pre-election survey of the state

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
					determined that an undisclosed number of Mississippi counties are likely to be trouble spots; monitors were to determine whether minorities are able to vote without interference.
Quitman		August 23, 1983	Primary Runoff	37	
Quitman		October 28, 1983	Special	12	
Quitman		November 8, 1983	General	37	
Quitman	Marks	March 10, 1987	Special Primary	8	
Quitman	Marks	April 7, 1987	Special General	6	
Quitman		November 5, 1991	General	8	Assignments are based upon investigations that include discussions with election officials and community leaders regarding potentially discriminatory practices in the election process.
Quitman	Lambert	May 4, 1993	Mun Primary	6	
Quitman	Lambert	May 18, 1993	Mun Prim Runoff	2	Information obtained at primary raised concerns that there might be possible discriminatory practices at the polls.
Quitman	Marks	May 6, 1997	Primary	9	
Quitman	Lambert	May 6, 1997	Primary	7	
Quitman		August 3, 1999	Primary	11	Monitor the treatment of African American voters, including whether they are able

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
					to receive assistance from the person of their choice and whether they are improperly turned away by poll workers.
Quitman		August 24, 1999	Primary Runoff	9	Monitor the treatment of African American voters, including whether they are able to receive assistance from the person of their choice and whether they are improperly turned away by poll workers.
Rankin		November 8, 1966	Federal	6	
Rankin		August 8, 1967	Primary	20	
Rankin		November 5, 1996	Federal	11	Determine whether black voters are being given proper assistance and information and obtain information on the state's dual voter registration system.
Scott	Forest	May 18, 1993	Mun Prim Runoff	13	Information obtained at primary raised concerns that there might be possible discriminatory practices at the polls.
Scott	Forest	May 6, 1997	Primary	12	
Scott	Forest	May 20, 1997	Runoff	12	
Sharkey		August 8, 1967	Primary	32	
Sharkey		November 5, 1968	Federal	10	
Sharkey		August 13, 1971	Primary	20	
Sharkey		November 4, 1975	General	20	
Sharkey		November 8, 1983	General	13	
Simpson		August 8, 1967	Primary	10	
Sunflower		May 2, 1967	Special	12	
Sunflower		August 8, 1967	Primary	16	

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
Sunflower		November 7, 1967	General	16	
Sunflower		May 13, 1969	Primary	22	
Sunflower		June 21, 1969	General Runoff	4	
Sunflower		November 3, 1970	Federal	12	
Sunflower		November 2, 1971	General	66	
Sunflower		August 5, 1975	Primary	71	
Sunflower	Sunflower	May 10, 1977	Mun Primary	3	
Sunflower	Moorhead	May 10, 1977	Mun Primary	3	
Sunflower	Indianola	November 10, 1981	Mun Primary	10	
Sunflower	Indianola	December 8, 1981	Mun General	12	
Sunflower	Moorhead	May 21, 1985	Mun Runoff	5	
Sunflower	Moorhead	June 4, 1985	Municipal	5	
Sunflower		November 4, 1986	Federal	14	
Sunflower		March 24, 1987	Special	16	
Sunflower		September 17, 1991	Primary	12	
Sunflower	Sunflower	May 4, 1993	Mun Primary	4	
Sunflower	Sunflower	June 8, 1993	Mun General	4	Actions by polling place officials that put black voters at a disadvantage, including rude treatment and harassment of black voters, denying illiterate black voters their right to assistance in voting by a person of their choice and failing to include eligible black votes on the cities' poll lists.
Sunflower	Moorhead	June 8, 1993	Mun General	5	Actions by polling place officials that put black voters at a disadvantage,

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
					including rude treatment and harassment of black voters, denying illiterate black voters their right to assistance in voting by a person of their choice and failing to include eligible black votes on the cities' poll lists.
Sunflower	Sunflower	April 28, 1994	Special Mayoral	4	
Sunflower		November 5, 1996	Federal	11	Determine whether black voters are being given proper assistance and information.; Obtain information on the state's dual voter registration system.
Sunflower	Sunflower	May 6, 1997	Primary	5	
Sunflower	Drew	May 6, 1997	Primary	4	
Sunflower	Moorhead	May 6, 1997	Primary	4	
Sunflower	Drew	May 20, 1997	Runoff	3	
Sunflower	Ruleville	June 3, 1997	General	5	
Sunflower		August 24, 1999	Primary Runoff	13	Monitor the treatment of African American voters, including whether they are able to receive assistance from the person of their choice and whether they are improperly turned away by poll workers.
Sunflower		November 2, 1999	General	8	Monitor the treatment of African American

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
					voters, including whether they are improperly turned away from the polls, and are incorrectly told their affidavit ballots are invalid. Observers will also monitor activities to ensure that voters are not harassed at the polls and receive assistance from the person of their choice.
Sunflower	Sunflower	June 5, 2001	Mun General	3	Monitor the treatment of African American voters, including whether they are able to receive assistance from the person of their choice and whether they are improperly turned away by poll workers.
Sunflower	Drew	January 15, 2002	Spec Mun General	3	Monitor the treatment of African American voters, including whether they are improperly turned away by poll workers.
Tallahatchie		November 2, 1971	General	10	
Tallahatchie		November 4, 1975	General	6	
Tallahatchie	Tutwiler	May 10, 1977	Mun Primary	2	
Tallahatchie		August 7, 1979	Primary	52	
Tallahatchie		August 28, 1979	Primary Runoff	33	
Tallahatchie	Tutwiler	May 12, 1981	Mun Primary	4	
Tallahatchie		August 2, 1983	Primary	24	A pre-election survey of the state

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
					determined that an undisclosed number of Mississippi counties are likely to be trouble spots; monitors were to determine whether minorities are able to vote without interference.
Tallahatchie	Tutwiler	March 17, 1987	Primary Runoff	6	
Tallahatchie		August 4, 1987	Primary	25	
Tallahatchie		August 25, 1987	Primary Runoff	38	
Tallahatchie		November 3, 1987	General	30	
Tallahatchie		November 17, 1987	General Runoff	3	
Tallahatchie		November 8, 1988	Federal	22	
Tallahatchie		November 2, 1993	General	28	
Tallahatchie		November 16, 1993	Runoff	20	Voting rights of blacks were impaired at a November 2 special election. Observers at the November 2 election reported that poll officials at one polling place discouraged a black voter from casting a ballot by falsely threatening him with a fine and poll officials at two other sites prohibited black voters from taking sample ballots in the polling places.
Tallahatchie		August 8, 1995	Primary	16	At previous elections poll workers denied black voters their right to be assisted by

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
					a person of their choice.
Tallahatchie	Webb	May 6, 1997	Primary	3	
Tallahatchie	Charleston	May 6, 1997	Primary	7	
Tallahatchie	Webb	May 20, 1997	Runoff	3	
Tallahatchie	Charleston	May 27, 1997	Special	7	
Tallahatchie		August 24, 1999	Primary Runoff	20	Monitor the treatment of African American voters, including whether they are able to receive assistance from the person of their choice and whether they are improperly turned away by poll workers.
Tallahatchie	Webb	May 1, 2001	Mun Primary	3	
Tunica		November 4, 1975	General	8	
Tunica		November 2, 1976	Federal	16	
Tunica		June 28, 1977	Special	24	
Tunica		November 14, 1978	Special	5	
Tunica		November 28, 1978	Special Runoff	5	
Tunica		November 6, 1979	General	28	
Tunica		August 2, 1983	Primary	15	A pre-election survey of the state determined that an undisclosed number of Mississippi counties are likely to be trouble spots. Monitors were to determine whether minorities are able to vote without interference.
Tunica		November 6, 1984	Federal	23	Problems were anticipated by local election officials and minority community leaders; the decision

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
					to send observers also was based on reports from federal observers in previous elections; black-white candidate contest for Congress.
Tunica		August 4, 1987	Primary	23	
Tunica		November 8, 1988	Federal	20	
Tunica		August 8, 1995	Primary	13	At previous elections poll workers denied black voters their right to be assisted by a person of their choice.
Tunica		November 7, 1995	General	6	The observers will provide basic information regarding procedures or activities that could disadvantage or result in the harassment or intimidation of African-American votes. Included in this are denials of requests for assistance or denial of voting eligibility for African-American voters.
Tunica		August 3, 1999	Primary	26	Monitor the treatment of African American voters, including whether they are able to receive assistance from the person of their choice and whether they are improperly turned away by poll workers.
Tunica		November 2, 1999	General	10	Monitor treatment of African American

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
					voters, including whether they are improperly turned away from the polls and are incorrectly told their affidavit ballots are invalid. Observers will also monitor activities to ensure that voters are not harassed at the polls and receive assistance from the person of their choice.
Walthall		September 17, 1991	Primary	15	
Walthall		August 24, 1999	Primary Runoff	26	Monitor the treatment of African American voters, including whether they are able to receive assistance from the person of their choice and whether they are improperly turned away by poll workers.
Warren		August 8, 1967	Primary	48	
Warren		February 27, 1968	Special Federal	18	
Warren		March 12, 1968	Federal Runoff	16	
Warren		August 5, 1975	Primary	42	
Warren		November 27, 1979	Special	89	
Warren		December 11, 1979	Special Runoff	44	
Warren		November 5, 1996	Federal	11	To determine whether black voters are being given proper assistance and information and obtain information on the state's dual voter registration system.

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
Warren	Vicksburg	May 6, 1997	Primary	25	
Washington		August 9, 1983	Primary	70	
Washington		August 23, 1983	Primary Runoff	34	
Washington		November 8, 1983	General	49	
Washington		November 6, 1984	Federal	41	Problems were anticipated by local election officials and minority community leaders; the decision to send observers also was based on reports from federal observers in previous elections; black-white candidate contest for Congress.
Washington		November 4, 1986	Federal	13	
Washington		November 18, 1986	General Runoff	8	
Washington	Leland	June 3, 1997	General	12	
Washington	Greenville	October 6, 2003	Mun Primary	15	
Wilkinson		August 8, 1967	Primary	40	
Wilkinson		August 29, 1967	Primary Runoff	32	
Wilkinson		November 7, 1967	General	14	
Wilkinson		February 27, 1968	Special Federal	24	
Wilkinson		March 12, 1968	Federal Runoff	20	
Wilkinson		November 5, 1968	Federal	24	
Wilkinson		May 13, 1969	Primary	14	
Wilkinson		June 3, 1969	General	6	
Wilkinson	Woodville	June 18, 1969	Municipal	5	
Wilkinson	Centerville	June 18, 1969	Municipal	5	
Wilkinson		June 21, 1969	General Runoff	4	
Wilkinson		November 3, 1970	Federal	16	
Wilkinson		November 2, 1971	General	38	
Wilkinson		November 7, 1972	Federal	36	

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
Wilkinson		November 4, 1975	General	20	
Wilkinson		August 7, 1979	Primary	26	
Wilkinson		November 8, 1983	General	24	
Wilkinson		October 8, 1991	Primary Runoff	12	
Wilkinson		May 26, 1992	Special	23	Results of previous election between black and white candidates had been set aside by court due to fraud and other improprieties.
Wilkinson		August 8, 1995	Primary	22	At previous elections poll workers denied black voters their right to be assisted by a person of their choice.
Wilkinson	Centreville	February 12, 2002	Spec Mun General	10	Monitor the treatment of African American voters, including whether they are improperly turned away by poll workers.
Winston		November 8, 1966	Federal	6	
Winston		September 17, 1991	Primary	9	
Winston		November 4, 2003	General	3	Ensure access to the polls and prevent discrimination.
Yazoo		November 2, 1971	General	35	
Yazoo	Yazoo City	April 1, 1974	Municipal	8	
Yazoo		August 5, 1975	Primary	46	
Yazoo	Yazoo City	April 3, 1978	Mun General	16	
Yazoo		August 7, 1979	Primary	19	
Yazoo		August 28, 1979	Primary Runoff	34	
Yazoo		October 2, 1979	Special	7	
Yazoo		November 6, 1979	General	34	
Yazoo		November 4, 1980	Federal	23	Based on a pre-election survey by the Civil Rights Division;

County	City/ Town	Date	Type	# of Observers	Press Release Comments/Notes
					monitors were to ensure the integrity of the election, give minorities confidence in the electoral process and record any irregularities that might develop.
Yazoo		November 18, 1980	General Runoff	7	
Yazoo		August 23, 1983	Primary Runoff	16	
Yazoo		November 8, 1983	General	19	
Yazoo		November 6, 1984	Federal	17	Problems were anticipated by local election officials and minority community leaders; the decision to send observers also was based on reports from federal observers in previous elections; black-white candidate contest for Congress, county office or the local school board.
Yazoo		November 4, 1986	Federal	13	
Yazoo		November 18, 1986	General Runoff	10	
Yazoo		August 4, 1987	Primary	26	
Yazoo		August 25, 1987	Primary Runoff	20	
Yazoo		November 3, 1987	General	14	

MISSISSIPPI REPORTED VRA CASES**Teague v. Attala County, 92 F.3d 283 (5th Cir. 1996)**

Decision: Stewart, Higginbotham, Lay (Circuit Judges)

Facts: Attala County's total population was 39.5% African-American. Despite this fact no black candidate had ever won a county-wide election or an election in a majority white district when running against a white candidate. The county had a single member districting scheme where five county supervisors were elected (one from each of the five single member districts) and two justice court constables (one from each of two single member districts). African-Americans were a majority in only one of the five county supervisor districts. To show that African-American voters were politically cohesive and that there was racially polarized voting, plaintiffs offered an ecological regression analysis and extreme case analysis. The ecological regression analysis showed that the average level of support for African-American candidates ranged from 86.3% to 92% among African-American voters versus only 12% to 25.2% among white voters. White bloc voting was also evident when surveying six elections where an average of 83.2% of all whites voted for white candidates.

Procedural History: Plaintiffs filed suit alleging that the county's districting scheme diluted minority voting strength in violation of both § 2 of the VRA and the one person-one vote principle of the Equal Protection Clause of the Fourteenth Amendment. The district court found that plaintiffs failed to prove either claim. On appeal, an earlier panel affirmed the district court's holding on the constitutional claim but remanded the § 2 claim for additional analysis of plaintiff's statistical evidence on racially polarized voting. On remand, the district court again held that the districting plan did not violate § 2 of the VRA. The district court found that voter apathy resulted in reduced voter registration and turnout and African-Americans had the same ability to participate in the political process as white voters. Plaintiffs appealed.

VRA Claim(s): The county's districting scheme for the election of county supervisors and county constables diluted African-American voting strength and denied African-American voters the ability to elect representatives of their choice in violation of § 2 of the VRA.

Holding: The court unanimously held that the trial court's findings that African-American voters were not politically cohesive and that there was not racially polarized voting was clearly erroneous. The court also found that the trial court's finding that African-American voters had as much opportunity to participate in the political process was clearly erroneous. After reviewing the ecological regression analysis and extreme case analysis the court found that there was overwhelming evidence of racial polarization which created a presumption of African-American political cohesion and racial bloc voting. The court also held that the district court unjustifiably required the plaintiffs to produce evidence disproving all nonracial reasons (i.e., experience, qualifications, and education) that could explain the election results. Moreover, there was insufficient evidence in the record to support the district court's finding that voter apathy was the reason why African-Americans had been unable to elect the candidate of their choice and the presence of voter apathy was not a matter for judicial notice.

Clark v. Calhoun County, 88 F.3d 1393 (5th Cir. 1996)**Decision:** Higginbotham, Stewart, Lay (Circuit Judges)

Facts: The plaintiffs were African-American residents and registered voters in Calhoun County, Mississippi. The county's districting scheme divided the county into five districts, each of which elected one county supervisor, one board of education member and one election commissioner. After the 1990 Census, the County Board of Supervisors developed a redistricting plan for the county that was precleared by the Department of Justice under § 5 of the VRA. According to the Census, African-American residents comprised 23% of the county's voting age population and 27% of its overall population. Under the redistricting plan, the African-American population was roughly equally divided among the five districts, ranging from a low of 19% African-American population to a high of 42% African-American population.

Procedural History: Plaintiffs filed suit alleging that the county's redistricting scheme diluted minority voting strength in violation of both § 2 of the VRA and that it also violated the Fourteenth and Fifteenth Amendments. The district court found that plaintiffs had failed to prove that a geographically compact black majority district could be created and that plaintiffs had failed to prove a § 2 violation under the totality of the circumstances. The district court did not address the constitutional claims and plaintiffs did not appeal the dismissal of those claims. The Fifth Circuit vacated the district court's judgment and remanded for further proceedings. On remand, the district court found that (1) a geographically compact black majority district could be created and (2) racially polarized voting was present in the county. Nevertheless, the district court found that after considering the totality of the circumstances its prior finding that plaintiffs had failed to prove a § 2 violation was not clearly erroneous. Plaintiffs appealed.

VRA Claim(s): The county's redistricting scheme that divided the county into five districts, each of which elected one county supervisor, one board of education member and one election commissioner diluted African-American voting strength and denied African-American voters the ability to elect representatives of their choice in violation of § 2 of the VRA.

Holding: The court held that the county's redistricting scheme diluted the voting strength of African-American voters and thus violated § 2 of the VRA. The record evidence before the district court demonstrated that racially polarized voting existed in Calhoun County and the success of a limited number of African-American candidates did not change the conclusion that racially polarized voting existed. Moreover, the district court found that even with those isolated victories African-American candidates had not been elected in the county during this century to supervisor, justice court judge, constable, sheriff, circuit clerk, chancery clerk, tax assessor, superintendent of education, school board member, coroner, county attorney, state senator or state representative. The court found that the Mississippi state majority-vote requirement could and had impacted African-American voting strength, especially due to the racially polarized voting. The court also addressed the county's argument that the proposed majority-minority district violated the Equal Protection Clause of the Fourteenth Amendment because race was the predominant factor in drawing the proposed district. The court held that redistricting to remedy § 2 violations by definition considers race and this is permissible as long as the remedy using race is narrowly tailored.

Mississippi State Chapter, Operation Push v. Mabus, 932 F.2d 400 (5th Cir. 1991)

Decision: Williams, Politz, Jones (Circuit Judges)

Facts: Plaintiffs challenged Mississippi's dual registration procedure which required citizens to first register with the county registrar (circuit clerk) in order to vote in federal, state and county elections, and then register again with the municipal clerk in order to vote in municipal elections. Plaintiffs also challenged the Mississippi statute that severely limited county registrars from conducting voter registration at places other than the registrar's office. Under this statute, satellite registration was blocked by preventing registrars from removing the registration books from the registrar's office. Registration was limited to the registrar's office, which was generally located in the county courthouse.

Procedural History: Plaintiffs alleged that the dual registration statute and the prohibition on satellite registration violated the Fourteenth and Fifteenth Amendments and § 2 of the VRA. The district court found that Mississippi's voter registration procedures results in African-American citizens in Mississippi registering to vote at a rate 25% lower than white citizens. The district court held that Mississippi's existing voter registration system violated § 2 of the VRA, but the court refused to order injunctive relief. Instead, the court gave the Mississippi Legislature an opportunity to cure the violation. The district court suggested changes to the existing voter registration process that would bring the registration process in compliance with the VRA. The legislature incorporated the district court's recommended changes and also amended the voter registration statute to allow voters to register with circuit clerks or county registrars for federal, state, county and municipal elections. The Attorney General precleared the changes under § 5 of the VRA. After reviewing the amended statute, the district court held that the Mississippi voter registration laws no longer violated § 2 of the VRA. Plaintiffs appealed alleging that the changes to the voter registration laws did not fully remedy past discrimination. The state of Mississippi cross-appealed alleging that the district court erred in its original finding of a § 2 violation.

Issue: Plaintiffs alleged that the new Mississippi voter registration statute was insufficient to remedy the racially discriminatory effects of Mississippi's past restrictions on voter registration. Plaintiffs asked the court to order mail-in voter registration, voter registration in state and local agencies, and election day registration.

Holding: The court affirmed the district court's holding that the Mississippi Legislature adequately remedied the § 2 violation when it changed the voter registration procedure. The court found that plaintiffs argument that the new statutory changes would be ineffective was premature because plaintiffs appealed before the voter registration changes could be evaluated. The court also held that the state failed to establish that the district court's finding that there was a 25% disparity in African-American and white voter registration rates, was clearly erroneous.

Houston v. Lafayette County, 20 F. Supp. 2d 996 (N.D. Miss. 1998)**Decision:** Judge Davidson

Facts: Lafayette County is a rural county located in the northern third of the state of Mississippi. According to the 1990 Census, Lafayette County's total population was 31,826. The racial composition of the county was 72.9% white, 25.1% African-American and 2.0% American Indian, Asian or other. African-Americans represented 21% of the county's voting age population. The county is governed by a Board of Supervisors elected from five single-member districts. Only one African-American candidate has ever won an election to the county Board of Supervisors. After the 1990 Census, the Board of Supervisors determined that that supervisory district lines should be redrawn. The Board of Supervisors helped develop a redistricting plan. Plaintiffs filed suit alleging that the lack of a majority-minority district for the Lafayette County Board of Supervisors resulted in the dilution of African-American votes in violation of § 2 of the VRA.

Procedural History: After a bench trial, the court concluded that plaintiffs failed to establish a violation of § 2 of the VRA. On appeal, the Fifth Circuit vacated the district court's holding and remanded the case to the district court for further findings to determine whether § 2 of the VRA had been violated.

Issue: Did the redistricting plan violate § 2 of the VRA?

Holding: On remand, the district court held that the county's redistricting plan violated § 2 of the VRA where plaintiffs sufficiently demonstrated that they met the Gingles factors of compactness and racially polarized voting. Plaintiffs also demonstrated that under the totality of the circumstances there was vote dilution under the redistricting plan. The court found evidence of vote dilution when evaluating how the State's majority vote requirement "permits a white majority that scattered its votes among several white candidates in an election to consolidate its support behind the remaining white candidate in the run-off election, thereby defeating the minority-supported candidate." Defendants pointed to the fact that one black candidate was successful in a general election to support their position that there was not vote dilution. The court rejected this argument holding that merely because one black candidate was successful in a supervisory general election does not mean there was not vote dilution. See Clark v. Calhoun County, 88 F.3d 1393, 1397 (5th Cir. 1996) ("the election of a few minority candidates does not necessarily foreclose the possibility of dilution of the black vote").

MISSISSIPPI UNREPORTED VRA CASES**Young v. Fordice, No. 3:95-cv-197 (S.D. Miss. July 24, 1995)****Decision:** Jolly (Circuit Judge), Barbour and Lee (District Judges)

Facts: Congress enacted the National Voter Registration Act (the "NVRA") which would become effective January 1, 1995. At the time Congress enacted the NVRA, Mississippi had a unitary voter registration system. Under this system once a Mississippi citizen registered to vote as provided under the state registration system, he or she was eligible to vote in municipal, county, state and federal elections. Each county in Mississippi maintained one voter registration

list. The purpose of the NVRA was to encourage voter participation in federal elections. The NVRA established a simplified voter registration process that allowed voters to register in state drivers license offices and other state agencies.

The Mississippi Secretary of State developed a plan to assist state agencies in registering voters under the NVRA. The Mississippi plan assumed that Mississippi election laws would be amended to permit citizens registering pursuant to the NVRA to also register under state and local election laws. At the request of the Attorney General, the Mississippi Secretary of State sent the Department of Justice the entire plan he intended to submit for preclearance. This proposed plan was submitted prior to the state legislature addressing the issue of voter registration in light of the NVRA. The proposed Mississippi statute that would have allowed qualified citizens registering under the NVRA to also vote in state and local elections was tabled and the proposed amendment to Mississippi's election laws was never enacted.

The Attorney General granted § 5 preclearance to the Mississippi plan but the parties disputed exactly what was precleared. Defendants argued that the proposed state legislation regarding Mississippi's voter registration laws was not precleared but the plaintiffs argued that the entire submission, including the proposed legislation was precleared. During this time, the Mississippi Secretary of State advised election officials that people who registered pursuant to the NVRA should be placed on the qualified list of voters for local and state elections although they were not qualified under the terms of Mississippi law. The Mississippi Attorney General later sent a letter notifying circuit clerks that since the proposed legislation had never been adopted people who registered under the NVRA would also have to register under the state election system in order to qualify to vote in state elections. The Attorney General wrote the Mississippi Attorney General informing him that this new "dual registration system" needed § 5 preclearance.

VRA Claim: Defendants effected a change subject to § 5 preclearance when the Mississippi Attorney General advised election officials that NVRA registrants could only vote in federal elections and not state and local elections. This effectively created two voter registration lists.

Holding: The court granted defendants' motion for partial summary judgment, holding that the proposed legislation that was included Mississippi's § 5 submission was not precleared because administrative regulations prevent the Attorney General from considering legislation that is not final. The court also held that the Mississippi Attorney General's letter did not affect a change subject to § 5 preclearance, rather it was the state's attempt to clarify a misapplication of the law.

Subsequent History: Young v. Fordice, No. 3:95-cv-197 (S.D. Miss. Oct. 5, 1998)

After the court's July 1995 Order granting defendants' motion for partial summary judgment, plaintiffs appealed to the United States Supreme Court. The Supreme Court reversed the grant of summary judgment and held that Mississippi needed to preclear certain changes under § 5 because they were discretionary and nonministerial in nature. The Supreme Court remanded the case to the district court with instructions for the court to enjoin Mississippi from using the unprecleared changes. The parties then agreed upon an interim voting registration plan that Mississippi could use to comply with the NVRA. The parties submitted the plan as a joint consent decree. The plaintiffs also filed an emergency motion for a preliminary injunction to

enjoin the upcoming elections in the event that the court rejected the consent decree. The court rejected the proposed consent decree and refused to enjoin the elections.

The Justice Department denied § 5 preclearance to the plan that Mississippi had been using to implement the NVRA. The Justice Department stated that Mississippi had essentially created a dual registration system - one system for voters registering for federal elections under the NVRA and another system for voters who had registered for all Mississippi elections under Mississippi state law procedures. The court also found that the majority of the NVRA voter registrants in Mississippi were African-American and Mississippi's dual registration process therefore had a disproportionate impact on African-Americans.

The court enjoined the state from denying the right to vote to any voter who had registered to vote in any state, county, or municipal election or any voter who was registered and qualified to vote in federal elections under the NVRA. The court reached its decision after considering (1) the Supreme Court's holding that Mississippi's administrative plan was a change subject to preclearance under § 5 of the VRA and (2) Mississippi's inability to obtain § 5 preclearance for those changes.

NORTH CAROLINA EXECUTIVE SUMMARY**DEMOGRAPHICS:**

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
Total population	8,049,313	100.0	6,085,266	100.0
Hispanic or Latino (of any race)	378,963	4.7	258,873	4.3
Not Hispanic or Latino	7,670,350	95.3	5,826,393	95.7
One race	7,946,053	98.7	6,027,519	99.1
White	5,804,656	72.1	4,527,155	74.4
Black or African American	1,737,545	21.6	1,218,470	20.0
American Indian and Alaska Native	99,551	1.2	69,522	1.1
Asian	113,689	1.4	82,637	1.4
Native Hawaiian and Other Pacific Islander	3,983	0.0	2,902	0.0
Some other race	186,629	2.3	126,833	2.1
Two or more races	103,260	1.3	57,747	0.9

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File.

MINORITY REPRESENTATION IN FEDERAL & STATE LEGISLATURE:

There are currently zero minorities in the United States Senate and two minorities in the House of Representatives from North Carolina (African-American: Melvin Watt- Democrat; G.K. Butterfield- Democrat).

There are seven minority members of the state Senate as follows: Charlie Smith Dannelly, African-American, Democrat; Katie G. Dorsett, African-American, Democrat; Malcolm Graham, African-American, Democrat; Robert Lee Holloman, African-American, Democrat; Jeanne Hopkins Lucas, African-American, Democrat; Vernon Malone, African-American, Democrat and Larry Shaw, African-American, Democrat.

There are twenty-one minority members of the state House of Representatives as follows: Alma Adams, African-American, Democrat; Bernard Allen, African-American, Democrat; Larry M. Bell, African-American, Democrat; Linda Coleman, African-American,

Democrat; W. Pete Cunningham, African-American, Democrat; Beverly M. Earle, African-American, Democrat; Jean Farmer-Butterfield, African-American, Democrat; Howard J. Hunter Jr., African-American, Democrat; Earl Jones, African-American, Democrat; Edward Jones, African-American, Democrat; Marvin W. Lucas, African-American, Democrat; Mary E. McAllister, African-American, Democrat; Henry M. Michaux Jr., African-American, Democrat; Paul Miller, African-American, Democrat; Daniel F. McComas, Latino, Republican; Earline W. Parmon, African-American, Democrat; Garland E. Pierce, African-American, Democrat; Ronnie Sutton, Native American, Democrat; William L. Wainwright, African-American, Democrat; Larry Womble, African-American, Democrat; Thomas E. Wright, African-American, Democrat

Source:<http://www.ncga.state.nc.us/gascripts/members/memberList.pl?sChamber=House>; House Clerk's Office, (919) 733-7928; Senate Clerk's Office, (919) 733-7928

SECTION 5 RELATED MATTERS:

The following counties in North Carolina are covered under Section 5 of the Voting Rights Act: Anson County; Beaufort County; Bertie County; Bladen County; Camden County; Caswell County; Chowan County; Cleveland County; Craven County; Cumberland County; Edgecombe County; Franklin County; Gaston County; Gates County; Granville County; Greene County; Guilford County; Halifax County; Harnett County; Hertford County; Hoke County; Jackson County; Lee County; Lenoir County; Martin County; Nash County; Northampton County; Onslow County; Pasquotank County; Perquimans County; Person County; Pitt County; Robeson County; Rockingham County; Scotland County; Union County; Vance County; Washington County; Wayne County; and Wilson County.

SECTION 203 AND OTHER MINORITY LANGUAGE MATTERS

North Carolina is not covered under Section 203 of the Voting Rights Act.

REPORTED INSTANCES OF VOTER SUPPRESSION AND INTIMIDATION

In 1990, the U.S. Department of Justice investigated instances of voter intimidation in the days leading up to the hotly contested U.S. Senate race between incumbent Republican Senator Jesse Helms and Democrat Harvey Gantt. Democrats contended that at least 10,000 postcards had been sent by Republicans to voters across the state that provided inaccurate information about voting laws. Democrats also contended that those postcards that were returned as undeliverable were to be used at polling places in order to scare potential voters from casting their ballots. Prior to election day, the head of the civil rights division of the U.S. Justice Department secured a pledge from Republicans not to use the returned postcards on Election Day, and said the FBI would investigate whether the mailing constituted voter intimidation. Reported by: *United Press International* (November 6, 1990)

STATE VOTING LAWS

1. Voter Identification Requirements

North Carolina law requires voters to register in order to be entitled to vote in any election. N.C. GEN. STAT. § 163-54 (2005). During the registration process, voters are asked to provide either a driver's license number or the last four digits of their social security number for identification purposes. N.C. GEN. STAT. § 163-82.4 (2005). Voters without a driver's license or social security number are alternatively given a unique identifier number then used to identify the voter at the polls. *Id.* Enacted in 2003 to comply with the Help America Vote Act, voters who have registered previously are only required to tell election officials their name and address at the voting location. N.C. GEN. STAT. § 163-166.7 (2005). Voters who have registered by mail, who have not voted in a previous election including a federal office seat must present either current or valid photo identification or a copy of a document showing the name and the address of the voter. N.C. GEN. STAT. § 163-166.12 (2005).

2. Proof of Citizenship Requirements

In North Carolina, any person born in the United States or naturalized who is over eighteen may register to vote, subject to certain residency requirements. N.C. GEN. STAT. § 163-55 (2005). Thus, in registering to vote, applicants are required to fill out a form asking whether they are citizens of the United States. N.C. GEN. STAT. § 163-82.4 (2005). If an applicant answers “no” to such question, they may not register to vote. Id. Applicants who do not answer questions regarding citizenship, are notified of such omission and are given the opportunity to fill out the form in a timely manner. Id.

3. English Literacy Requirements

Assistance is available to registered voters if they are unable to mark a ballot due to physical disability or illiteracy. N.C. GEN. STAT. § 163-166.8 (2005). Voters needing such assistance request permission upon arriving at the voting place. Id. The voter will have a choice of who will assist them in voting, as long as the person is not the voter’s employer, an agent of that employer, or an officer or agent in the voter’s union. Id. Additionally, those giving assistance may not attempt to influence or persuade the voter to cast a vote in any other way, nor may they take note of how the person voted, or relate such information to another person. Id.

DOJ OBSERVER/MONITOR COVERAGE

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
Edgecombe		May 8, 1984	Primary	42	
Edgecombe		June 5, 1984	Runoff	6	
Edgecombe		November 6, 1984	Federal	22	Ensure voters have a fair chance to cast their ballots; in most instances, local officials requested the aid.
Edgecombe		May 3, 1988	Primary	39	

Edgecombe		November 6, 1990	Federal	36	Indications of possible problems from DOJ contacts. Monitors watching for signs of voter harassment and other violations of the Act.
Edgecombe		November 8, 1994	Federal	45	Monitor interracial contests for three seats on the Edgecombe County Commission and for a Superior Court clerkship. In previous elections, some voters alleged they were given the wrong ballot.

NORTH CAROLINA REPORTED VRA CASES

Thornburg v. Gingles, 478 U.S. 30 (1986).

Decision: No majority decision was reached. Justice Brennan delivered the opinion of the Court (with respect to several sections of the decision); Justice Brennan, joined by Justice Marshall, Justice Blackmun, and Justice Stevens (wrote separately to address another aspect of the decision)

Concurrence: Justice White filed a concurrence; Justice O'Connor filed an opinion concurring in the judgment in which Chief Justice Burger, Justice Powell, and Justice Rehnquist joined; Justice Stevens filed an opinion concurring in part and dissenting in part in which Justice Marshall and Justice Blackmun joined.

Facts: In 1982, North Carolina General Assembly enacted a redistricting plan for the state Senate and House of Representatives. Plaintiffs challenged seven districts of which one was a single member district and the others were multi-member districts. After plaintiffs brought suit, but before trial, Congress amended § 2 so that a violation could be proved either by showing discriminatory intent or through a results test. The district court applied the totality of the circumstances test as set forth in the Senate Judiciary Report and concluded that the scheme violated § 2.

VRA Claims: Whether the redistricting plan violated § 2 by denying African-Americans the opportunity to participate in the election process.

Issues: First, what standard should be applied when determining if multimember districts violate § 2? Second, what type of evidence should the court consider when determining if a voting practice is racially polarized? Finally, has the Court's clearly erroneous standard of review of vote dilution claims changed since the amendment to § 2?

Plurality: While the totality of the circumstance test is relevant to a finding of vote dilution, it must be considered in conjunction with three pre-conditions. First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district. Second, the minority group must be able to show that it is politically cohesive. Third, the minority must be able to show that the white majority votes sufficiently as a bloc to enable it to defeat a minority preferred candidate. The Court concluded that racially polarized voting refers to a correlation between the race of voters and the selection of certain candidates. Plaintiffs “need not prove causation or intent in order to prove a prima facie case or racial bloc voting and defendants may not rebut that case with evidence of causation or intent.” The Court will still apply the clearly erroneous standard to its review of vote dilution claims.

Lewis v. Alamance County, 99 F.3d 600 (4th Cir. 1996)

Decision: Luttig (Circuit Judge).

Concurrence: Wilkinson (Chief Judge)

Dissent: Michael (Circuit Judge)

Facts: Plaintiffs filed suit alleging that the county’s at-large method of electing county commissioners denied African-Americans an equal opportunity to elect representatives of their choice due to vote dilution. The county is governed by a Board of Commissioners. Its five members are elected, in at-large partisan elections, to four year, staggered terms. Voters may cast votes for as many candidates as there are seats open, but they cannot cast more than one vote for any one candidate. To show that the African-American voters were politically cohesive, but unable to elect a representative, plaintiffs presented bivariate ecological regression analysis for every election in which an African-American candidate was on the ballot.

VRA Claim: The at-large election scheme denies African-Americans equal opportunity to elect a representative of their choice in violation of § 2.

Issues: Whether white candidates who received overwhelming support from African-American voters in general elections should be considered as minority-preferred candidates. Whether successful candidates may be treated as “black-preferred” if they place second or third among African-American voters behind an unsuccessful candidate who was the first choice among those voters.

Holding: Minority-preferred candidates may be either a minority or a non-minority. The court must consider elections in which candidates are both of different races and of the same race. The court will not consider the race of the candidate, but rather the race of the voter. Therefore, it is insufficient to consider selectively only those elections in which minority candidates were on the ballot, at least where such elections are not a substantial majority of the total elections that a fair assessment can be made of whether the minority-preferred candidates are usually defeated by white bloc voting. In multi-seat elections in which voters are permitted to cast as many votes as there are seats, a candidate that receives a majority of the minority vote and finishes behind a successful candidate who was the first choice of the minority is deemed a successful minority candidate. Candidates who receive less than a majority of the minority vote, but who would

have been elected had the election only been held among minority voters, are presumed to be minority preferred.

McGee v. Granville County, 860 F.2d 110 (4th Cir. 1988)

Decision: Butzner (Senior Circuit Judge), Phillips and Ervin (Circuit Judges).

Facts: Plaintiffs initiated suit in 1987 arguing that the existing at-large method of electing the County Board of Commissioners had the result of diluting the minority vote. The district court ordered that the parties attempt to agree on a remedial plan. If the parties could not agree, the County was to submit a response to the court. Accordingly, the parties could not agree, so the County submitted its plan. The plan proposed single-member district plan with seven districts and staggered terms. The plaintiffs argued this plan was inadequate and submitted a limited voting plan. The district court found that the plan did not 'completely' remedy the dilution problem. Therefore, the court adopted a modified version of the plaintiff's plan.

VRA Claims: What is the role of a federal court's remedial power in reviewing a legislative plan designed, in response to the court's order, to remedy a stipulated violation of section 2 of the Voting Rights Act.

Holding: Where the county does not respond with a plan or responds with a legally unacceptable remedy, the district court may formulate a "near optimal" plan. When the county does respond with a legally acceptable remedy, the court cannot substitute another remedy. The court may only consider whether the plan proposed violates another constitutional or statutory right or whether it failed to address the initial violation. Having determined that the county's plan remedied the vote dilution problem, the district court should not have substituted its own plan.

See also Hines v. Mayor and Town Council of Ahoskie, 998 F.2d 1266 (4th Cir. 1993).

Ward v. Columbus County, 782 F. Supp. 1097 (E.D.N.C. 1991).

Decision: Britt (District Judge).

Facts: Plaintiff challenged the method of electing members to the Board of County Commissioners. Under the plan, five members on the board are elected at-large from residency districts in staggered terms. The court found that voting among African-American voters was consistently cohesive since 1985, that racial bloc voting was extreme and persistent among white voters in the county and that the level of bloc voting ensured the defeat of African-American candidates.

VRA Claim: The at-large election method of Board of Commissioners violates § 2 of VRA and denies African-American voters equal opportunity to participate in the electoral process.

Issue: Whether the at-large election system violates § 2 of VRA.

Holding: The plaintiff has met the burden of Gingles and established the prima facie requirements of a § 2 claim. The court considered the cohesiveness of minority voters, the

success and failure of minority candidates, the effectiveness of racial bloc voting, the history of racial discrimination in the community, the relative percentages of residents of voting age, the necessity of the current election plan and the size of the county.

See also Cannon v. Durham County Board of Elections, 959 F. Supp. 289 (E.D.N.C. 1997); NAACP v. City of Statesville, 606 F. Supp. 569 (W.D.N.C. 1985); Johnson v. Halifax County, 594 F. Supp. 161 (E.D.N.C. 1984).

United States v. Onslow County, 683 F. Supp. 1021 (E.D.N.C. 1988).

Decision: Britt (Chief District Judge), Ervin (Circuit Judge) and Dupree (Senior District Judge).

Facts: On November 1, 1964, the county was governed by a five member Board of Commissioners. The commissioners served two-year terms and were nominated in partisan primaries from single-member districts and then elected at-large by the entire county. In 1966, the election plan was changed pursuant to a consent decree so that commissioners were also nominated through an at-large system. In 1969, the General Assembly increased the term of the board members to four years and provided that their terms would be staggered. These changes were implemented in 1970 and have been followed since. However, Onslow County, which is subject to § 5 of the VRA did not seek pre-clearance until 1987. The Attorney General objected to the staggered term, but approved the other changes. Plaintiff asked the court to declare all five seats on the board vacant and a new election for those positions.

VRA claim: All elections of the Board of Commissioners after the General Assembly adopted staggered term policy violated § 5 of the VRA because the General Assembly did not seek preclearance.

Issue: What is the appropriate remedy when a county has conducted elections without obtaining the proper pre-clearance as required by § 5 of the VRA?

Holding: All seats of the board must be vacated, not simply the recently elected positions. To only reelect the recently filled positions would be to perpetuate the staggered board to which the Attorney General objected.

See also Haith v. Martin, 618 F. Supp. 410 (E.D.N.C. 1985).

Cavanagh v. Brock, 577 F. Supp. 176 (E.D.N.C. 1983).

Decision: Phillips (Circuit Judge), Dupree and Britt (District Judges).

Facts: In 1968, North Carolina amended its constitution to provide that no county shall be divided in the formation of senate or house districts. In 1981, the General Assembly wished to amend the apportionment plans. Forty of North Carolina's counties are subject to § 5 preclearance requirements. Thus, the Attorney General reviewed the plan and objected to how the 1968 amendments affected covered counties. As a result, in 1982, the General Assembly called a Special Session and revised the apportionment plans. These plans were approved by the Attorney General but the objections to the 1968 amendments had not been lifted. Plaintiffs sued

to enjoin the state from imposing the 1982 Special Session apportionment plans and argued that the 1968 amendments still applied to counties not subject to preclearance.

VRA Claim: The 1968 state constitution amendments, which provided that counties may not be divided in the formation of house or senate districts, were not pre-cleared by the Attorney General as required by § 5.

Issue: Whether apportionment provisions that the Attorney General did not pre-clear could be severed and applied to counties not subject to preclearance requirements.

Holding: The constitutional amendments are not severable. The state applies a two-part test to determine severability: “(1) whether the remaining portions of the state are capable of being enforced on their own; and (2) whether there is legislative intent to enforce the remainder.” There was no evidence that the General Assembly intended that the amendments be applied differently across the state. Therefore, once the Attorney General objected, the amendments had no binding force.

See also Stephenson v. Bartlett, 562 S.E.2d 337 (N.C. 2002).

SOUTH CAROLINA EXECUTIVE SUMMARY**DEMOGRAPHICS:**

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
Total population	4,012,012	100.0	3,002,371	100.0
Hispanic or Latino (of any race)	95,076	2.4	67,122	2.2
Not Hispanic or Latino	3,916,936	97.6	2,935,249	97.8
One race	3,972,062	99.0	2,979,745	99.2
White	2,695,560	67.2	2,097,372	69.9
Black or African American	1,185,216	29.5	215,702	27.2
American Indian and Alaska Native	13,718	0.3	9,964	0.3
Asian	36,014	0.9	27,486	0.9
Native Hawaiian and Other Pacific Islander	1,628	0.0	1,218	0.0
Some other race	39,926	1.0	28,003	0.9
Two or more races	39,950	1.0	22,626	0.8

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File.

MINORITY REPRESENTATION IN FEDERAL & STATE LEGISLATURE:

There are currently zero minorities in the United States Senate or the House of Representatives from South Carolina.

There are eight minority members of the state Senate as follows: Ralph Anderson, African-American, Democrat; Robert Ford, African-American, Democrat; Darrell Jackson, African-American, Democrat; Gerald Malloy, African-American, Democrat; John W. Matthews Jr., African-American, Democrat; Kay Patterson, African-American, Democrat; Clementa C. Pinckney, African-American, Democrat; and Kent M. Williams, African-American, Democrat.

There are twenty-four minority members of the state House of Representatives: Gloria Arias Haskins, Latino, Republican; Karl B. Allen, African-American, Democrat; Carl L. Anderson, African-American, Democrat; Floyd Breeland, African-American, Democrat; Joe E. Brown, African-American, Democrat; Robert L. Brown, African-American, Democrat; William

Clyburn, African-American, Democrat; Gilda Cobb-Hunter African-American, Democrat; Jerry N. Govan Jr., African-American, Democrat; Jesse E. Hines, African-American, Democrat; Mack T. Hines, African-American, Democrat; Lonnie Hosey, African-American, Democrat; Leon Howard, African-American, Democrat; Joseph H. Jefferson Jr., African-American, Democrat; Kenneth Kennedy, African-American, Democrat; David J. Mack III, African-American, Democrat; Bessie A. Moody-Lawrence, African-American, Democrat; Joseph H. Neal, African-American, Democrat; J. Anne Parks, African-American, Democrat; J. Todd Rutherford, African-American, Democrat; John L. Scott Jr., African-American, Democrat; Fletcher N. Smith Jr., African-American, Democrat; J. David Weeks, African-American, Democrat; and J. Seth Whipper, African-American, Democrat.

Source: <http://www.scstatehouse.net/html-pages/housemembers.html>; <http://www.scstatehouse.net/html-pages/senatemembers.html>; House Clerk's Office, (803) 734-2010

SECTION 5 RELATED MATTERS:

South Carolina is covered under Section 5 of the Voting Rights Act.

SECTION 203 AND OTHER MINORITY LANGUAGE MATTERS

South Carolina is not covered under Section 203 of the Voting Rights Act.

REPORTED INSTANCES OF VOTER SUPPRESSION AND INTIMIDATION

Phony letters from the "NAACP" were sent to residents of Charleston County, cautioning would-be voters that they might be arrested if they had outstanding parking tickets or overdue child support payments and attempted to vote. The letter also falsely stated that voters were required to provide two forms of photo identification, a social security card, a voter registration card, and a handwriting sample, and were required to submit to a credit check in order to be voter eligible.

Reported in: *The Greenville News* (October 30, 2004)

Voters, many of whom were college students, were turned away for a brief period from a precinct located on Benedict College's campus. Poll watchers affiliated with the Republican Party contested the legality of many of the voters at the site. One college student who had a student ID but did not have state identification was challenged by a poll watcher and forced to get out of line until the dispute was settled. Other students, frustrated by the repeated challenges to their vote left crying, without casting a vote. Others were forced to leave before voting because the high volume of voting-related challenges created tremendously long delays at the polls.

Reported by: *The Associated Press State and Local Wire* (November 3, 2004)

STATE VOTING LAWS

1. Voter Identification Requirements

Voters must fill out a written application in order to register to vote. S.C. CODE ANN. § 7-5-170 (2004). South Carolina also provides that "when any person presents himself to vote, he shall produce his valid South Carolina driver's license or other form of identification containing a photograph issued by the Department of Motor Vehicles." S.C. CODE ANN. § 7-13-710 (2004). When people appearing to vote do not appear on the polling place's registered voter's list, the official may place a call in order to ascertain whether the voter is registered in another location, and then allow the person to vote. S.C. CODE ANN. § 7-13-820 (2004).

2. Proof of Citizenship Requirements

The South Carolina constitution gives suffrage to any "citizen of the United States and of this State of the age of eighteen and upwards who is properly registered is entitled to vote as provided by law." S.C. CONST. ANN. ART. II, § 4 (2004). Additionally, South Carolina law

provides that citizens of the United States and the state may register to vote, subject to age and other restrictions regarding criminal record. S.C. CODE ANN. § 7-5-120 (2005).

3. English Literacy Requirements

The South Carolina constitution provides that ability to read and write the English language may serve as a prerequisite to being entitled to vote, with exceptions for physical disability. S.C. CONST. ANN. ART. II, § 6 (2004). South Carolina law also states that under normal circumstances, only one person is allowed in the polling area in order to cast a vote. S.C. CODE ANN. § 7-5-740 (2005). Still, the election code provides that, a “voter who requires assistance to vote by reason of blindness, disability, or inability to read or write” may receive assistance in casting a vote. S.C. CODE ANN. § 7-13-770 (2005). The election officials may appoint one of the managers and any person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union to assist the voter. Id.

DOJ OBSERVER/MONITOR COVERAGE

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
Bamberg		October 11, 1984	Runoff	4	
Bamberg	Denmark	February 12, 1985	Municipal	7	
Calhoun		October 2, 1984	Primary	23	
Calhoun		November 8, 1988	Federal	11	
Chester		June 12, 1990	Primary	32	
Chester		November 6, 1990	Federal	24	Federal observer assignment was based upon investigations that include discussions with election officials and community leaders regarding potentially discriminatory practices in the election process.
Chester	Chester	March 26, 1991	Special Mun	20	The county had canceled its previous

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
					election in 1989 and allowed the incumbents to remain in office without preclearance of the change in voting procedures as required by the Voting Rights Act. The federal observer assignment was based upon investigations that include discussions with election officials and community leaders regarding potentially discriminatory practices in the election process.
Chester	Chester	May 7, 1991	Municipal	20	
Chester	Chester	May 4, 1993	Mun Primary	20	
Chester		June 25, 1996	Primary Runoff	10	In the previous election, African American voters in need of assistance were misinformed of voting procedures and unable to obtain assistance from a person of their choice.
Clarendon		June 14, 1966	Primary	56	
Clarendon		June 28, 1966	Primary Runoff	56	
Clarendon		June 11, 1968	Primary	22	
Clarendon		June 25, 1968	Primary Runoff	36	
Clarendon		November 5, 1968	Federal	36	
Clarendon		November 3, 1970	Federal	9	
Clarendon		November 7, 1972	Federal	50	
Clarendon		October 2, 1984	Primary	14	
Colleton		October 11, 1984	Runoff	45	

County	City/Town	Date	Type	# of Observers	Press Release Comments/Notes
Darlington		November 7, 1978	Federal	55	
Dorchester		June 14, 1966	Primary	46	
Dorchester		June 11, 1968	Primary	36	
Dorchester		November 5, 1968	Federal	22	
Dorchester		November 3, 1970	Federal	10	
Dorchester		November 7, 1972	Federal	55	
Dorchester		June 12, 1990	Primary	11	
Dorchester		November 5, 1996	Federal	5	Ensure that voters are assisted by persons of their choice.
Dorchester	Ridgeville	December 11, 2001	Special Mun	3	Monitor the treatment of African American voters, including whether they are improperly turned away by poll workers.
Hampton		October 11, 1984	Runoff	11	
Marion		June 27, 1978	Primary Runoff	12	
Marion		October 2, 1984	Primary	16	
Marion		June 11, 1996	Primary	9	
Richland		October 2, 1984	Primary	6	
Williamsburg		October 2, 1984	Primary	39	
Williamsburg		June 14, 1988	Primary	34	
Williamsburg		June 11, 1996	Primary	29	
Williamsburg		June 25, 1996	Primary Runoff	19	In the previous election, African American voters in need of assistance were misinformed of voting procedures and unable to obtain assistance from a person of their choice.

SOUTH CAROLINA REPORTED VRA CASES

United States v. Charleston County, 365 F.3d 341 (4th Cir. 2004)

Decision: Wilkinson, Niemeyer, and Duncan (Circuit Judges)

Facts: Charleston County was governed by a County Council composed of nine members elected in county-wide, partisan elections. Charleston County has a population of 310,000. The racial composition of Charleston County is 60.8% white, 34.3% African-American, and 4.9% people of other racial or ethnic descent. As of November 2000, there were 177,279 people registered to vote in Charleston County. Of the registered voters, 72.2% were white and 27.8% were non-white. The county's at-large voting system allows all residents to vote for candidates residing in specific areas of the county. This system was created in 1969. In 1989, a county referendum to switch from an at-large to a single-member district system was narrowly rejected. Voting on the referendum was very polarized with 98% of minority voters approving the switch to single-member districts while 75% of white voters wanted to retain at-large elections. Since 1970, only 3 of the 40 people elected to the County Council were minorities.

Procedural History: The United States and a group of Charleston County voters challenged the county's at-large method for electing members to the County Council. Plaintiff alleged that the at-large system violated § 2 of the VRA by diluting minority voting strength. Plaintiffs moved for partial summary judgment as to whether the three Gingles preconditions necessary to establish a § 2 violation had been met. The district court granted plaintiffs motion for summary judgment and held a trial on the remaining issue – whether, based on the totality of the circumstances, the County's at-large electoral method violated § 2 of the VRA. The district court held that the at-large voting system deprived minority voters of an equal opportunity to participate in the political process and elect candidates of their choice.

VRA Claim(s): The County appealed the district court's finding that plaintiffs had satisfactorily established the third Gingles precondition – the presence of white racial bloc voting. The county argued that voting in the county was polarized as a result of partisanship rather than race.

Holding: The court held that the district court's finding that the county's at-large election of its County Council violated § 2 of the VRA was not clearly erroneous. In reaching this conclusion the court found that evidence presented by both parties supported the district court's conclusion "that voting in Charleston County Council elections is severely and characteristically polarized along racial lines." Both parties' experts also agreed that the county's use of staggered terms, residency districts and a primary nominating system made it more difficult for minority-preferred candidates to win. The court found that the cause of racially polarized voting was irrelevant to the determination of the third Gingles precondition and it did not require a finding that the white bloc voting was based on racial animus or bias.

Colleton County Council v. McConnell, 201 F. Supp. 2d 618 (D.S.C. 2002)

Decision: Traxler (Circuit Judge), Anderson (Chief District Judge), Perry (Senior District Judge)

Facts: The governing body of the state of South Carolina failed to successfully enact new districting plans after the 2000 Census. The South Carolina General Assembly prepared redistricting plans for the South Carolina Senate, the South Carolina House of Representatives and the United States Congressional districts within the state. The plans were vetoed by the Governor. The Governor stated that he vetoed the plans because the House and Senate plans should have created more minority influence districts and the Congressional plan unnecessarily

split several counties within the state. The General Assembly unsuccessfully attempted to override this veto. The parties stipulated that the existing plans for all three bodies were unconstitutionally malapportioned after the 2000 Census.

VRA Claim(s): This case resulted from the filing of three separate lawsuits where the plaintiffs alleged that the existing election districts for the South Carolina General Assembly and the United States Congressional seats in South Carolina violated the one-person, one-vote requirement of the Constitution. The plaintiffs sought a declaration that the existing redistricting plans were unconstitutional and the court should order an interim court-ordered plan in time for the 2002 elections.

Holding: The court held that the existing districts were malapportioned and the South Carolina General Assembly failed to redistrict in adherence to its constitutional and statutory obligations. The parties presented proposed redistricting plans for the two bodies of the South Carolina General Assembly and the six Congressional districts. The court refused to totally adopt either parties plans because the proposed plans were primarily driven by each parties attempt to advance partisan goals and the court found that it was inappropriate for the court to engage in political gerrymandering. In creating its plan, the court considered the Equal Protection Clause's requirement of apportionment on an equipopulous basis and § 2 of the VRA's requirements. The court enjoined the state of South Carolina from conducting any elections under the existing electoral districts. The court held that the court-ordered redistricting plans were to be utilized in all elections until the South Carolina General Assembly, with the approval of the Governor and in compliance with § 5 of the VRA, enacted a new redistricting plan.

Jackson v. Edgefield County, 650 F. Supp. 1176 (D.S.C. 1986)

Decision: Brown (District Judge)

Facts: Plaintiffs, African-American citizens of Edgefield County, filed suit challenging the at-large system for electing members of the Edgefield County School Board of Trustees. The Board is comprised of seven members. Before 1968, the Board was appointed by the Governor to four-year staggered terms. In 1968, the State legislature changed the appointive system to require that the seven-member Board be elected at-large by voters in the County to six-year staggered terms. Edgefield County is in a predominantly rural area. According to the 1980 Census, there were 17,528 persons in Edgefield County. The racial composition of the County was 49.9% white, 49.8% African-American and the remaining 3% were other races. The voting age population of the County was 54.3% white and 45.4% African-American. Only one African-American at a time had ever been on the Board and the white-preferred candidate almost always won the election.

VRA Claim(s): Plaintiffs allege that the at-large election system resulted in dilution of the voting strength of African-American voters depriving them of their Constitutional rights in violation of the First, Thirteenth, Fourteenth and Fifteenth Amendments and in violation of § 2 of the VRA.

Holding: The court found that § 2 of the VRA had been violated. The court held that "under the commands of federal civil rights law and the close scrutiny by the federal courts, there are

progresses made toward racial equality in South Carolina. These relatively recent achievements, however, have not purged the continuing adverse effects of past racial discrimination on black citizens' ability to participate effectively on an equal basis in political affairs under certain circumstances in Edgefield County." In reaching this decision the court considered Edgefield County's history of discrimination that prevented African-Americans from voting which included physical intimidation and violence, poll taxes, and literacy tests. In addition, both expert witnesses acknowledged that there was a correlation between the race of the voter and the selection of their preferred candidate. The court found that this was sufficient to establish racially polarized voting. The court also found that the existence of staggered terms and a majority vote requirement contributed to minority vote dilution. The court enjoined future at-large elections for the Board of Trustees until the court approved a constitutionally permissible plan for the election of the Board. Defendants had 30 days to submit a new apportionment plan for approval pursuant to § 5 of the VRA and until that time the current school board was to remain in effect until the new election under the court approved plan.

SOUTH CAROLINA UNREPORTED VRA CASES

Rutherford v. South Carolina Republican Party, No. 4-00-329-24 (D.S.C. Feb. 14, 2000)

Decision: Traxler (Circuit Judge), Seymour and Anderson (District Judges)

Facts: Plaintiffs moved for injunctive relief alleging that Defendants opening, closing and consolidation of polling places in preparing for the Presidential Preference Primary violated § 2 and § 5 of the VRA. Defendants responded that their actions regarding the opening, closing or consolidation of polling places around the State of South Carolina did not conflict with state law. Defendants argued that their actions were not covered by § 5 of the VRA and therefore they were not required to obtain preclearance under § 5. After Plaintiffs filed the complaint in this action, Defendants submitted a request for preclearance of the February 19, 2000 Presidential Preference Primary procedures to the Department of Justice.

VRA Claim(s): Plaintiffs alleged that defendants violated § 2 and § 5 of the VRA when they closed certain polling places during the Republican Presidential Preference Primary.

Holding: Plaintiffs continued to assert that § 5 of the VRA applied to the primary and defendants continued to deny that § 5 applied. The parties agreed to resolve the equitable issues concerning this election due to the approaching February 19, 2000 primary. The court issued a consent order that (1) the defendants should continue to use their best efforts to ensure that each polling place is adequately staffed during the hours of the February 19, 2000 Presidential Preference Primary, (2) for those polling places that could not be opened, Defendants would try to provide an alternative polling location at or near the location of the unavailable state designated location; (3) Defendants agreed to publicize the location of the alternative polling places; (4) Defendants agreed to seek additional assistance from the State Election Commission to open all available polling locations; (5) Defendants agreed to inform the court and plaintiffs of the location of any additional polling places and the retention of state designated workers to staff those locations; and (6) Plaintiffs agreed that this Consent Order, once complied with by Defendants, would be complete relief with respect to those claims relating to the conduct, procedures and result of the February 19, 2000 Presidential Preference Primary.

Smith v. Beasley, No. 3-95-3235-0 (D.S.C. Sept. 23, 1996)

Decision: Chapman (Senior Circuit Judge), Anderson (District Judge), Perry (Senior District Judge)

Facts: The South Carolina General Assembly developed a redistricting plan that affected House of Representative Districts 12, 54, 82, 91, 103, and 121 and Senate Districts 29, 34, and 37. The primaries in these districts were conducted before the resolution of this lawsuit.

Issue: Were the reapportionment plans for the House of Representative Districts and Senate Districts constitutional since they used race as the predominant factor? If the plans were unconstitutional, what was the appropriate remedy since primary elections had already been conducted in the malapportioned districts.

Holding: The court unanimously held that House Districts 12, 54, 82, 91, 103 and 102 were unconstitutional because they were created with race as the predominant factor and they were not narrowly tailored to accomplish the state's interest in complying with § 2 of the VRA or to obtain preclearance by the Department of Justice under § 5 of the VRA. Since the districts were not narrowly tailored they violated the Equal Protection Clause of the Fourteenth Amendment. A majority of the court also found that Senate Districts 29, 34 and 37 were unconstitutional for the same reasons. Despite the statutory and constitutional infirmity of the districts, the court agreed that the 1996 general election in the six unconstitutional House Districts and three unconstitutional Senate Districts should proceed according to schedule and the General Assembly should be given time to adopt and have a constitutional reapportionment precleared. The court enjoined the state from conducting any elections after 1996 based on the malapportioned House and Senate Districts. The court retained jurisdiction stating that if the General Assembly failed to adopt a plan and have it precleared prior to April 1, 1997, then the court would adopt an appropriate remedial plan.

Subsequent History: **Smith v. Beasley, No. 3-95-3235-0 (D.S.C. May 28, 1997)** Prior to the 1997 election, the General Assembly submitted the new districting plan for § 5 review. The Attorney General interposed objections to District 37. The Senate could not remedy the violation so the court created its own remedial plan. The court's remedial plan cured many of the constitutional infirmities of the prior plan by eliminating the former land bridges and strangely shaped arms, legs and appendages. The court's plan (1) corrected the constitutional violations found in the court's September 1996 Order, (2) adheres to the one-person, one-vote requirement of the Equal Protection Clause, (3) complies with both § 2 and § 5 of the VRA and (4) minimally disrupts the General Assembly's plan. The court held that the prior plan unconstitutionally assigned voters to District 37 on account of race but the court's plan followed normal practices in drawing lines and did not divide towns and cities according to race.

NAACP v. Lee County, No. 3:94-1575-17 (D.S.C. Oct. 27, 1994)

Decision: Russell (Circuit Judge), Anderson and Shedd (District Judges)

Facts: Defendant Lee County Council authorized the Lee County Election Commission to conduct a special general election for three members of the Lee County Council and four members of the Lee County Board of Education. Defendants submitted the special election to

the Attorney General for preclearance. The Attorney General objected to the proposed special election. Lee County is a political subdivision governed by a seven-member board elected from seven single-member districts. The Lee County Board of Education is a seven-member board elected from the same single-member districts as the County Council.

In 1992, the County Council adopted a redistricting plan for the election of members of the county council and school board. The Attorney General interposed timely objections. Due to the Attorney General's objections, the regularly scheduled 1992 elections could not be held on time. In 1993, a second redistricting plan was submitted to the Department of Justice. The Attorney General approved this redistricting plan. Ten days after the plan was approved the County Council passed a resolution declaring the positions for three County Council districts vacant and the positions for three Board of Education Districts vacant. The special elections were necessary because Lee County did not have a precleared redistricting plan in time for the 1992 elections. As a result, the 1992 elections had to be postponed.

The town scheduled a special primary under a statute established to create a uniform schedule for filling vacancies due to death, resignation or removal of the office holder. The statute had been precleared. The County Council indicated that it would not seek to have the special election precleared because the statute under which the schedule was established had already been precleared. The Attorney General notified the County Council that it needed to seek preclearance under § 5 of the VRA. The County Council disregarded the Attorney General's notification and proceeded to conduct the special primary elections.

After the primary election but before the general election the County Council submitted its special election schedule to the Attorney General for preclearance. Plaintiffs sought a preliminary injunction enjoining the defendants from conducting the general elections because the defendants had failed to obtain preclearance of the special elections under § 5 of the VRA.

VRA Claim(s): Plaintiffs alleged that the special election schedule was a change to a voting procedure that required preclearance under § 5 of the VRA.

Holding: The court held that the Lee County special election schedule was a change affecting voting that required preclearance under § 5 of the VRA. The court vacated the special primary elections and enjoined further implementation of the special election schedule. The court found that defendants' reliance on the precleared state statute that addressed death, resignation or removal from office was misplaced. The Attorney General had never considered the application of that state law to special elections for newly districted positions or when incumbents were holding over in office. The court relied on the Supreme Court's holding in McCain v. Lybrand, 465 U.S. 236, 244-50 (1984) that voting changes must be unambiguously identified to the Attorney General and preclearance is limited to those identified changes.

TENNESSEE EXECUTIVE SUMMARY**DEMOGRAPHICS:**

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
Total population	5,689,283	100.0	4,290,762	100.0
Hispanic or Latino (of any race)	123,838	2.2	84,939	2.0
Not Hispanic or Latino	5,565,445	97.8	4,205,823	98.0
One race	5,626,174	98.9	4,254,477	99.2
White	4,563,310	80.2	3,524,497	82.1
Black or African American	932,809	16.4	636,300	14.8
American Indian and Alaska Native	15,152	0.3	11,530	0.3
Asian	56,662	1.0	42,365	1.0
Native Hawaiian and Other Pacific Islander	2,205	0.0	1,597	0.0
Some other race	56,036	1.0	38,188	0.9
Two or more races	63,109	1.1	36,285	0.8

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File.

MINORITY REPRESENTATION IN FEDERAL & STATE LEGISLATURE:

There are currently zero minorities in the United States Senate and one minority in the House of Representatives (African-American: Harold E. Ford Jr.- Democrat) from Tennessee.

There are two minorities in the state Senate (African-American: Kathryn Bowers-Democrat; Thelma Harper- Democrat).

There are seventeen minority members of the state House of Representatives as follows: Joe Armstrong, African-American, Democrat; Henri E. Brooks, African-American, Democrat; Tommie Brown, African-American, Democrat; Jerome Cochran, multiracial (Vietnamese and Caucasian), Republican; Barbara Cooper, African-American, Democrat; John J. Dewberry Jr., African-American, Democrat; Lois M. Deberry, African-American, Democrat; Joanne Favors, African-American, Democrat; Ulysses Jones Jr., African-American, Democrat;

Edith Taylor Langster, African-American, Democrat; Larry J. Miller, African-American, Democrat; Mary Pruitt, African-American, Democrat; Gary Rowe, African-American, Democrat; Johnny Shaw, African-American, Democrat; Joe Towns Jr., African-American, Democrat; Larry Turner, African-American, Democrat; Nathan Vaughn, African-American, Democrat.

Source: <http://www.legislature.state.tn.us/House/Members/HMembers.htm>; House Clerk's Office, (615) 741-2901; <http://www.legislature.state.tn.us/senate/members/smembers.htm>; and Office of Minority Affairs, (615) 741-3900.

SECTION 5 RELATED MATTERS:

Tennessee is not covered under Section 5 of the Voting Rights Act.

SECTION 203 AND OTHER MINORITY LANGUAGE MATTERS

Tennessee is not covered under Section 203 of the Voting Rights Act.

REPORTED INSTANCES OF VOTER SUPPRESSION AND INTIMIDATION

At least two people wearing fake poll-watcher credentials and several other individuals (with no credentials at all) showed up to poll centers on August 5, 2004 in Davidson County. According to the newspaper, The Davidson County Election Commission did not identify the people or formally report the problem because the Commission asserted that sporadic problems with phony poll watchers are "common". This, of course, was a concern for the local NAACP because such activity at the polls had similarly occurred at elections in 2000 and 2002. In 2002 in particular, the U.S. Justice Department became involved after obtaining a Republican Party email that instructed volunteer poll watchers to "challenge voters who concern you."

Reported in: *The Tennessean* (August 26, 2004)

STATE VOTING LAWS

1. Voter Identification Requirements

Voters must fill out an application and present it to a registrar present at the polls. TENN. CODE ANN. § 2-7-112 (2005). The registrar will then compare the signature to that on the permanent registration list file, if any, and determine to their satisfaction the voter's identity. Id. The registrar may ask for such proof of identification such as a driver's license, social security card, credit card, or some other document bearing the voter's signature. Id. If the voter's signature is illegible and the voter has no form of identification, the registrar may allow them to vote upon executing an affidavit regarding the voter's identity. Id. This statute reflects a change in the law from 2003, where the statute was amended to allow for provisional voting. Id. Previously, if voters were unable to provide adequate proof of identification to the registrar's satisfaction, they could refuse to allow a person to vote. Id.

2. Proof of Citizenship Requirements

The Tennessee constitution provides that any person who is over eighteen years of age and is a citizen of the U.S. and the state of Tennessee shall be permitted to vote in local, federal and primary elections. TENN. CONST. ART. IV, § 1 (2005). The Tennessee election code further provides that any citizen of the United States who is eighteen years of age or older and resides in the state is a qualified voter, subject to disqualification based upon criminal behavior. TENN. CODE ANN. § 2-2-102 (2004).

3. English Literacy Requirements

Voters unable to mark the ballot due to inability to read or write may receive assistance in casting their votes. TENN. CODE ANN. § 2-7-116 (2004). Election judges have the authority to evaluate and grant voters the right to assistance, and voters who qualify for such

assistance may choose an assistant. Id. If no such assistant is available, an election judge may provide assistance in the presence of another judge or an election official from an opposing political party. Id. Similarly, if there are no election judges available, election officials may be appointed to assist the voter in the presence of another election judge or an official from an opposing political party. Id.

DOJ OBSERVER/MONITOR COVERAGE

None.

TENNESSEE REPORTED VRA CASES

Cousin v. Sundquist, 145 F.3d 818 (6th Cir. 1998).

Decision: Wellford, Norris and Batchelder (Circuit Judges).

Facts: Plaintiff challenged the process of judicial elections in Hamilton County. At the time elections were held, the Hamilton County judiciary consisted of four Circuit Court judges, three Criminal Court judges, two Chancery Court judges, and three General Session judges. After the district court decision, the legislature expanded the number of General Session judges to five. All judicial officers are elected at-large and serve for terms of eight years. These are partisan elections. The candidates run for separately designated positions and the candidate receiving the highest number of votes wins. No African-American lawyer has ever run for a judicial position and has never been appointed by the governor. The district court found a § 2 violation. The first time the court reviewed the decision, it faulted the district court for not clearly addressing the Gingles pre-conditions and remanded the case for more specific findings. On remand, the district court found that plaintiffs met all Gingles pre-conditions and that the totality of the circumstances favored the finding of liability. The district court ordered the state to submit a new plan. When the state did not submit a plan, the court solicited the parties' suggestions. The district court rejected the plaintiff's plan and created its own solution. The defendants again appealed. The court of appeals found that the plaintiffs failed to show the third Gingles pre-condition and thus could not prove a vote dilution claim.

VRA claims: The at-large system of electing judges constitutes a § 2 violation of VRA and denies African-Americans equal opportunity to participate in the electoral process.

Issues: Whether, in evaluating the third pre-condition, the court should consider only elections which pitted minority candidates against white candidates or whether the court should also consider elections in which only white candidates ran. Whether single-member districting is an appropriate solution for judicial elections. Whether cumulative voting, as a method of electing judges, is an appropriate remedy to a § 2 claim.

Holding: The third pre-condition does not require an analysis of only elections in which African-American and white candidates ran. The proper inquiry is whether minority-preferred candidates, whatever their race, usually lose. Single-member districting is not a viable remedy for judicial elections because it is at odds with the state interest in linkage. Such a plan would eliminate the identity between electoral and jurisdictional bases of its judges. In addition, the proposed plan included a district with a maximum of 34% African-American voting age population, based on the premise that the violation consisted of an impairment of the ability to influence the outcome. The appellate court stated that it would reverse such a claim because an “influence” claim is not permitted under the VRA. Regarding cumulative voting, Section 2 specifically precludes its application to achieve proportional representation. Such a method is especially inappropriate for judicial elections because it would undermine the tradition of judicial collegiality and the quality of their work.

Wesley v. Collins, 791 F.2d 1255 (6th Cir. 1986).

Decision: Churchill (District Judge) and Martin and Krupansky (Circuit Judges).

Facts: Plaintiff pleaded guilty to a charge of being an accessory after the fact to the crime of larceny and received a suspended sentence. This crime constituted a felony. In Tennessee, persons convicted of felonies and certain other crimes are not permitted to register or to vote in any election until pardoned or until his full rights of citizenship have been restored. Plaintiff claimed that this prohibition causes vote dilution because a significantly higher number of African-Americans are convicted of felonies in Tennessee than whites. The district court granted defendant’s motion to dismiss for failure to state a claim upon which relief could be granted.

VRA claim: Denying convicted felons the opportunity to vote causes vote dilution in violation of § 2.

Issue: Whether the Tennessee law which prohibits felons from voting in any election violates § 2 of the VRA.

Holding: A state may constitutionally disenfranchise convicted felons. Section 2 of the VRA is violated if the challenged legislation results in unlawful dilution. To determine if there is unlawful dilution, the court must examine the totality of the circumstances. While disproportional racial impact is one factor, the court must also examine historical, social and political factors. The court concluded that the state had a legitimate and compelling rationale for the statute. The statute is very specific as to who may not vote and that determination is not based on an immutable characteristic, but on a conscious commitment to commit a crime.

Langsdon v. Darnell, 9 F. Supp.2d 882 (W.D. Tenn. 1998).

Decision: Turner (District Judge)

Facts: In 1992, Tennessee reapportioned the state’s single-member House and Senate districts. Plaintiffs from west Tennessee challenged how the reapportionment affected Madison, Haywood, Hardeman, Tipton, Fayette, and Lauderdale counties. In 1993, the district court determined that the House scheme was unconstitutional. Later that year, the same panel said the Senate plan violated § 2 of VRA. (Rural West I). The Supreme Court vacated and remanded

Rural West I. On remand, the district court reversed its decision and held that the Senate plan did not violate § 2. While awaiting appeal, the Tennessee legislature passed a three-part reapportionment plan for the House. Plan A, at issue, created 12 majority-African-American House districts, but places none of those districts in the six counties in western Tennessee. The plaintiffs and defendants both filed for summary judgment. Defendants argued that Shelby county should have been included in the court's proportionality analysis. Plaintiffs confirmed that they did not intend to include Shelby county.

VRA claim: The reapportionment plan violated § 2 because it denies citizens of a region of Tennessee an equal opportunity to participate in the election of officials.

Issue: Whether the court should consider statewide proportionality statistics when plaintiff brings a claim about a specific region.

Holding: The court analyzed the Supreme Court's decisions in *Johnson v. DeGrandy*, 512 U.S. 997(1994) and *Shaw v. Hunt*, 517 U.S. 899 (1996) to conclude that it would not consider statewide statistics when presented with a regional proportionality problem. The court stated "when plaintiffs bring a claim of vote dilution that is specific to a particular region, statewide proportionality statistics by themselves have limited probative value, in that they may obscure the fact that defendants are improperly using over-proportionality in one area of the state to offset vote dilution in the challenged region of the state." The court addressed defendant's concern that such a holding would encourage plaintiffs to define smaller and smaller geographic areas until they achieve a victory by pointing out that all three of the *Gingles* pre-conditions must still be met.

See also *Rural West Tennessee African-American Affairs Council, Inc. v. McWherter*, 877 F. Supp. 1096 (W.D. Tenn. 1995).

Brown v. Board of Commissioners of the City of Chattanooga, 722 F. Supp. 380 (E.D. Tenn. 1989).

Decision: Edgar (District Judge).

Facts: In 1911, the City created a five member commission to be elected at large from the city. Candidates had to run for designated positions. Because candidates needed a majority vote to be successful, run-offs occurred frequently. The city adopted this plan specifically to curb the growing political power of African-Americans. Since the adoption of the commission form of government, no African-American ran for office until 1955. An African-American candidate was not elected until 1971. Since 1955, fifteen other African-American candidates ran and none have been elected. Prior to 1911 however, they had significant political clout.

VRA claims: The at-large election of commissioners violates § 2 of the VRA because it encouraged vote dilution.

Issues: Whether plaintiffs must show that an election plan continues to fulfill the discriminatory purpose for which it was initially adopted to succeed in establishing a § 2 claim.

Holding: Although an election plan may have initially been developed with discriminatory intent, the current lack of that intent does not cure the plan of § 2 violations. The court recognized that the amendment to § 2 permitted a claim to proceed when the plan results in unequal opportunities if the three pre-conditions set forth in Gingles are met.

See also Buchanan v. City of Jackson, 683 F. Supp. 1515 (W.D. Tenn. 1988), Buchanan v. City of Jackson, 708 F.2d 1066 (6th Cir. 1983), Taylor v. Haywood County, 544 F. Supp. 1122 (W.D. Tenn. 1982).

TEXAS EXECUTIVE SUMMARY**DEMOGRAPHICS:**

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
Total population	20,851,820	100.0	14,965,061	100.0
Hispanic or Latino (of any race)	6,669,666	32.0	4,282,901	28.6
Not Hispanic or Latino	14,182,154	68.0	10,682,160	71.4
One race	20,337,187	97.5	14,659,207	98.0
White	14,799,505	71.0	10,948,322	73.2
Black or African American	2,404,566	11.5	1,653,377	11.0
American Indian and Alaska Native	118,362	0.6	82,854	0.6
Asian	562,319	2.7	420,011	2.8
Native Hawaiian and Other Pacific Islander	14,434	0.1	9,835	0.1
Some other race	2,438,011	11.7	1,544,808	10.3
Two or more races	514,633	2.5	305,854	2.0

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File.

MINORITY REPRESENTATION IN FEDERAL & STATE LEGISLATURE:

There are currently zero minorities in the United States Senate and eight minorities in the House of Representatives (African-American: Sheila Jackson-Lee- Democrat; Eddie Bernice Johnson- Democrat; Al Green- Democrat; Hispanic: Henry Bonilla- Republican; Charlie Gonzales- Democrat; Ruben Hinojosa- Democrat; Solomon P. Ortiz- Democrat; Silvestre Reyes- Democrat) from Texas.

There are nine minority members of the state Senate as follows: Gonzalo Barrientos, Latino, Democrat; Rodney Ellis, African-American, Democrat; Mario Gallegos Jr., Latino, Democrat; Juan Hinojosa, Latino, Democrat; Eddie Lucio Jr., Latino, Democrat; Frank L. Madla, Latino, Democrat; Leticia Van de Putte, Latina, Democrat; Royce West, African-American, Democrat; and Judith Zaffrini, Latina, Democrat

There are forty-five minority members of the state House of Representatives as follows: Alma A. Allen, African-American, Democrat; Roberto Alonzo, Latino, Democrat; Rafael Anchía, Latino, Democrat; Joaquin Castro, Latino, Democrat; Norma Chavez, Latina, Democrat; Garnet Coleman, African-American, Democrat; Yvonne Davis, African-American, Democrat; Joe Deshotel, African-American, Democrat; Dawwna Dukes, African-American, Democrat; Harold Dutton, African-American, Democrat; Jim Dunnam, Latino, Democrat; Al Edwards, African-American, Democrat; Juan Manuel Escobar, Latino, Democrat; Jessica Farrar, Latina, Democrat; Ismael Flores, Latino, Democrat; Pete Gallego, Latino, Democrat; Helen Giddings, African-American, Democrat; Veronica Gonzales, Latina, Democrat; Yvonne Gonzalez-Tourelles, Latina, Democrat; Ryan Guillen, Latino, Democrat; Abel Herrero, Latino, Democrat; Teri Hodge, African-American, Democrat; Jesse Jones, African-American, Democrat; Vilma Luna, Latina, Democrat; Armando Martinez, Latino, Democrat; Trey Martinez-Fischer, Latino, Democrat; Ruth McClendon, African-American, Democrat; Jose Menendez, Latino, Democrat; Paul Moreno, Latino, Democrat; Rick Noriega, Latino, Democrat; Rene Oliveira, Latino, Democrat; Dora Olivo, Latina, Democrat; Aaron Peña, Latino, Democrat; Robert Puente, Latino, Democrat; Chente Quintanilla, Latino, Democrat; Elvira Reyna, Latina, Republican; Eddie Rodriguez, Latino, Democrat; Jim Solis, Latino, Democrat; Senfronia Thompson, African-American, Democrat; Sylvester Turner, African-American, Democrat; Carlos Uresti, Latino, Democrat; Marc Veasey, African-American, Democrat; Michael Villarreal, Latino, Democrat; Hubert Vo, Asian, Democrat; and Martha Wong, Asian, Republican.

Source: <http://www.house.state.tx.us/members/welcome.php>; Chief Clerk's Office, (512) 463-0845 <http://www.senate.state.tx.us/75r/senate/Members.htm>; and Secretary of the Senate, (512) 463-0100.

SECTION 5 RELATED MATTERS:

Texas is covered under Section 5 of the Voting Rights Act.

SECTION 203 AND OTHER MINORITY LANGUAGE MATTERS

The following counties are covered under Section 203 for Spanish language: Andrews County; Atascosa County; Bailey County; Bee County; Bexar County; Brewster County; Brooks County; Caldwell County; Calhoun County; Cameron County; Castro County; Cochran County; Comal County; Concho County; Crockett County; Crosby County; Culberson County; Dallas County; Dawson County; Deaf Smith County; Dewitt County; Dickens County; Dimmit County; Duval County; Ector County; Edwards County; El Paso County; Floyd County; Frio County; Gaines County; Garza County; Glasscock County; Goliad County; Gonzales County; Gaudalupe County; Hale County; Harris County; Hays County; Hidalgo County; Hockley County; Howard County; Hudspeth County; Irion County; Jeff Davis County; Jim Hogg County; Jim Wells County; Karnes County; Kennedy County; Kent County; Kinney County; Kleberg County; La Salle County; Lamb County; Live Oak County; Lubbock County; Lynn County; Martin County; Maverick County; McCulloch County; McMullen County; Medina County; Menard County; Midland County; Mitchell County; Moore County; Nolan County; Nueces County; Parmer County; Pecos County; Presidio County; Reagan County; Reeves County; Refugio County; Runnels County; San Patricio County; Schleicher County; Scurry County; Starr County; Sutton County; Swisher County; Tarrant County; Terrell County; Terry County; Tom Green County; Travis County; Upton County; Uvalde County; Val Verde County; Victoria County; Ward County; Webb County; Wharton County; Willacy County; Wilson County; Winkler County; Yoakum County; Zapata County and Zavala County. Polk County is covered for American Indian language (Alabama).

REPORTED INSTANCES OF VOTER SUPPRESSION AND INTIMIDATION

In a review of the problems that occurred with voting practices during the 2000 presidential election, the Times reported disturbing occurrences of voter intimidation, particularly in areas within Texas. The Times reported that: "in Fort Worth, a vocal supporter of a Republican candidate for Congress tried to scare elderly black voters from voting. She distributed leaflets (falsely) accusing several longtime African-American community activists of violating the law by assisting elderly voters apply for absentee ballots. Similarly, in Wharton County (50 miles southwest of Houston), a campaign worker for the first African-American candidate for sheriff awoke to find, in her backyard, an apparent cross being burned along with a photograph of the candidate."

Reported in: *Legal Times* (November 19, 2001)

STATE VOTING LAWS

1. Voter Identification Requirements

The eligibility requirements for voter registration include, among other things, that the voter be eighteen years of age and a U.S. citizen. TEX. CODE ANN. § 13.001 (2004). Included on the actual registration form are spaces for applicants to include their driver's license number or personal identification card number issued by the Department of Public Safety. TEX. CODE ANN. § 13.122 (2004). Voters who appear to vote without a registration certificate but whose names are on the registered voters list are allowed to vote upon proof of identification, including driver's license, social security card, credit card, or another government-issued document. TEX. CODE ANN. § 63.008 (2004). Alternatively, a person working at the polling place may sign an affidavit attesting to the identity of the voter. Id. Should, however, the voter fail to produce identification or fail to receive an affidavit regarding their identity, election officials may refuse to accept them as a valid voter, noting the reason for such on the list of the registered voters. Id.

2. Proof of Citizenship Requirements

The Texas state constitution only provides that persons under eighteen as well as mentally incompetent persons and felons shall not have the right to vote. TEX. CONST. ART. VI § 1 (2004). Qualified voters are defined under Section 2 of the election code as persons eighteen years of age or older, citizens of the United States, a resident of Texas, who are registered to vote. TEX. CODE ANN. § 11.002 (2004). In addition, voter registration applications require statements by the applicant affirming their U.S. citizenship. TEX. CODE ANN. § 13.002 (2004). Employees of voter registration agencies may determine a person is ineligible to vote based upon

lack of U.S. citizenship, but must provide registration assistance if eligibility upon citizenship cannot be determined. TEX. CODE ANN. § 20.006 (2004).

3. English Literacy Requirements

If a voter cannot communicate in English, election officers may communicate with the voter in a language that the voter and the officer can understand. TEX. CODE ANN. § 61.031 (2004). If an election officer is unable to communicate with the voter, the voter may select an interpreter to facilitate communication. TEX. CODE ANN. § 61.032 (2004). Interpreters must also be registered voters in the county in which the voter needing the interpretation resides, and must also take an oath administered by the election officer. TEX. CODE ANN. §§ 61.033, 61.035 (2004). If the voter cannot understand the language in which the ballot is written, the interpreter may also accompany the voter into the polling area for the purpose of translating the ballot. TEX. CODE ANN. § 61.034 (2004).

Similarly, voters who are unable to read the language in which the ballot is written are also eligible to receive assistance. TEX. CODE ANN. § 64.031 (2004). A voter may choose an assistant, recorded by the election officer, or may be assisted by two election officials from different parties, if possible. *Id.* A voter may have the contents of the ballot read aloud, or may direct the person giving assistance to only read certain portions the voter is interested in. TEX. CODE ANN. § 64.033 (2004). Finally, the person assisting the voter may be requested to actually deposit the ballot at the voter's request. TEX. CODE ANN. § 64.035 (2004).

DOJ OBSERVER/MONITOR COVERAGE

County	City/ Town	Date	Type	# of Observer s	Press Release Comments/Notes
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Atascosa		November 4, 1980	Federal	19	Monitor assignment based on a pre-election survey by the Civil Rights Division. Monitors to ensure the integrity of the election, give minorities confidence in the electoral process and record any irregularities that might develop.
Bee		November 2, 1976	Federal	24	
Crockett		August 12, 1978	Special Runoff	8	
Dallas		April 7, 1984	School Board	10	Voting Rights Act had been invoked to prevent the county from reducing polling places in heavily populated black areas and increasing polling places in sparsely populated white areas. The DOJ decided to send observers because the board has assigned only white election judges to all its polling places and has hired uniformed security guards for each polling place. Two white incumbents are facing two black challengers in the election in district that was 70 percent black, 10 percent Mexican-American and 20 percent white. Monitors to ensure that all individuals are allowed to vote without discrimination and to have their votes counted fairly.

Dallas	Irving	May 6, 2000	Municipal	16	Assure that all written election materials are available in Spanish translations, and that the city provides effective help to primarily Spanish-speaking voters
Dallas	Irving	May 5, 2001	Municipal	19	Questions in past years about the locations of polling places and efforts to reach non-English-speaking voters.
Dallas		May 15, 2004			Gather information on the quality and availability of minority-language materials at the polls and the treatment of minority-language voters.
Dallas		November 2, 2004	General	99	
Ector		November 8, 2005			
El Paso		November 7, 1978	Federal	8	
Fort Bend		May 1, 1976	Primary	18	
Frio		November 2, 1976	Federal	26	
Frio		April 14, 1992	Primary Runoff	5	Federal observer assignment based upon investigations that include discussions with election officials and community leaders regarding potentially discriminatory practices in the election process.
Galveston		December 10, 1996	Runoff	9	Minority voters had been harassed by white poll watchers during previous elections; allegations of voter fraud and intimidation at past elections.
Harris		December 6, 2003	Mayoral		Monitor treatment of Vietnamese and Spanish-speaking voters; ensure election materials are available in Vietnamese and Spanish.
Harris		March 9, 2004	Primary		

Harris		May 15, 2004			Gather information on the quality and availability of minority-language materials at the polls and the treatment of minority-language voters.
Hidalgo		November 8, 1988	Federal	31	
Jefferson		December 10, 1996	Runoff	15	Minority voters had been harassed by white poll watchers during previous elections; allegations of voter fraud and intimidation at past elections.
LaSalle		November 2, 1976	Federal	26	
Medina		May 1, 1976	Primary	57	
Reeves		May 6, 1978	Primary	59	
Reeves		June 3, 1978	Primary Runoff	15	
Tarrant		March 9, 2004	Primary		
Titus		November 5, 2002	Federal	12	Observers watching for any signs of discrimination based on race or problems encountered by the disabled, as well as whether all eligible voters are able to cast a ballot.
Uvalde		May 1, 1976	Primary	24	
Victoria	Victoria	April 4, 1987	Mun Primary	15	
Waller		March 9, 2004	Primary		Observers were requested by U.S. and Texas state representatives after district attorney questioned whether students at predominantly black university qualified to vote in county elections.
Wilson		May 1, 1976	Primary	18	

TEXAS REPORTED VRA CASES**Bush v. Vera, 517 U.S. 952 (1996)**

Decision: No majority decision was reached. Justice O'Connor, joined by Chief Justice Rehnquist and Justice Kennedy, wrote for the Court. Justice O'Connor filed a separate concurrence. Justice Kennedy filed a separate concurrence. Justice Thomas, with whom Justice Scalia joined, concurring in judgment. Justice Stevens, with whom Justices Ginsburg and Breyer joined, dissenting. Justice Souter, with whom Justices Ginsburg and Breyer joined, dissenting.

Facts: Texas drew new congressional districts after the 1990 census because it was entitled to three additional congressional seats due to population growth. The state legislature drew District 30 as an African-American-majority district in the Dallas area, District 29 as a Hispanic-majority district in the Houston area, and reconfigured District 18 as an African-American-majority district in the Houston area adjacent to District 29. These three districts were bizarre and contorted in shape. Plaintiffs alleged that Districts 18, 29 and 30 were racially gerrymandered in violation of the 14th Amendment, and a three-judge court agreed and found them unconstitutional.

VRA Claim: Plaintiffs alleged that the new congressional districts violated the 14th Amendment. The VRA was considered in determining whether the state's interest in avoiding Section 2 liability was a compelling governmental interest for the purposes of the strict scrutiny test.

Issues: Whether Texas' redistricting plan constituted racial gerrymandering in violation of the 14th Amendment and whether the state's interest in avoiding Section 2 liability is a compelling governmental interest.

Majority: The Supreme Court held that: (1) the new district lines were drawn with race as the predominant factor and, thus, the districts were subject to strict scrutiny; (2) the challenged districts could not be upheld under the Voting Rights Act's "results" test; and (3) one district could not be upheld under the "nonretrogression" principle underlying the Act's preclearance requirement where Texas substantially augmented, and did not just maintain, the African-American population percentage in the district. O'Connor's concurrence held that the state's interest in avoiding Section 2 liability is a compelling governmental interest.

Houston Lawyer's Association v. Attorney General of Texas, 501 U.S. 419 (1991)

Majority: Justice Stevens, joined by Justices White, Marshall, Blackmun, O'Connor and Souter.

Facts: Texas district judges (trial level judges) were elected in at-large, countywide elections where each candidate ran for a separately numbered position. Petitioners challenged this method of election under §2 of the VRA, claiming that it diluted the voting strength of African-American and Hispanic voters. The United States Court of Appeals for the Fifth Circuit held that the results test of §2 of the VRA, which is used to determine voter dilution cases, does not apply to judicial elections. The Supreme Court granted certiorari to determine the extent of coverage under §2 of the VRA.

VRA Claims: Judicial elections are covered under §2 of the VRA

Issue(s): Whether §2 of the VRA applies to the election of trial judges in Texas.

Majority: The vote dilution provision, §2 of the VRA, applies to the election of trial judges whose responsibilities are exercised independently in an area coextensive with the districts from which they are elected. Once a state decides to elect its trial judges, those elections must be conducted in compliance with the VRA, since judicial elections are not categorically excluded from coverage. The Supreme Court also held that Texas has a special interest in linking the electoral and jurisdictional bases of district judges; however this state interest does not outweigh its dilutive effect in all cases as a matter of law. Such a state interest is a legitimate factor to be considered by courts in determining whether, based on the totality of the circumstances, a vote dilution violation has occurred or may be remedied.

See also League of United Latin American Citizens v. Clements, 999 F.2d 831 (5th Cir. 1993).

Perez v. Pasadena Independent School District, 165 F.3d 368 (5th Cir. 1999)

Majority: King (Chief Judge), Jones (Circuit Judge), and Smith (Circuit Judge).

Facts: Hispanic citizens and an unincorporated association of individuals brought an action against the Pasadena Independent School District, challenging its at-large voting system for electing members of the school board as invalid under §2 of the VRA. According to the 1990 Census: 187,047 residents (131,405 VAP), 62.07% white (66.84% VAP), 30.22% Hispanic (26.06% VAP), 3.94% African-American (3.56% VAP). There were approximately 38,671 students in the Pasadena Independent School District: 49% white, 42% Hispanic/Mexican-American, 5% African-American and 4% other non-white. The Board was composed of 7 members elected at-large for staggered three year terms and for specific positions. In 1986, the Board voluntarily considered converting from an at-large to a single-member system. It proposed a 5-2 plan and submitted it to DOJ for preclearance. The plan was not supported by the Hispanic Advisory Committee and was rejected by the DOJ. Consequently, the Board abandoned the plan for a single-member system. Between 1980 and 1990, the total Hispanic population in the school district increased by 80.55%, the African-American population increased by 90.79% and the total white population decreased by 22.21%.

VRA Claims: The at-large election scheme denies Hispanics equal opportunity to elect school board representatives in violation of § 2 of the VRA.

Issue(s): Whether minorities who are not citizens and thus cannot vote, must be included in the count of minorities when determining whether a group of minorities is sufficiently large and compact to constitute a majority in any single-member district and thus meet the threshold requirement under Gingles.

Majority: The court held that Section 2 was not violated. The court reviewed the district court's decision and affirmed on all counts: the standard of citizen voting age population used by the district court was correct under the language of Section 2 (Campos) - minorities must be citizens to be included in the count to determine whether the minority group is big enough to meet threshold requirements under Gingles. In this case, the court found that citizen minorities did not

make up a large enough and geographically compact enough group to constitute a majority in any single member district. The court also held that neither the 14th nor 15th Amendments were violated.

See also Campos v. City of Houston, 113 F.3d 544 (5th Cir. 1997).

League of United Latin American Citizens #4552 v. Roscoe Independent School District, 123 F.3d 843 (5th Cir. 1997)

Majority: Higginbotham, Garza and Davis (Circuit Judges).

Facts: Roscoe had a population of 1,786 (1990 census) of which 68.1% was white (73.6% VAP) and 31.2% was Hispanic (25.5% VAP). The Board consisted of 7 members, elected according to a non-place, at-large scheme. Roscoe had only one polling place. There was no majority vote requirement or cumulative voting. The trustees served staggered three year terms. This election system had been in place since 1995. From 1978-94, the election scheme was the same except each candidate ran for a specific numbered position. The School District changed this to a non-place scheme in response to vote dilution claims by minority groups. This new plan was cleared with the Department of Justice. LULAC contended that the scheme diluted Hispanic voting strength and denied Hispanics access to the political process. The district court found no Section 2 liability.

Issue(s): Whether the at-large election scheme used to elect trustees for the Roscoe Independent School District violates § 2 of the VRA.

Majority: The court affirmed, holding that there was no Section 2 violation because the third Gingles precondition had not been met. The court agreed with the district court that LULAC had not presented sufficient evidence or expert testimony to meet its burden of proof. The court only considered the issue of the third Gingles precondition, looking to evidence of racially polarized voting and minority electoral success.

League of United Latin American Citizens v. Clements, 999 F.2d 831 (5th Cir. 1993)

Majority: Higginbotham (Circuit Judge), Jones, (Circuit Judge) concurring, joined by Jolly, Smith, Barksdale and DeMoss (Circuit Judges).

Facts: Plaintiffs, ten individual voters and the League of United Latin American Citizens, on behalf of language and ethnic minorities in different combinations in different counties sued the Governor of Texas, the Attorney General, the Secretary of State, and the Chief Justice of the Supreme Court as chair of the Judicial Districts Board, claiming that county-wide elections of trial judges diluted the voting power of Latinos and African-Americans, and thereby violated § 2 of the VRA. Texas district judges (trial level judges) were elected in at-large, countywide elections where each candidate ran for a separately numbered position, with each candidate running for a particular court. Plaintiffs also brought a constitutional challenge to Article 5, §7(a)(i) of the Texas Constitution, which precludes the creation of judicial districts smaller than a county absent approval by a majority of the voters in that county, claiming that this limitation on the power to redistrict was enacted with discriminatory intent.

Key facts (at time of trial) particular to each of the 9 counties were as follows:

- 1) Dallas County: Voting age population: 1,106,757. 16.3% of voting age population was African-American. Five of the thirty-seven district judges in Dallas County (13.5%) were African-American. Less than 2.0% of the lawyers in Dallas County were both eligible to serve as district judges and African-American.
- 2) Harris County: Voting age population: 1,685,024. 18.2% of voting age population was African-American, and 13.2% was Latino. At time of trial, of 59 district judges elected at-large, three were African-American and three were Latino. African-American lawyers made up 3.8% of the eligible lawyers, and comprised 5.1% of Harris County's district judges.
- 3) Tarrant County: Voting age population: 613,698. 10.4% of eligible voters were African-American. 2 of 23 district judges were African-American (8.7%). 2.4% of eligible Tarrant County lawyers were African-American.
- 4) Travis County: Voting age population: 312,392. 14.4% of eligible voters had Spanish surnames; 9.3% were African-American. None of 13 district judges were Latino or African-American. Latino lawyers made up 2.7% of the eligible lawyers in the county.
- 5) Bexar County: Voting age population: 672,220. 7.0% of eligible voters were African-American; 41.4% were Latino. 5 of 19 district judges (26.3%) were Latino. 11.4% of the eligible lawyers in Bexar County were Hispanic.
- 6) Jefferson County: Voting age population: 179,708. 24.6% of eligible voters were African-American. Eight district judges were elected; no African-American judge was elected between 1985 and 1989. 3.1% of qualified attorneys were African-American.
- 7) Midland County. Voting age population: 82,636. 11.9% of eligible voters had Spanish surnames; 4,484 7.8% were African-American. None of three district judges were Latino or African-American. 3.2% of Hispanic and African-American attorneys were eligible for district judgeships.
- 8) Lubbock County: Total voting age population: 150,714. 15.2% of eligible voters had Spanish surnames; 6.4% were African-American. None of five district judges were African-American or Latino. No African-American attorneys were eligible to run for the district court.
- 9) Ector County: Voting age population: 79,516. 17.8% of eligible voters were Latino; 4.1% were African-American. None of four district judges were African-American or Latino. No more than 6 of 200 lawyers in the county were African-American or Latino and eligible to become district judges.

Issue(s): Whether the election scheme for trial judges in Texas violated §2 of the VRA by diluting the voting power of minorities.

Majority: The court reversed the district court, finding that no violation of Section 2 existed in any of the nine counties. Specifically, the court held that the district court's ruling was clearly erroneous in two ways. First, in each of the nine counties, plaintiffs failed to establish that their choice was caused by racial animus of the white electorate (i.e. legally significant white bloc voting or racially polarized voting) rather than mere partisan affiliation. Second, even assuming

these factors could establish a violation of Section 2, as a matter of law these findings would be too insubstantial to survive weighing the totality of the circumstances - that is, they would be outweighed by Texas' interest in maintaining the structure of single-member judicial offices. The court's ruling centered on the following factors: (1) the third Gingles prerequisite (bloc voting); (2) effects of ongoing discrimination; and (3) the proportion of minority judges to the general minority population. The court opined that "[a]mong the Zimmer factors, proof of racial appeals in elections, non-responsiveness of elected officials to minority voters, and persistent lack of electoral success by minority candidates are most important."

See also Houston Lawyer's Association v. Attorney General of Texas, 501 U.S. 419 (1991).

Rangel v. Morales, 8 F.3d 242 (5th Cir. 1993)

Majority: King (Circuit Judge), Jolly (Circuit Judge) and Parker (District Judge).

Facts: Plaintiffs, Latino voters, argued that the election of the six judges on the Thirteenth Court of Appeals from an at-large election district that covered twenty counties impermissibly diluted the voting strength of Latinos. Latinos made up 46% of the registered voters in the district. The district court found that plaintiffs met their burden of establishing the Gingles preconditions and also prevailed on the totality of the circumstances. One election was used by the lower court to establish the existence of white bloc voting.

VRA Claim: The at-large election scheme denies Latinos equal opportunity to elect their representatives in violation of § 2.

Issue(s): Whether there was legally significant white bloc voting in elections involving the Thirteenth Court of Appeals for the State of Texas.

Majority: The 5th Circuit held that the district court committed clear error in finding, on the basis of one election, that whites vote sufficiently as a bloc to defeat the Latino-preferred candidate in Thirteenth Court of Appeals elections. The court stated that because the district court's finding of white bloc voting was clearly erroneous, its ultimate finding of vote dilution was as well. The district court's judgment was reversed, and judgment was entered in favor of the defendants.

Salas v. Southwest Texas Junior College District, 964 F.2d 1542 (5th Cir. 1992)

Majority: Barksdale, Goldberg and Duhe (Circuit Judges).

Facts: The School Board had seven members, elected at large. They served six-year staggered terms and were elected to numbered posts. To be elected, a candidate was required to win a majority of the votes cast. Hispanics comprised approximately 63% of the 36,000 (approximate) population of the three counties from which the District was drawn, and about 57% of the voting age population. 53% of the registered voters in the three counties in which the District is located have Spanish surnames.

VRA Claim: The at-large election scheme denies Hispanics equal opportunity to elect their representatives in violation of § 2.

Issue(s): Whether the Hispanic voters, who constituted a registered voter majority in the challenged at-large district, met their burden of establishing that use of the at-large system, as opposed to single member districts, resulted in their having less opportunity to participate in the political process and to elect representatives of their choice in comparison to other members of the electorate.

Majority: The court held that the district court's findings, including that white bloc voting was not legally significant, were not clearly erroneous. The court affirmed the district court's ultimate finding that the cause of Hispanic voters' lack of electoral success was failure to take advantage of political opportunity, rather than a violation of Section 2, though it employed somewhat different reasoning. It disagreed with the conclusion of the district court that "[w]here the protected group constitutes a majority of the registered voters in an election district, any Anglo bloc voting that might exist is not legally significant." The panel held that there is no *per se* bar to a group which constitutes a majority bringing a vote dilution claim. Here, the panel held that there was no vote dilution cognizable under Section 2 because Hispanics had registered to vote at high rates and were thus not barred from participating equally in the political process.

Overton v. City of Austin, 871 F.2d 529 (5th Cir. 1989)

Majority: Thornberry, Rubin, A. Jones (Circuit Judges). E. Jones (Circuit Judge) concurred.

Facts: African-American and Hispanic citizens brought actions against the City of Austin alleging that the City's at-large, majority place system for election of city council members violated the VRA. 12% of Austin's citizens were African-American and 18% were Hispanic in 1984. A citizens' committee that included racial minorities was created between 1951 and 1953. The committee made several proposals suggesting an overhaul of the structure of city government including a move to a numbered-place system for council member elections. Plaintiff-appellants challenged that 1953 revision of the council election scheme. The district court found no violation, both before Gingles was decided and, on remand from this court, under the Gingles standard.

VRA Claim: The at-large election scheme denies African-Americans and Hispanics equal opportunity to elect their representatives in violation of § 2.

Issue(s): Whether the City of Austin's at-large, majority place system for election of city council members violates § 2 of the VRA.

Majority: Affirmed. The court found that Section 2 was not violated based on the weakness of the Plaintiffs' expert witness testimony and the recent success of African-American and Hispanic candidates. The court held that the district court was correct in finding that the 1953 charter amendment did not result from racially discriminatory intent. The district court's finding of no white bloc voting was not clearly erroneous.

Campos v. City of Baytown, 840 F.2d 1240 (5th Cir. 1988)

Majority: Reavley (Circuit Judge), Clark (Chief Judge) and Hunter (District Judge).

Facts: Hispanic and African-American citizens of Baytown, Texas brought an action challenging the city's at-large system for electing city council members as a violation of §2 of the VRA resulting in the dilution of their voting power. No minority member, either African-American or Hispanic, has ever been elected to the Baytown City Council. Baytown, according to the 1980 Census, is approximately 9% African-American and 25.4% Hispanic. The at-large election system was originally implemented in 1947 as means of unifying the town. The court held that the interests of African-Americans and Hispanics sufficiently overlapped so as to be considered one group for the purposes of majority-minority district creation. The district court found a Section 2 violation and in a later proceeding approved the city's new plan. Defendants appealed.

VRA Claims: The at-large election scheme denies African-Americans and Hispanics equal opportunity to elect their representatives in violation of § 2.

Issue(s): Whether African-Americans and Hispanics may be considered together as a cohesive minority group for the purposes of meeting the threshold requirements set forth in Gingles.

Majority: The court held that a minority group consisting of African-Americans and Hispanics combined was sufficiently large and geographically compact to constitute a majority in a single member district and thus meet the threshold requirements set out in Gingles. The court further upheld the district court's finding of a Section 2 violation using both the Zimmer and Gingles factors because the findings were not clearly erroneous. However, the Court of Appeals vacated the district court's approval of a new plan because it had not been precleared in compliance with Section 5. The court vacated and remanded to allow the city to present the plan for preclearance.

See also Brewer v. Ham, 876 F.2d 448 (5th Cir. 1989).

Jones v. City of Lubbock, 727 F.2d 364 (5th Cir. 1984)

Majority: Randall, Reavley and Higginbotham (Circuit Judges).

Facts: The City of Lubbock's city charter, established in 1917, provides for a mayor and a four member city council elected at large even though the city is divided into voting precincts. Council members need not live in any particular part of the city. According to the 1980 Census, over 75% of the 8.2% African-American and 17.9% Hispanic population is concentrated in predominantly minority neighborhoods. Since 1970, when the city began to keep records of the race and ethnicity of candidates, no African-American or Hispanic candidate has run for mayor or city council successfully. Plaintiffs brought this action to require the City to abandon its at-large election system.

VRA Claims: The at-large election scheme denies African-Americans and Hispanics equal opportunity to elect their representatives in violation of § 2.

Issue(s): Whether the City of Lubbock's election system deprives minorities of equal access to the electoral process and thus violates §2 of the VRA and the 15th Amendment. The City in turn challenged the constitutionality of §2 of the VRA as being so vague that it violates due process. The City also challenged the court-ordered redistricting plan.

Majority: Reversing the district court, the Court of Appeals held that Lubbock's at-large election scheme did not violate the 15th Amendment. The court found there was not enough evidence that African-Americans were prevented from participating in the electoral process. However, the court affirmed the district court's finding that the at-large system violated § 2 of the VRA. The court found no clear error in the lower court's finding of polarized voting and the lower court's totality of the circumstances inquiry. Responsiveness of the City to minority needs and non-tenuousness of policy underlying at-large system do not overcome the Section 2 violation. The court upheld the district court's remedy that six single-member districts be drawn. The City challenged the racial fairness of this remedy as being over representative of the City's minority population to which the court responded that the district court acted within its discretion. The court also criticized the City for exaggerating its concern of racial unfairness, noting that all the districts still maintained a white-majority population.

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APPENDIX

INDEXES OF UNREPORTED CASES BY STATE

INDEX OF CASES

GEORGIA

- Evelyn Bryant, William Wright, James Edwards, Carolyn Cooksey, Karen Watson, Jesse Duffy, Jerome Woody, Lucius Holloway, Rose Johnson, James Wyatt, Frank Davenport, George Willis, Eugene Cooper, Edward Williams, Eddie Batten, and I. C. Cochran v. Zell Miller, Governor of the State of Georgia, et al., No. 1:92-cv-1042-ODE May 22, 1992
- The Griffin Branch of the National Association for the Advancement of Colored People, Griffin, Georgia, on behalf of themselves and all others similarly situated v. The Griffin-Spalding County Board of Education: Dr. Dale Carley, Lin Thompson, et al., No. C80-103N March 24, 1982
- Larry V. Ivey, individually and on behalf of all others similarly situated v. Cyler D. Garner, Mayor of the City of Gordon, Georgia, et al. December 10, 1974
- Mary Ann Woodard, et al. v. Mayor and City Council of the City of Lumber City, Georgia, et al., No. CV387-027 August 3, 1990
- Tyrone Brooks, et al. v. Zell Miller, et al., No. 1:90-cv-1001-RCF September 30, 1996
- Frank J. Baia v. The City of Kingston Georgia, et al., No. CV87-1565 July 20, 1989
- United States of America v. City of Monroe Georgia, et al., C.A. 94-45-ATH (WDO) April 4, 1995

<p>United States of America v. City of Monroe, Georgia, Harry Knight, Mayor of the city of Monroe, Monroe Council, Randy Peppers, Jerry Smith, Hugh Bolton, Phillip J. Enslin, Rosemary B. Mathews, and Larry Wayne Adcock, Members of the Monroe City Council, Sara Campbell, City Clerk, No. 94-45-ATH (WDO)</p>	<p>April 15, 1997</p>
<p>Willie Cofield and Frank Cox v. The City of Langrange, Georgia and John W. Bell, Superintendent of Elections, No. 3:93-CV-97-JTC</p>	<p>February 21, 1997</p>
<p>City of Rome, et al. v. Griffin B. Bell, et al., No. C-76-159-R</p>	<p>February 24, 1977</p>
<p>Roosevelt Love, et al. v. Robert Cox, et al., No. 679-037</p>	<p>April 24, 1992</p>
<p>Henry L. Cook, Reverend Seaborn Jackson, Mary L. Kearney, Doris Cook and Reverend John L. Davis v. Randolph County Board of Commissioners, Randolph County Board of Education, Perry Turner, Superintendent of Elections for Randolph County, and Board of Registrars, Randolph County, No. 93-112-COL</p>	<p>October 29, 1993</p>
<p>Melvin Lawrence v. City of Forsyth, Georgia, through its duly elected City Council, Ralph Ogletree, in his official capacity, Lamar Russell, in his official capacity, James Calloway, in his official capacity, Melvin Lawrence, in his official capacity, Rosemary Walker, in her official capacity, William Y. Querry, in his official capacity, and Mayor Paul Jossey, in his official capacity as Mayor and in his individual capacity, No. 5:00-CV-152-4 (DF)</p>	<p>August 23, 2000</p>

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2.	<i>Lulac of Texas v. State of Texas</i>	Judgment	3/3/98
3.	<i>Lulac of Texas v. State of Texas</i>	Order	3/3/98
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5.	<i>Volma Overton, et al. v. City of Austin, et al.</i>	Memorandum Opinion	3/12/84
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12.	<i>Hector Dehoyos, et al. v. Crockett County, et al.</i>	Order	9/23/77
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19.	<i>Eugene Robinson v. City of Jefferson, Texas</i>	Findings of Fact and Conclusions of Law	4/25/83
20.	<i>Eugene Robinson v. City of Jefferson, Texas</i>	Final Judgment	4/25/83
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22.	<i>Cleveland Nisby, Hattie West v. Commissioners Court of Jefferson County, et al.</i>	Findings of Fact and Conclusions of Law	8/14/84

<u>TAB</u>	<u>CITATION</u>	<u>DESCRIPTION</u>	<u>DATE FILED</u>
23.	<i>Arturo Gomez, et al. v. John W. Galloway, et al.</i>	Judgment	9/6/78
24.	<i>Arturo Gomez, et al. v. John W. Galloway, et al.</i>	Findings of Fact	9/6/78
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29.	<i>Jose Cisneros, et al. v. Corpus Christi Independent School District, et al.</i>	Order	5/7/75
30.	<i>Rev. Lee Turner et al. v. John Painter with Phil Gramm and Chester R. Upham, Jr., Intervenors</i>	Preliminary Injunction	2/8/83
31.	<i>Rufus Gant and Diane De La Torre Threadgill v. Ellis County Commissioners' Court</i>	Injunctive and Declaratory Relief	3/4/92
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33.	<i>NAACP Grand Prairie Chapter, et al. v. Grand Prairie Independent School District, et al.</i>	Opinion	4/4/88
34.	<i>Cynthia Tauss, In Her Capacity as Chairman of the Galveston County Republican Party of Texas and Individually v. Billy Pergues, Wayne Johnson, Eddie Janek, Ray Holbrook and Eddy Barr, In Their Capacities as Members of the Galveston County Commissioners' Court, and Individually, and Galveston County, Texas</i>	Interim Judgment and Election Order	10/18/94
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36.	<i>Abel Alonzo, et al. v. City of Corpus Christi, et al.</i>	Final Judgment	6/29/94
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38.	<i>Emma Reyna v. Castro County, Texas</i>	Findings of Fact, Conclusions of Law, and Order of the Three-Judge Court	10/14/92
39.	<i>Jesse Campos, W.R. (Resendez) Morris, and Mexican American Bar Association of Houston v. City of Houston, et al.</i>	Order	1/12/92
40.	<i>Reverend A. M. Seamon, et al. v. Dr. James Brunette, et al.</i>	Findings of Fact	3/15/76
41.	<i>Reverend A. M. Seamon, et al. v. Dr. James Brunette, et al.</i>	Order	3/15/76

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<u>TAB</u>	<u>CITATION</u>	<u>DESCRIPTION</u>	<u>DATE FILED</u>
42.	<i>Jimmie Casias, Santiago Pacheco, and Mary Ochoa v. Michael Moses, Texas Commissioner of Education; Texas Education Agency, Texas State Board of Education; and State of Texas</i>	Order on Preliminary Injunction	5/11/95

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Message

Rogene Calvert
Exhibit 1

-----Original Message-----

From: Beirne, David (CCO)

Sent: Tuesday, September 30, 2003 11:31 AM

To: 'sarnagist@tomballisd.esc4.net'; 'ddutton@c1bellaire.tx.us'; 'jose.villarreal@hccs.edu';
'bcapent@houston.lsd.org'; 'at05@ridemetro.org'; 'pa04@ridemetro.org'; 'anna.russell@cityofhouston.net';
'don.cheatham@cityofhouston.net'

Cc: German, John (CCO); Kaufman, Beverly (CCO)

Subject: Vietnamese language appearing on eSlate

Due to the inability of the Internation Testing Authorities (ITAs) to fully certify the firmware required to run the necessary applications on the eSlate and provide for the appearance of the Vietnamese language directly on each eSlate voting unit, the Harris County Clerk's office will be incorporating the current precleared procedures for Vietnamese language assistance during the November 2003 elections and any subsequent runoff election. I am attaching copies of the documents the County Clerk's office submitted outlining our election day procedures and overall assistance.

The main issue with the delay in obtaining the final certification of the eSlate system upgrade involves the lack of clarifying input from the Election Assistance Commission (EAC) which was authorized through the Help America Vote Act of 2002 (HAVA). Through HAVA, the EAC is charged with the responsibility of reviewing voting system standards in conjunction with the National Institute of Standards and Technology (NIST). The EAC should have been in existence already, but delays in the initial appointment of the Commission's members combined with the removal of this traditional function from the Federal Election Commission has created a administrative/interpretative vacuum when it comes to questions on the electronic voting system standards and any clarification of voting system standards that is necessary.

The procedures that will be in process for language assistance cover the following:

- Voters requiring language assistance in Vietnamese will be able to obtain a sample ballot exactly replicating the eSlate for their individual voting precinct. This sample ballot will be used as a reference item only as each voter will still cast their vote directly on the eSlate;
- Vietnamese voting instructions will appear at each early voting and election day polling location;
- Oral Vietnamese assistance will also be available from the County Clerk's central office;
- Precincts that have been predetermined to possess a high density level of Vietnamese residents will be provided with a Vietnamese clerk (if available);
- Each early voting and election day polling location will also possess a Language Assistance Kit containing the necessary forms and translations appearing on each of the affidavits that a voter may need to complete prior to being accepted for voting;

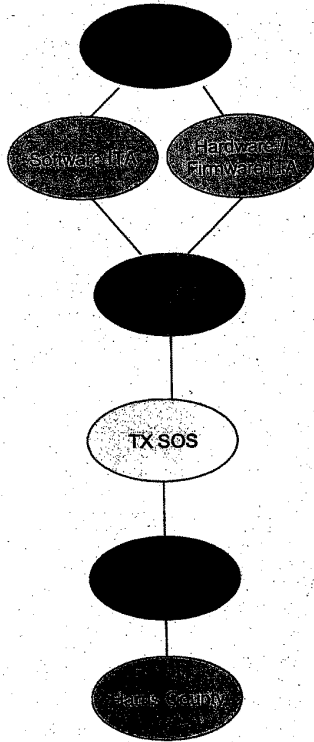
The items listed are intended as a brief overview of the Vietnamese language assistance procedures adopted by Harris County Clerk and currently precleared through the Department of Justice, but are not intended to preclude each individual entity from implementing additional measures to provide adequate levels of language assistance outside the provisions of the election services contract.

Please review the attached documents for any clarification of our procedures and don't hesitate to contact me if you have any questions.

David Beirne
Director of Public Affairs
Office of Harris County Clerk, Beverly Kaufman
1001 Preston, 4th Floor
Houston, TX 77002
713.755.6762

10/2/03

Process for eSlate Electronic Voting System Certification



Hart InterCivic submits eSlate System 3.0 software, hardware and firmware to the ITAs (Independent Testing Authorities) for testing. The ITAs are currently governed by the FEC (Federal Election Commission) in the absence of the EAC (Election Assistance Commission) which is required under HAVA and is still not in place by the Federal Government.

The eSlate System 3.0 software was submitted to Cyber Labs in Huntsville, AL, one of the two national software ITAs, in May 2003 and was approved for certification on August 15, 2003.

There is only one ITA for hardware / firmware in the US. This firm is Wyle Labs in Huntsville, AL. Hart submitted the eSlate System 3.0 hardware and firmware to Wyle Labs in May, 2003 and expects notification regarding certification on October 3, 2003.

Once the eSlate System 3.0 software, hardware and firmware are all reviewed and approved by the ITAs, NASED (National Association of State Election Directors) issues formal approval and assigns certification numbers.

In Texas, the Secretary of State's Office can begin an independent review of an electronic voting system while the national certification by the ITAs is underway.

However, a system or its components cannot be approved for use in Texas until a NASED certification number is assigned. Hart InterCivic would facilitate the communication between NASED and the TX SOS's Office in the case of the eSlate System.

Once all components of eSlate System 3.0 are approved by NASED, and the TX SOS, Hart InterCivic is notified.

Hart InterCivic then notifies Harris County and its other eSlate customers in Texas that eSlate System 3.0 is approved for use in Texas.

Definitions of Terms:

- Software** - Applications that manage BOSS, Ballot Now, TALLY and SERVO functions;
- Firmware** - Software that is resident on the JBC and eSlate (hardware components at the precinct). It manages the presentation of the ballot and other functionality at the precinct system level and permits the operation of software components;
- Hardware** - Physical components of the eSlate System (eSlate, JBC);

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Gonzales niation wigs might like a a do- to the handle her- asy at P.O. 77210, or e- chron.com.

Idette Rumann and her father, Peter Heymann, watch as wrecker driver Keith Tussdale works to get a car out of Rumann's pool in the 3200 block of Crescent Bay Drive in League City on Thursday. About 5:30 a.m., the driver,

Sherman Watkins, 67, lost control of the Buick as he went north on FM 1286, running off the road and landing in the pool. Lifeflight took Watkins to Memorial Hermann Hospital, where he was in critical condition Thursday.

Schools boosting tech skills

But reports show minorities lack computers at home

By JO ANN ZUÑIGA and JANETTE RODRIGUES Houston Chronicle

Students in Chad Starrett's computer lab class at Holub Middle School easily manipulate the remote control of a robot. For them, working with technology is second nature.

"It was pretty easy," seventh-grader Timothy Mitchell said. "You can do a lot of stuff humans can do, like rotate spheres and wrists."

While it may be fun, the "tech ed" class in the Alief School District is also fundamental for today's stu-

dents, educators say, and programs like it are making U.S. public schools the great equalizer for computer access, according to reports released this week by the Department of Education.

The same reports, however, indicate that while students — even those in kindergarten — have greater access to a computer in school, minority students across the country are less likely to use a computer outside the classroom. That's because fewer minority students have a computer at home, statistics show.

Anita Givens, educational technology director for the Texas Edu-

cation Agency, said the federal reports "mirror Texas trends in computer and Internet access at school and home.

"We have made significant progress in providing Internet access and computers in school," she said, "but the same level of access is not available in homes."

The student-to-computer ratio is 4.6 to 1 in Texas, according to a 2002 statewide report on technology and readiness in the classroom. Another statewide study found that many students in Texas have access to computers and the

See STUDENTS on Page 36A.

LOGGED ON LEARNING



Asians irked ballots aren't in Vietnamese

Leaders say county flouts federal rules

By ROSANNA RUIZ Houston Chronicle

Harris County's failure to provide electronic ballots in Vietnamese is ranking local Asian leaders who complain that the county has failed to comply with the U.S. Justice Department's order last year.

Community leaders learned last month that Vietnamese would not be found on the county's electronic eSlate ballots in Tuesday's election.

"We're very disappointed the Vietnamese language is not on eSlate machines," said Eugene Gee Calvert, a member of county and city Vietnamese advisory panels.

The \$25 million eSlate machines, which replaced the county's aging punch-card system, were first used last November and provided Spanish and English ballots. The county has been unable to get federal certification to add

Vietnamese. "If (the county) really wanted to do it, it's the kind of thing where you wouldn't have to push to do it," Calvert said.

Still, a county official insists the county is abiding by the law by providing Vietnamese translators, sample ballots in Vietnamese and informational voting materials at targeted polling places.

However, Philean Tran, a board member for the Asian American Legal Center of Texas, said her group has encountered irregularities at polling sites where Vietnamese sample ballots were unavailable and interpreters were not proficient in the language.

"I don't think the county can solve the problems before Tuesday's election," Tran said.

In July 2002, the Justice Department ordered the county to provide ballots and election materials in Vietnamese. The growing Viet-

See BALLOTS on Page 36A.



People with city contracts are filing coffers of the major mayoral candidates: Page 1A.

Today is the last day to vote early for Tuesday's election. For a list of locations: Page 29A.

A former legal client of Sylvester. Turner's filed a suit against him and his law firm, five days before the election: Page 29A.

HPD review on outside e

Off-duty bar work u

By LISE OLSEN Houston Chronicle

The Houston Police Department, the largest in the nation that allows off-duty officers to work in bars, is reviewing its outside-employment policy, HPD spokesman Robert Hurst said.

HPD and the Harris County Sheriff's Department have begun internal investigations of possible violations of policy by moonlighting officers videotaped in bars by an undercover-news team.

Hurst said he could not comment further about the video or the policy review. Harris County Sheriff's office spokesman, Capt. Robert Van Peit, said only that their investigation included three or four deputies.

In a report aired Thursday night on KTRK Channel 13, officers can be seen letting people in the back door of an apparently overcrowded club and hiding during a

More than half of the 200 bars where Houston police officers can work have been recently cited by the Alcoholic Beverage Commission for violations, the

ous situation. Hurst, the HPD spokesman, said acting Police Chief Joe Breshears is examining the "whole issue of extra jobs," not just bar work.

Ballots

Continued from Page 27A. Vietnamese population and requirements in the federal Voting Rights Act triggered the action. Harris is the only county in Texas with a Vietnamese population large enough to trigger the requirement. According to the 2000 census, more than 55,000 people in the county identify themselves as Vietnamese, and the Justice Department says at least 10,000 are old enough to vote but not proficient in English. Three California counties also were included in the order: Los Angeles, Orange and Santa Clara.

Certification for the language upgrade to optical machines, which comes at an additional cost to the county, has been in the works since January, said David Beirne, public affairs director for County Clerk Beverly Gaultman. Documents submitted to a federal agency in January did not meet revised standards. The procedural changes had not been clearly communicated, said Bill Stolesbery, vice president for the eslate vendor, Hart InterCivic. The agency is considering revised forms. Once federal approval is granted, the state's election division must also scrutinize the upgrade.

The Voting Rights Act makes it illegal to discriminate in voting

based on language. The Justice Department enforces that protection by lawsuits, sending observers to monitor elections and working with local jurisdictions to improve their minority-language election procedures.

Jorge Martinez, a Justice Department spokesman, said he was aware of the county's certification efforts. He explained that the law allows the county to provide an alternative, like translators, if unable to provide a required language. But he declined to say whether the county would be investigated for its voting procedures.

Beirne said he is confident that the Justice Department will not take issue with the election measures.

"We've always been in constant contact with the Department of Justice, and we briefed them on what we're experiencing at the local level," Beirne said.

Beirne and Stolesbery offered assurances that the certification process will be secured in time for the March 2004 primary election.

Calvert, who is also Councilman Gordon Quan's chief of staff, has her doubts, saying the same promise was made before Tuesday's election.

More Vietnamese voters, she said, would likely turn out if they knew they could easily vote in their language.

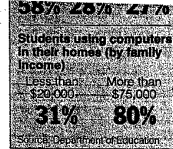
"They need to exercise their right to vote and not feel intimidated," Calvert said.

that they could easily be helped help refurbish other computers for community use.

Even if students would use a computer at home, some families cannot afford one, said Will Reed, chief executive officer of the program.

"I live in Clear Lake, where kids go home and have two or three computers available," Reed said. "But in this southeast Houston neighborhood where the school is, there is less than 10 percent penetration of home computers."

The program, funded with private donations and grants, works with several Harris County school districts and programs, so far setting up about



Chronicle

170 computer labs in churches, YMCAs and other community centers, using refurbished donated computers, Reed said.

Upon completing an after-school computer class, Milby students will understand the in-

Dotson

Continued from Page 27A.

During Thursday's interview, Dotson defended former Baylor basketball coach Dave Bliss, who resigned Aug. 8 after allegations surfaced that he tried to cover up an investigation of the men's basketball program. Dotson said he knew Bliss had resigned amid some sort of scandal but was unaware of the details.

"I have nothing against Coach Bliss at all. To me, he was a very good coach," Dotson said.

According to tape recordings, Bliss told players to tell investigators they had seen Denney carrying a tray containing a variety of drugs and flashing a roll of \$100 bills. Two players admitted they had smoked marijuana with Denney but said they had not seen him use or sell harder drugs, according to the tapes.

When asked if he had used drugs, Dotson replied: "I didn't party, maybe on my birthday but that's all."

"I'm not going to say I was a perfect person, but I wasn't like that (a heavy drug user)," Dotson said. He declined to talk about the drug use of others, including Denney.

"There's a lot of lies going on," he said, referring to the drug-use allegations and Denney's disappearance and death.

Dotson said no one has come to visit him since his return, including R.T. Guinn, whom he still considers a friend. Guinn was one of the players approached by Bliss in the alleged cover-up attempt.

At the moment, Dotson said, he feels good about his court-appointed attorneys and doesn't know if he'll hire his own attorneys. He said they told him his trial may not come up for another six months or more.

He said he does not know if

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- Space is limited so get your tickets now!
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Dotson awaits trial, tru Suspect says 'lies' surround death of Baylor pla

By **ARMANDO VILLAFRANCA**
Houston Chronicle

WACO — Former Baylor basketball player Carlton Dotson, accused of killing ex-
teammate Patrick Dennehy, said Thursday "a
lot of lies" have been said about the case but
the truth will come out during his trial.

During an interview at the McLennan
County Jail, Dotson described Dennehy as a
very close friend. At Baylor, the two were
teammates and roommates.

"I'm sorry about what happened to him,"
Dotson said.

Dotson, 21, has pleaded not guilty to killing

Dennehy, but Thursday he declined to dis-
cuss details of his case.

His tall frame hunched over as he sat on
a stool in the county jail visiting area, Dotson,
wearing orange jail scrubs, often turned away
when asked about Dennehy and other former
teammates.

"I'd just like to be there (at Baylor) right
now," he said. "I'd just like to be taking
classes, going back to school."

When asked how he ended up in jail, rather
than school, he replied: "I don't have an expla-
nation."

Choosing his words carefully, Dotson was
often vague when asked about Dennehy or
the events that led to his death.

Dennehy, 21, had been
when his body was found
quarry south of Waco. A
he had been shot twice

Dotson was arrested
21 after calling police and
hearing voices and needs
remained in custody in Chi
he was extradited to Wa

He had his first court
on Wednesday. After
appointed attorneys, Albe
Hunt Sr., entered a not
son's behalf.

See D1

TIMELINE

- Patrick Dennehy's body was found July 27 about 10 miles from Baylor. He had been missing for six weeks.
- Carlton Dotson was indicted Aug. 27 on a murder charge.
- Dotson was extradited Tuesday from Chesapeake, Md., to face charges.
- Dotson pleaded a not-guilty plea Wednesday in Waco.

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ELECTION

www.houstonchronicle.com/elections

ELECTRONIC BALLOT

ESlate voting proves smooth, not flawless

By ERIC BERGER
Houston Chronicle

Voting at 663 polling stations in Houston and the rest of the Metropolitan Transit Authority area using eSlate machines went smoothly Tuesday, elections officials said.

"In general I think it went very well," said Harris County Clerk Beverly Kaufman. "I think our people in the field did a very good job."

Very good, perhaps, but not flawless. Greater True Light Baptist Church, a northeast Houston polling site, did not open until about 9 a.m. An election worker there had difficulty setting up the equipment, and did not call for help quickly enough, Kaufman said. Between 50 and 100 voters were turned away.

"The concern is that they would not be able to get back in time," said U.S. Rep. Sheila Jackson Lee, D-Houston, of the predominantly African-American district. "Their voting rights are being impinged upon. It's a severe problem."

Lee discussed with Sylvester Turner's mayoral campaign staff the possibility of getting a court order to keep the polling site open two more hours, but chose not to because the problem appeared to be isolated.

"If we would have had a widespread situation I would have been over there myself in front of a judge asking to extend the hours," said Kaufman, who cannot keep a polling place open late on her own authority.

At the Holiday Inn Hotel at 7787 Katy Freeway, election workers decided to use paper ballots when they thought the

eSlate voting machines were not working properly. About 75 makeshift ballots were cast — and signed.

But the eSlates were not malfunctioning. Workers were entering incorrect information into the machines that assigned the wrong ballots to voters. David Puckett, who showed up shortly after 7 a.m., at first registered his vote on a piece of paper, but returned later to cast an eSlate ballot, concerned his initial vote might not be counted.

"This isn't Houston's finest moment," he said. "You had to see it to believe it. Really, no one knew what to do."

Elections officials said they would ensure that only one vote per person would be counted.

Part of the confusion at the west Houston location and others is the distinction between the Houston and Metro voting areas. All of Houston is in Metro, but the Metro area extends well beyond the city limits.

In some polling precincts, one voter might be eligible to vote in the Houston elections, such as mayor, and on the rail referendum, but another voter might only be able to vote for or against rail. At other polling precincts, some people were eligible to vote in the rail referendum, while others, residing outside the Metro area, were not.

Donna Mabry, who lives just outside the city and Metro areas near Ellington Field, said she and other residents from Sage-Glen subdivision were surprised when they were turned away from the polls.

"Now I know how those poor people in Florida felt," Mabry said, referring to problems there in the last presidential election. The county's decision not to

make the eSlate ballots available in Vietnamese did not seem to faze most Vietnamese voters, who got bilingual friends and relatives to help them vote.

At Chancellor Elementary in Southwest Houston, Gary Phan stood at the booth to help his 70-year-old mother with the new electronic ballot.

"It's not easy for her to understand the English," Phan said of his mother, Lu Thi Dong. "She has been voting for four years, and I always help her."

City officials believe the precinct voting at Chancellor, on Boone near Bellaire, has the highest Vietnamese population of any in Houston. Two translators stood by to help, but they said they were not busy, since most Vietnamese preferred to use relatives to translate.

"We haven't had any problems," said Hieu Binh, one of the translators.

Some precincts refused to let Vietnamese voters use their own translators. At All Saints Lutheran Church on West Bellfort, election officials insisted Vietnamese voters work with translator Chan Ho.

"The translator is supposed to be helping them, not the family member," said Precinct 649 Alternate Judge Ruth Duson-Phillips.

Ho said the lack of a Vietnamese version of the ballot made it more difficult for about 20 voters in the precinct.

Kaufman said it is not only legal for a voter to get someone — other than their employer or union boss — to help understand a ballot, it is encouraged.

Chronicle reporters Salatheia Bryant, Ed Hegstrom and Bill Murphy contributed to this story.

FIREFIGHTERS INITIATIVE

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Sent By: PHILQAN TRAN PC;

713 977 4133;

Oct-30-03 4:51PM;

Page 2/4

440 Louisiana, Suite 590
Houston, Texas 77002
Website: www.aalctx.org
Tel. (832) 971-1205

ASIAN AMERICAN LEGAL CENTER OF TEXAS

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Stuti Patel - President
Luz Bates - Treasurer
Philoan Tran - Secretary

Directors:
Debbie Chen
Tony Dinh
Daniel David Hu
Helen Kim
Yoo-Sun Park
Trang Tran

October 28, 2003

Honorable Beverly Kaufman
Harris County Clerk
1001 Preston Street, 2nd Floor
Houston, Texas 77002

(VIA CM/RRR 7003 1630 0004 1920 5709)

Re: November 4, 2003 Election

Dear Ms. Kaufman:

On behalf of Asian American Legal Center of Texas ("AALC"), we are hereby requesting that the following provisions regarding the November 4, 2003 Election be complied with Section 203 of the Voting Rights Act:

1. Each precinct judge shall be properly trained regarding the use and dissemination of Vietnamese sample ballots (with instructions in Vietnamese). The judges should be advised on how to make these sample ballots with instructions available upon request by a Vietnamese speaking voter. Further, a Vietnamese speaking helper should be present or available on "stand by" at all voting sites.

Please send a copy of these judicial instructions to AALC by November 1, 2003.

2. Sample ballots and instructions, in Vietnamese, should be available at all voting sites in Harris County. Please reference 28 CFR 55.19(d).

.....
A 501(c)(3) nonprofit organization serving the Texas Gulf Coast area

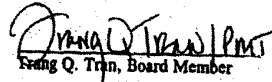
October 28, 2003
Page 2

Please send a copy of a sample ballot and instructions in Vietnamese to AALC by November 1, 2003.

- 3. Each precinct that has 100 or more Vietnamese heritage registered voters shall have a Vietnamese speaking helper available at each voting site. Please reference 28 CFR 55.20. All other voting sites, a Vietnamese speaking helper shall be made available by phone or in person upon request or perceived need of a voter.

Please send a copy of the list of each precinct with 100 or more Vietnamese heritage registered voters to AALC by November 1, 2003.

Very truly yours,



Trang Q. Tran, Board Member

TQT/eb
Enclosure(s): none

cc: Mr. John Tanner (VIA U.S. REGULAR MAIL)
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Mr. David Bieme (VIA U.S. REGULAR MAIL)
Public Affairs
Harris County Clerk
1001 Preston, 4th Floor
Houston, Texas 77002

Honorable Paul Bettecourt (VIA U.S. REGULAR MAIL)
Harris Co. Tax Assessor & Collector
1001 Preston, 1st Floor
Houston, Texas 77002

Honorable Franco Lee (VIA U.S. REGULAR MAIL)
Commissioner, Precinct 1
1001 Preston, 9th Floor
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Website: www.aalctsbigstep.org
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Luz Bates - Treasurer
Philoan Tran - Secretary

Directors:
Debbie Chen
Tony Dinh
Daniel David Hu
Helen Kim
Yoo-Sun Park
Trang Tran

October 30, 2003



(VIA U.S. REGULAR MAIL)

Mr. David ...
Public ...
Houston, Texas 77002

Re: November 4, 2003 Election

Dear Mr. ...

I am writing to you because I was unable to reach you by telephone today. I wanted to follow up on our conversation yesterday and address a few issues that AALC has identified with the Early Election process:

1. E-Slate Paper templates for Vietnamese American Voters with limited English Proficiency were not made available and have not been offered to voters. Because the County did not provide Vietnamese ballots on the E-Slate machines, the remedy has been to provide paper templates in Vietnamese language to be used with the E-Slate machines in the polling booths. On three separate occasions, poll workers at early election locations have mistakenly informed voters that there were not any Vietnamese Paper templates at the polling location. Voters who ask for Vietnamese Paper templates have been instructed to go to retrieve them at the County's Down Town location.

.....
ng the Texas Gulf Coast area

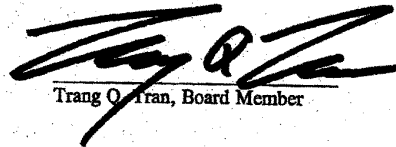
October 30, 2003

Page 2

2. Vietnamese Paper templates have arrived late at the Early Polling location and have not been distributed.
3. Poll workers lack proper training to comply with Section 203 and to accommodate voters with limited English proficiency.
 - a. The poll workers who work at the registration desk are either not aware of the presence of Vietnamese paper templates at their location or were not aware of the requirement that paper templates are to be offered or provided to Vietnamese American voters with limited English Proficiency.
 - b. Poll workers are not pro-active in offering E-slate paper templates that correspond with the precinct where the voters are located in. This is a problem for early election because while voters can vote at any early voting locations, they must use the ballots that are specific to their precinct. While this process is automatic with the use of E-Slate Machine, Vietnamese American voters with limited English proficiency will need help locating the right paper template in order to vote.
4. The format of the Vietnamese E-slate paper template are awkward and can be confusing because it does not match the ballot in pagination or appearance. The Vietnamese translation for the two city propositions are awkward and can lead to confusion among voters who rely on them.

The Asian American Legal Center is very concern about the County's effort to comply with Section 203. In that regard, we would like to have your cooperation in monitoring this election. We ask that the attached letter be issued to our poll monitors in order to allow them to access polling location on election day in order to observe the voting process.

Very truly yours,



Trang O. Tran, Board Member

TQT/eb
Enclosure(s): none

cc: Mr. John Tanner
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

(VIA U.S. REGULAR MAIL)

October 30, 2003
Page 3

Honorable Paul Bettencourt
Harris Co. Tax Assessor & Collector
1001 Preston, 1st Floor
Houston, Texas 77002

(VIA U.S. REGULAR MAIL)

Honorable Beverly Kaufman
Harris County Clerk
1001 Preston Street, 2nd Floor
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(VIA U.S. REGULAR MAIL)

Honorable Franco Lee
Commissioner, Precinct 1
1001 Preston, 9th Floor
Houston, Texas 77002

(VIA U.S. REGULAR MAIL)

Honorable Sylvia R. Garcia
Commissioner, Precinct 2
1001 Preston, Room 950
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(VIA U.S. REGULAR MAIL)

Honorable Steve Radack
Commissioner, Precinct 3
1001 Preston, 9th Floor
Houston, Texas 77002

(VIA U.S. REGULAR MAIL)

Honorable Jerry Eversole
Commissioner, Precinct 4
1001 Preston, 9th Floor
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(VIA U.S. REGULAR MAIL)

Mr. Don Cheatham
Assistant City Attorney
City of Houston Legal Department
900 Bagby Street
Houston, Texas 77002

(VIA U.S. REGULAR MAIL)

Ms. Terry Ao
Language Rights, Voting Rights & Census
National Asian Pacific American Legal Consortium
1140 Connecticut Avenue, N.W.
Suite 1200
Washington, D.C. 20036

(VIA U.S. REGULAR MAIL)

3683

October 30, 2003

Page 4

October 31, 2003

Dear Election Clerk,

The bearer of this letter is covering the November 4, 2003 elections as a Poll Watcher.

The Poll Watcher is allowed into the polling place to observe voting activities. Poll Watchers may look at the Roster of Voters as long as the voting process is not delayed. They may not at any time handle the E-Slate machines.

Only voters engaged in receiving or voting ballots, precinct officers, or people assisting the voter, may be in the area of the voting booths or ballot box. Only precinct officers, language interpreters, and persons signing the Roster may sit at the table used by the Precinct Board. Poll Watchers may be present before the polls open and after the polls close and throughout the voting day.

Still or video photography may be conducted within the polling place as long as it is not disruptive to the voting process.

Cooperate with Poll Watcher requests as long as they do not interfere with the voting process and do not violate the Elections Code (Refer to the "A Guide for Poll Watchers" pamphlet) which is included in your supplies.

I very much appreciate your assistance in this matter. If you have any questions, please call the Polls Section at ()

Sincerely,

Beverly Kaufman
COUNTY CLERK



BEVERLY KAUFMAN COUNTY CLERK

October 31, 2003

Trang Tran
 Asian American Legal Center of Texas
 440 Louisiana, Suite 590
 Houston, TX 77002

Dear Mr. Tran:

This letter is in response to your letter dated October 28, 2003 in which you outlined your recommendations for use in complying with Section 203 of the Voting Rights Act. In response to your recommendations, I will outline each of your recommendations and our respective responses:

Suggestion 1: "Each precinct judge shall be properly trained regarding the use and dissemination of Vietnamese sample ballots (with instructions in Vietnamese). The judges should be advised on how to make these sample ballots with instructions available upon request by a Vietnamese speaking voter. Further, a Vietnamese speaking helper should be present or available on "stand by" at all voting sites."

Response: *As part of our mandatory training process, all legal and administrative requirements covered under the Voting Rights Act and Texas Election Code are stressed. These procedures include reviewing the availability of Vietnamese Language Assistance Kits, Ballot Templates (which replicate the English version of the eSlate), and the availability of additional language assistance at our main office location. In addition, during a traditional county election, we have an estimated total of seven-hundred twenty (720) polling locations which would require the deployment of approximately 2.4 % of the entire Vietnamese registered voter population in Harris County, a laudable, but unrealistic goal. We welcome other suggestions that may be more attainable.*

Suggestion 2: "Sample ballots and instructions, in Vietnamese, should be available at all voting sites in Harris County (reference 28 CFR 55.19(d))."

Response: *This procedure is currently being met with the provision of Vietnamese Language Assistance Kits as well as sample ballots and ballot templates in every Harris County location.*

Suggestion 3: "Each precinct that has 100 or more Vietnamese heritage registered voters shall have a Vietnamese speaking helper available at each voting site. Please reference 28 CFR 55.20. All other voting sites, A Vietnamese speaking helper shall be made available by phone or in person upon request or perceived need of a voter."

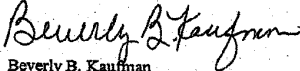
Response: *Our recruitment efforts for Vietnamese pollworkers has been a result of a household mailing the Harris County Clerk conducted to over 15,000 households prior to the November 5, 2002 General Election. In addition, applications have been*

made available at the office of VN Teamwork and were distributed via e-mail to members of the Vietnamese Advisory Committee for recruitment purposes. All of these efforts have yielded approximately thirty-three (33) applicants. Based on your recommendation of 100 registered voters as a benchmark, the County Clerk's office would have to provide language assistance in a total of fifty-one (51) voting precincts. While this is laudable, our recruitment efforts over the past year with members of the Vietnamese Advisory Committee have not yielded this number. In anticipation of this and as cited in Code of Federal Regulations (28 CFR 55.18 (d)), we have made language assistance for Vietnamese voters available at our central office and have instructed our judges accordingly to contact our office when the need arises. Language Assistance available at our central office is parallel with the latter portion of your recommendation. I would also like to point you to 28 CFR 55.20(e), in which the Attorney General and the United States Department of Justice have cited the use of "Helpers" in an election. Understanding the pollworker recruitment process and the difficulty in recruiting ample volunteers, the assistance measures in the State of Texas include the ability of a voter who has limited English proficiency to bring someone of their own choosing into the polling place to provide assistance. The only limitation to this is that the person providing assistance may not be the person's employer or labor union representative. (TEC, 64.032).

In addition, in your letter dated October 30, and received in our office on October 31, 2003, you have asked for access in the form of poll monitors. The Texas Election Code permits pollwatchers only as appointments of candidates, political parties, write-in candidates or specific-purpose political committee. The Asian American Legal Center does not qualify under these provisions under Section 33.002-Section 33.006 of the Texas Election Code. While I appreciate your concern and the concern of the Asian American Legal Center, perhaps the same diligence can be shown in the recruitment of additional pollworkers for future elections and will assist the Vietnamese community further with their efforts in the voting process.

Other items in your letter dated October 30th include specific complaints and concerns pertaining to the availability and usage of the Vietnamese templates. We will be happy to address these, but will need to be made aware of these instances with specific details so we may address them, as we continue to receive conflicting statements from our election officials in those areas that have high concentrations of Vietnamese voters. Throughout our correspondence, and included in our Department of Justice submission for preclearance of our procedures under the Voting Rights Act, was our expectation of having the Vietnamese language option directly on the eSlate voting system. Due to circumstances beyond our control, we have had to continue with our current procedures and look forward to accommodating the Vietnamese language on the eSlate beginning in 2004 based on assurances made by our vendor.

Sincerely,



Beverly B. Kauffman
County Clerk, Harris County, Texas

3686

10/31/2003 16:09 FAX 7137554883

ELECTION DEPT

004/004

3

cc: John Tanner
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Honorable Paul Bettencourt
Harris County Tax Assessor & Collector
1001 Preston, 1st Floor
Houston, TX 77002

Honorable Franco Lee
Commissioner, Precinct 1
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Honorable Sylvia R. Garcia
Commissioner, Precinct 2
1001 Preston, Room 950
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Commissioner, Precinct 3
1001 Preston, 9th Floor
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Honorable Jerry Eversole
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Mr. Don Cheatham
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Language Rights, Voting Rights & Census
National Asian Pacific American Legal Consortium
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C:/vietadvisorycommittee/AALCresponse

3687

Sent By: PHILOAN TRAN PC; 713 977 4133 713 977 4133; Apr-20-04 5:35PM; Page 2

03-02-2004 02:13PM FROM:Harris County Att's Office T-031 P.001/007 F-020



Mike Stafford
Harris County Attorney

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DATE: 3/2/04

TRANSMITTAL SHEET

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: Trang Tran FAX NO.: 713-223-2097

FIRM: Asian Amer. Legal Ctr. PHONE NO.: 713-223-8855

DOCUMENT: DAI Agreement

FROM: James Harris

FIRM: _____

FAX NO.: 713-755-8772

NUMBER OF PAGES 6 + TRANSMITTAL SHEET

COMMENTS: Please call me with any questions
after you have reviewed the agreement.

Thanks,
James

If you do not receive all of the pages, please call us as soon as possible so that we may notify the sender of any problems.

Thank You!

Memorandum of Understanding and Agreement

This Memorandum of Understanding and Agreement ("the Agreement") is entered into between the United States of America ("United States") and Harris County, Texas, with an effective date of [date].

Recitals

1. On July 26, 2002, the Director of the Census determined that the County is covered under the requirements of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, as it relates to the Vietnamese language.
2. Section 203 requires Harris County, Texas, and all of the political subdivisions within Harris County, to provide all election notices, forms, instructions, assistance and other registration and voting materials and information, including ballots, in the Vietnamese language as well as in English and in Spanish.
3. Promptly upon receiving notification that it was a covered jurisdiction under Section 203 with respect to the Vietnamese language, the County began efforts to comply fully with the requirements of Section 203. The County translated into Vietnamese all election-related materials used in Harris County, with the exception of those materials that are prescribed and supplied by the Texas Secretary of State. In addition, the County established and has maintained a compact Vietnamese Advisory Committee to aid the County in its efforts to develop a Vietnamese-language program and to comply with Section 203.
4. Since Harris County became covered under Section 203 for the Vietnamese language, the County and the United States have worked together cooperatively to review and enhance the County's progress in implementing its Vietnamese-language program. In accordance with Section 5 of the Voting Rights Act, the County submitted its Vietnamese-language forms and initial procedures to the Attorney General for review, which forms and procedures the United States Department of Justice (the "Department") subsequently precleared. As part of that submission, the County stated that its E-slate voting machines would include a Vietnamese version of the ballot by 2003; a series of circumstances, however, resulted in the E-slate machines including only English and Spanish versions of the ballots, so that the County prepared a Vietnamese ballot "template" to supplement the machine ballot as provided in the Attorney General's Minority Language Guidelines.
5. The County also welcomed the Civil Rights Division, which has unique experience with minority language programs in other jurisdictions, to observe the County's Vietnamese-language program as it operated at the polls on election day, and cooperated fully in that observation. The Civil Rights Division was able, as a result of the County's cooperation, to identify a number of issues in the operations of the County's program.

Harris County, desiring to remedy any deficiencies in its Vietnamese-language program, and to establish itself as a model that other jurisdictions might emulate, has therefore agreed to the following terms.

8. The County does not admit to any violation of federal law. Harris County actively seeks to implement a model Vietnamese-language program for compliance with Section 203.

Terms

1. The County, for all county elections and elections conducted under an election services contract, as defined by the Texas Election Code, shall provide instructions and ballots in the Vietnamese language on the same basis as they are provided in English and Spanish, including on all voting machines. All non-machine ballots shall be bilingual or trilingual. The County shall adopt procedures for determining which type of bilingual or trilingual ballot should be offered or provided to individual voters. Such procedures shall be subject to compliance with Section 5 of the Voting Rights Act.

2. Whenever the County enters into an election services contract with any other entity, political subdivision, or political party to conduct an election on behalf of that entity, the County shall require such other entity to agree to abide by the terms of this Agreement as if such entity were a party to this Agreement with the United States, and consistent with the responsibility of each such entity to comply fully with Section 203. Each independent school district or other educational entity with which the County contracts shall agree to implement a program that allows and encourages selected bilingual students (as allowed by state law and as part of an educational program devised by such district) to serve as poll officials on election day for all county elections, including election days that fall on school days. Such students shall receive academic credit appropriate to their service as well as all pay and benefits of poll officials. Harris County agrees to notify the United States sixty (60) days prior to each election of each jurisdiction within Harris County that does agree to cooperate in the terms of this Agreement, and to identify all other entities having elections on such date.

3. All voter registration and election notices, forms, instructions, and other materials available to voters in English shall also be printed in Vietnamese, and shall be displayed or available in each polling place on the same basis as English language materials and information. The distribution of information through the media shall be in the Vietnamese language in newspapers and other media that exclusively or regularly publish or broadcast information in Vietnamese. The announcements need not be identical in all respects to English language announcements, but shall be in the form, frequency and media best calculated to achieve notice and understanding equal to that provided to the English-literate population and to provide substantially the same information.

4. The County acknowledges the need for Vietnamese-speaking personnel in all phases of the election process. The County shall maintain and publicize telephone

numbers where citizens may obtain election information from Vietnamese-speaking personnel trained in the entire election process. Polling places which have more than 50 Vietnamese-surnamed registered voters at the time of an election usually, but not always, will under the conditions that prevail in Harris County, require a Vietnamese-speaking poll official or interpreter to assist voters and answer their questions, and the County will ensure that such personnel are stationed at each such polling place. The United States recognizes that this general need may vary from place to place, and over time; accordingly, the County may establish, subject to compliance with Section 5 of the Voting Rights Act, a procedure for determining, for any election, which particular precincts or polling places have no need for such assistance, or for providing such assistance through early voting, absentee voting, or other reasonable means. In such cases, no Vietnamese speaking poll official or interpreter will be necessary at such a site. Similarly, the County shall be responsive to evidence that precincts with fewer than 50 Vietnamese-surnamed registered voters contain voters who may need Vietnamese assistance, and shall meet such need through Vietnamese-speaking poll officials or interpreters or other reasonable means. For each election, the County shall have Vietnamese-speaking personnel available on call to travel to polling places as required to assist voters at any site where a Vietnamese-speaking official is not available.

5. The County shall publicize through Vietnamese-language media the right of voters who require assistance in casting their ballots to receive such assistance from any person, other than the voter's employer or agent of that employer or officer or agent of the voter's union, consistent with Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6 and the Texas Election Code. The County also shall publicize such information through English and Spanish language media.

6. To assist in the recruitment of bilingual poll officials and interpreters, the County shall survey its employees to identify personnel who speak Vietnamese, and shall make such employees available for service at the polls on election day, or place them on call to address questions or problems that may arise to the extent such employees are available to provide assistance.

7. In addition to providing training in the operation of the polls, the operation of voting equipment, and state law rules, requirements, and election procedures, the County shall train all election judges, alternate election judges and clerks in the legal requirements of Section 203 and Section 208 of the Voting Rights Act, and on the need to avoid inappropriate remarks and conduct within the polling place. The County shall maintain a record of which poll officials attend training sessions, including the time, location and training personnel.

8. The County shall adopt a checklist that each election judge must complete and sign before the election judge receives payment for work in the election, subject to applicable state and federal law, and shall maintain a record of each such failure to complete and sign the checklist. The checklist shall include attestation that the election judge posted or made available Vietnamese-language sample ballots, voter registration and

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03-02-2004 02:14PM FROM:Harris County Att's Office T-831 P.008/007 F-628

address update forms, affidavits, and other such items in the poll kit; that voters were allowed to receive assistance from persons of their choice in compliance with Section 208 and the Texas Election Code; and that voters whose names did not appear on the poll list or who lacked voter registration cards or other requisite identification were treated equally and as required by law, the specific legal provisions being described on such checklist.

9. The County shall employ, on a full time basis, an individual ("the Coordinator") to coordinate the Vietnamese election program for all elections within the County and the County shall provide that individual transportation and other support sufficient to meet the goals of this Agreement. The Coordinator shall work under the supervision of the Harris County Clerk. The Coordinator's responsibilities shall include development and adjustment of Vietnamese publicity programs matching English language announcements, including selection of appropriate Vietnamese language media for notices and announcements; identification of any special informational needs of the Vietnamese community; preparation of publicity for early voting sites; recruitment of Vietnamese-speaking poll officials and interpreters; voter registration programs and general publicity; translation of ballots and other election information; development of a Vietnamese election glossary to ensure uniform terminology in elections; and other aspects of the Vietnamese-language election program.

10. The Coordinator shall establish an advisory group to assist and participate in the Vietnamese language program. Such advisory group shall be open to all interested persons. The Coordinator shall invite participation by all organizations listed in Houston's Asian Pacific American Resource Directory, as well as other individuals and organizations that work with or serve the Vietnamese-speaking community in Harris County. The Advisory Committee may include sub-groups to deal with particular subject matters, such as voter registration, or to deal with matters limited to a particular area within Harris County, such as an election for an independent school district. The advisory group shall meet at least on a monthly basis through the 2004 elections and post-election review and analysis. The group shall meet thereafter as needed, and according to schedules for the full group and for any sub-groups. Such schedules shall be determined in consultation with the advisory group. The Coordinator shall notify each member at least 14 days in advance of the time, location and agenda for the meeting. The Coordinator shall act as Chair of the advisory group. Within five days following each meeting, the Coordinator shall provide a written summary of the discussion and any decisions reached at the meeting. The group will be advisory in nature, and nothing in this agreement limits the powers or responsibilities of any public official.

11. The County shall transmit to all members of the advisory group by facsimile or electronic transmission copies in English and Vietnamese of all election announcements and notices which are provided to the public by the County in English. The County shall invite recipients to post materials or make announcements for their members or clients, where appropriate. Municipalities and other sub-jurisdictions of Harris County which contract with the County may limit such distribution to group members within or serving

their geographic area, and others expressing an interest in such materials and information.

12. The Coordinator shall make and preserve records of all tasks undertaken pursuant to this Agreement during the term of the Agreement and for a period of at least two years after its termination.

13. Each standard, practice or procedure that must be created by the terms of this Agreement is subject to compliance with Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. Such standards, practices or procedures may be modified to meet the changing needs of the Vietnamese community in Harris County subject to the requirements of Section 5.

14. This Agreement shall continue in formal operation through December 31, 2008; however, Harris County firmly expresses its intention to continue the beneficial practices and procedures of the Agreement beyond that time.

This Memorandum of Understanding and Agreement has been executed by the parties in duplicate originals, each having full force and effect.

APPROVED AS TO FORM:

MIKE STAFFORD
County Attorney

HARRIS COUNTY

By _____
JAMES HARRIS
Assistant County Attorney

By _____
ROBERT ECKELS
County Judge

Date signed: _____

PAUL BETTENCOURT
Harris County Tax Assessor-Collector, in
his capacity as Harris County Voter Registrar

BEVERLY KAUFMAN
Harris County Clerk, in her capacity
as Harris County Elections Administrator

Date signed: _____

Date signed: _____

3693

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03-02-2004 02:13PM FROM-Harris County Att's Office T-001 P.007/607 F-028

R. ALEXANDER ACOSTA
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice

Date signed: _____

JOHN TANNER
Special Litigation Counsel
Civil Rights Division
U.S. Department of Justice

Date signed: _____

Claude Foster
Exhibit 1

December 12, 2001
VOTER IRREGULARITY HEARING

1 REPORTER'S RECORD
2 VOLUME 1 OF 1 VOLUMES

3
4
5 HOUSTON COALITION FOR BLACK CIVIC PARTICIPATION
6 VOTER IRREGULARITY HEARING
7 WEDNESDAY, DECEMBER 12, 2001
8 SHAPE COMMUNITY FAMILY CENTER

9
10 NAACP VOTER IRREGULARITY HEARING
11

12
13 On the 12TH day of December, 2001, the following
14 hearing was held at Shape Community Center at 3815
15 Live Oak, held in Houston, Harris County, Texas.

16 Proceedings reported by computerized stenotype
17 machine.

18
19 CYNTHIA J. LEE
20 CERTIFIED COURT REPORTER

21
22 COPY
23
24
25

1 **APPEARANCES**

2
3 **DELLOYD PARKER**
4 **EXECUTIVE DIRECTOR, SHAPE COMMUNITY CENTER**

5
6 **HOWARD JEFFERSON, PRESIDENT**
7 **NAACP HOUSTON BRANCH**
8 **YOLANDA SMITH,**
9 **EXECUTIVE DIRECTOR NAACP HOUSTON BRANCH**

10
11 **PAUL BETTENCOURT,**
12 **TAX-ASSESSOR-COLLECTOR**

13
14 **KERYL DOUGLAS,**
15 **DIRECTOR NAACP REGION VI**

16
17 **CLAUDE FOSTER,**
18 **NAACP Voter Empowerment Coordinator**

19
20 **GINA GASTON,**
21 **KTRK ABC TV (Channel 13)**

22
23 **GLENDA KIZZEE, COORDINATOR**
24 **HOUSTON COALITION FOR BLACK CIVIC PARTICIPATION**

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1 **JOHNNY MATA,**
2 **LULAC**

3
4 **RICHARD SAMBRANO,**
5 **UNITED STATES DEPARTMENT OF JUSTICE**

6
7 **TONY SIRVELLO,**
8 **OFFICE OF THE HARRIS COUNTY CLERK**

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1 VOLUME 1

2 NAACP VOTER IRREGULARITY HEARING

3 December 12, 2001

4 PAGE VOL.

5 Introduction of Panel Members 9 1

6 Witnesses to Testify Direct Cross Voir Dire

7 Felicia Dykes 26 1

8 Terence Scott 32 1

9 Linda D. Mitchell 41 1

10 Debra Riley 48 1

11 Denise Jordan 49 1

12 Melody Rames 53 1

13 Bernadine Thorn 62 1

14 Sue Schechter 65 1

15 Felicia Farrar 71 1

16 Christy Bosados 75 1

17 Florence Mitchell 76 1

18 Stella Graves 79 1

19 Daryl Carter 82 1

20 Barry Thompson 85 1

21 Patricia Howard-Crawford 88 1

22 Earl McDonald 93 1

23 Johnny Roberson 97 1

24 Ovide Duncantell 98 1

25 Tammy Campbell 111 1

Nick Clayton 112 1

Ron Jackson 119 1

Larry Green 120 1

Robyn Short 121 1

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December 12, 2001
 VOTER IRREGULARITY HEARING

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5	Carter, Daryl	82	1
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6	Duncantell, Ovide	98	1
	Dykes, Felicia	26	1
7	Edwards, Ada	123	1
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8	Graves, Stella	79	1
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9	Howard-Crawford, Patricia	88	1
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10	Jordan, Denise	49	1
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11	Mitchell, Florence	76	1
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12	Rames, Melody	53	1
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13	Roberson, Johnny	97	1
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14	Scott, Terence	32	1
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December 12, 2001
VOTER IRREGULARITY HEARING

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(Whereupon Proceedings Will Begin)

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MR. PARKER: I'd like everybody's attention, please. Everybody's attention. On behalf of Shape Community Center, I'm Delloyd Parker, Executive Director of Shape Community Center. On behalf of the shape and our family, we are honored to host this history redevelopment. Because we truly believe, know, and realize that it is truly a historical event, something that if we make happen, we make history.

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This is a people's hearing is really what it is. To me, that's the only kind that counts. And so we are honored to be the host this evening. But equally as important, we want you to know that the grounds that you are sitting on right now, some real history -- Shape Community Center was born out of the black liberation struggle. Born out of struggle, and we are still here to continue waging that struggle, and we're happy about that. We realize that in waging the struggle, you have to do it both in the street and you have to do it in the classroom.

You have to do it in the community center, wherever the people are. You have to take it

1 to the people, and that's what we're doing.

2 Right now, we're going to turn it over
3 to Howard. We're going to work together to get this
4 hearing complete and done efficiently and effectively
5 together. Recognizing what each others role is, we
6 do it together. I'm going to turn to over to Howard.
7 And, of course, you have your panel members.

8 But we want you, before we start to go
9 any further, we want to remind the panel members to
10 give your -- we will do this -- somebody needs to
11 take the names of each of the panel members so the
12 stenographer can have them available when they speak.
13 She needs to know exactly who they are.

14 But it's best that you say who you are
15 and that would be even better. Right? Say who you
16 are before you speak, everybody, before you make any
17 comments. I'm DeLloyd Parker I said that, remember?
18 Okay.

19 Say who you are before you speak. And
20 the witnesses, likewise, will say who they are. And
21 we will have -- everybody who testifies will be sworn
22 in. Okay. Everybody that testifies will be sworn
23 in. Right now, we're turning it over to Howard
24 Jefferson, President of the NAACP. Thank you,
25 Howard.

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1 MR. JEFFERSON: Thank you. And before
2 we follow, let's give DeLloyd a hand, please. When
3 we come to Shape Community Center, we know we're
4 coming for business. We know we're coming to a place
5 where -- a place that is not looking for fanfare, not
6 looking for publicity, but DeLloyd is building
7 strength. And we have had some hard times and we
8 have met here on some hard issues, so we thank you.
9 We feel honored that we are in the house tonight.

10 I want to thank all of you-all for
11 coming out. That is a little drizzle of rain. I was
12 worried about it last night, but we're all in the
13 house tonight. I want to thank you, the panelists,
14 for coming, too. Please give me the honor of being
15 able to tell you to stop talking. Okay?

16 We want to hear as many people as we
17 can. And if you will honor that, I will certainly
18 appreciate it. We have an agenda here, but I'm going
19 to deviate, as presiding officer, from the agenda.
20 That's my prerogative. But before I get this far, I
21 would like for Yolanda -- hold up your hand. Look
22 back, folks, and see who Yolanda is. Yolanda really
23 helps put this together.

24 The coalition really works. And when
25 I called Yolanda and told her to do it, I ain't

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1 talked to nobody in here. That's all I did.
2 Yolanda, do it. And she got with other members of
3 the coalition and whatnot, and she did it.

4 I'm going to take things out of order
5 because I like to give respect to the coordinator who
6 really pulled all of these groups together and
7 whatnot, so I'm going to start with Glenda, who is
8 the coordinator of the group of organizations that we
9 have here. Glenda. Okay.

10 There is a mike over there. Let's
11 give Glenda a hand. That was a sorry hand you-all
12 gave. Come on now. All right.

13 MS. KIZZEE: I'm Glenda Kizzee with
14 Houston Acorn, and I am the Coordinator for the
15 Houston Coalition for Black Civic Participation.

16 MR. JEFFERSON: And take about two
17 minutes.

18 MR. PARKER: It's on.

19 MS. KIZZEE: Okay. I'm sorry. My
20 name is Glenda Kizzee with Houston Acorn, and I'm the
21 coordinator for the Houston Coalition for Black Civic
22 Participation. This is our founding year. This is
23 our first time getting together. We started with the
24 election November 6th. We had organizations from
25 across the city to join together, because we felt

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1 like the citizens here needed some added
2 encouragement, additional information to actually
3 participate. And we were very successful.

4 This is only the beginning. Starting
5 next year, we will be starting in January building on
6 the success of this year. This is actually an early
7 addition to what we're building, and because we'd
8 like to get the problems that we encountered in the
9 election and runoff out of the way, get those
10 addressed so that we can continue this building
11 effort next year.

12 MR. JEFFERSON: Thank you very much.
13 Now I will follow the order as we have it here.
14 Sylvia Brooks, would you come up, please? I'm going
15 to put a chair right here. I'd like for you to come
16 up. You have been a very big part of this
17 leadership. Come on up.

18 MR. BETTENCOURT: We need somebody to
19 keep time.

20 MR. JEFFERSON: Thank you. Thank you.
21 Bring a chair right here and put it right here for
22 Sylvia, please. Sylvia is President of the Urban
23 League. And unlike a lot of Urban Leagues may be,
24 but Sylvia is always there to fight and we went to
25 put her there. So we have Sylvia. Sylvia is now in

1 the house. All right. Okay.

2 Now we will follow the program. Paul
3 Bettencourt is the Tax Assessor-Collector. All of
4 you-all know him. And so Paul, will you take off and
5 use about two minutes and then you will get a chance
6 to talk a little more later. Paul.

7 MR. BETTENCOURT: Sure. Thanks
8 everyone. Let's see here. I appreciate it. Hi.
9 I'm Paul Bettencourt, and I send you lots of tax
10 bills. But another job I've got with the county is
11 I'm also the county voter registrar. And to make a
12 long story short, my office is dedicated to
13 registering every person, wherever they live, so they
14 can vote in every election. Now, that's in a perfect
15 world, just like trying to get this microphone on.
16 Thanks. I appreciate it, Mr. Parker.

17 And in the last election, I wanted to
18 tell you that we did something that I thought was
19 very unique, and that no other urban voter registrar
20 has done, which is we took 10,000 calls from the
21 public or election judges, and we basically answered
22 those calls almost on the first ring.

23 So if anybody had a question about
24 voter eligibility, about whether or not they were
25 registered to vote, we could answer that with almost

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1 on the first time you heard the ring when you made
2 the phone call.

3 Now, the reason why that's important
4 is this: It's my commitment to everybody that is in
5 Harris County that if they have been registered, that
6 they have the opportunity to vote. When you look
7 through what the Shape Center put out, the Community
8 Center put out on everybody's rights to vote, that is
9 what your right is based on, fundamental bedrock of
10 American Democracy, which is every citizen that
11 registers has that right to vote.

12 And I think my office demonstrated
13 that on election. I asked Yolanda and also the NAACP
14 officials if there were any complaints about my
15 office, and there were none. Because I think that
16 when we can answer 10,000 calls from the public in
17 one day on first ring, that that tells you that we
18 don't talk the talk, we walk the walk. And I
19 appreciate your time.

20 I have got a great staff here. We
21 also have all the voter roles here from the election.
22 So if anyone wants to look up their voter
23 registration status, we are right here. Carl, raise
24 your hand. He's got it. So if you don't know if
25 you're registered or not, we can tell you that.

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1 Marty, raise your hand. If you're not registered, we
2 well register you.

3 And if there is another problem, Juan,
4 raise your hand. We will figure it out. Okay.
5 Thank you, Howard, I appreciate the time and
6 appreciate the community for having this meeting.

7 MR. JEFFERSON: Okay. So Juan is the
8 figure out man. Okay. Claude Foster. Claude?

9 MR. FOSTER: Good afternoon. My name
10 is Claude Foster, and I'm the Region 6 Voting
11 Coordinator. Region 6 covers the states of Texas,
12 Louisiana, Arkansas, New Mexico, and Oklahoma.

13 I want to first thank the Houston
14 Chapter of the National Coalition on Black Civic
15 Participation of which the NAACP is a partner for
16 conducting this hearing on voter intimidation during
17 the recently concluded December 1st runoff election.
18 Election 2000 was a watershed moment for the NAACP.
19 The NAACP helped increase African American voter
20 turnout by two million voters, historic proportions.
21 Yet, the election was rife with abuses that
22 disenfranchised thousands of African Americans across
23 the country.

24 The NAACP's voter empowerment program
25 has increased its efforts to fight against these

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1 abuses and make certain that they do not continue to
2 occur. Unfortunately, we have heard a great deal
3 about attempts to intimidate minority voters in this
4 election. The right to vote should be fundamental
5 for all citizens. Fannie Lou Hammer, John Lewis and
6 thousands of others were beaten and imprisoned for
7 it. Michael Schwerner, James Chaney, Andrew Godman,
8 Vernon Dahmer, Medgar Evers and Jonathan Daniels and
9 others died for it.

10 The right to vote is the most precious
11 right of all. On it hangs all other rights we have
12 as citizens of the United States. This right is
13 placed in jeopardy, in jeopardy by understaffed
14 poles, arbitrary decisions by election officials, and
15 lack of proper notification of polling place changes
16 which can undermine a voter's right to participate in
17 the voting process.

18 We are here tonight in Houston to
19 address the concerns of voters who were denied the
20 opportunity to participate in the most sacred
21 franchise in our democracy, the right to vote. Every
22 voter should have the right to vote without
23 intimidation or persecution; to use as much time as
24 they need in completing the ballot; to redo their
25 ballot if they make a mistake; to get help if they

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1 have a question about the ballot or the process; and
2 not be frowned upon or looked at in any kind of
3 disdain or disparaging way; to get help if they have
4 language difficulties or challenges resulting from
5 disabilities; to request and receive a challenge
6 provisional ballot, and not be told that we're out of
7 ballots for two hours; to cast their ballot if they
8 are in line before the poll closes; to have a polling
9 place or process accessible to the physically
10 challenged.

11 MR. JEFFERSON: Excuse me. We have to
12 keep it short. So summarize it real quick, Claude.

13 MR. FOSTER: Your commitment in being
14 here tonight can help us defend against voter
15 irregularities and other threats. Field hearings
16 such as this are essential to discovering the truth
17 about voter suppression in Houston and working to
18 make sure that we stop these efforts to
19 disenfranchise African American voters in the future.

20 MR. JEFFERSON: Thank you. Thank you.
21 We want to make sure you don't say the president's
22 part, so thank you very much. All right. Gina?

23 MR. BETTENCOURT: It may stretch, I'm
24 not sure.

25 MS. GASTON: Claude took part of my

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1 time. Just kidding. I don't have a whole lot to
2 say. I'm here as a working journalist here in this
3 community. I guess I'm representing journalists of
4 the community since I'm the only one on the panel,
5 but just here to learn more about what's going on to
6 ensure the fact that people are getting the rights
7 that they certainly are entitled to as American
8 Citizens to vote. And I'm here as a neutral and
9 curious and interested journalist to find out more
10 and to hopefully ask questions and help us all come
11 to a better understanding of what's going on. Thank
12 you.

13 MR. JEFFERSON: Thank you. Thank you,
14 journalist, for showing them how to do two minutes.
15 Okay. Next two-minute person. The reason we're
16 letting the panel take such a short time is because
17 we are really here to hear you, and so that's the
18 reason I'm cutting it real short. Johnny Mata, my
19 friend.

20 MR. MATA: Thank you. Well, LULAC is
21 a national civil rights Hispanic organization working
22 along the lines with NAACP. It's a lot of work
23 behind the scenes and that a lot of people don't
24 know.

25 We tally the elections, where we

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1 continuously work together along with other civil
2 rights groups. So we want the community to
3 understand that disenfranchising anyone to elect is
4 really a violation and injustice, and we're here to
5 correct it. I yield my time so that the two minutes
6 will be made up. Thank you.

7 MR. JEFFERSON: Okay. Thank you very
8 much. Richard is with the United States Department
9 of Justice, and we have worked together on some
10 things before. We're glad you could come. We called
11 and he said, I will be there. Glad the Justice
12 Department is here because we need some justice.

13 MR. SAMBRANO: Thank you. Thank you.
14 Thank you so much. The community serves the
15 Department of Justice created back in 1964. It's
16 there to assist in the resolution of disputes or
17 differences between minorities and nonminorities
18 by -- based on national origin, race, or color. A
19 lot of works that we got involved in had to with
20 administration of justice better known to you as
21 police brutality, housing, education and even voting
22 rights.

23 Hopefully, tonight, it's a learning
24 experience for me. I'm here to listen. But as I've
25 told Yolanda and also Keryl Douglas, who invited me

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1 to come last week, I met with them to kind of plan
2 this, that is, that if whatever comes up as a result
3 of this, our office will be there to help in terms of
4 hopefully, mediating, maybe, between you folks and
5 maybe the folks over here that were in charge of
6 running the election. And then also to help bring
7 resources to you.

8 We do have the Voter Rights Section of
9 the Department of Justice under the Civil Rights
10 Division that has jurisdiction over this matter just
11 as the Texas Secretary of State. So again, I thank
12 you for the invitation and hope that I can be of some
13 help to you.

14 MR. JEFFERSON: Thank you so much.
15 You know, I was going to let him talk a little
16 longer. I'm not going to mess with the Justice
17 Department. Okay. Tony is from the office of the
18 Harris County Clerk, and he worked with us very
19 closely in trying to fix some things that were
20 broken. Tony?

21 MR. SIRVELLO: Thank you,
22 Mr. Jefferson. My name is Tony Sirvello,
23 administrator of the election for the County Clerk's
24 Office, Beverly Kaufman. It is our responsibility
25 once Mr. Bettencourt has registered a voter to

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1 involve the voter in the actual voting process on
2 both November 6th and December 1st.

3 We had the trained officials
4 establishing the polling places and county ballots in
5 conjunction with the other political subdivisions
6 that were involved in the elections, including the
7 City of Houston, Houston Independent School District,
8 Houston Community College, City of Bellaire. And
9 that was for the November election, and then in
10 December, with just the City of Houston and HISD.

11 We take every voter complaint very
12 seriously, and we address every voter complaint. As
13 Mr. Bettencourt did, our office was well staffed on
14 election day. We also took hundreds of phone calls,
15 and I can assure you that every question we got, we
16 addressed as soon as we could. Thank you.

17 MR. JEFFERSON: Thank you, Tony. Now
18 we will hear from Ms. Keryl Douglas, Director of
19 NAACP Region 6. Keryl.

20 MS. DOUGLAS: Thank you so much, Mr.
21 President. And I'd like to say to all the
22 representatives of Houston here tonight, way to go
23 Houston. You registered, you volunteered, and you
24 voted. We were so proud. Thank you very much. You
25 made history on December 1st. Usually in a runoff

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1 race the voter participation goes down.

2 Your voting participation here in
3 Houston went up. Yes. Eleven percent. That is very
4 dramatic and very impressive, and I want to thank all
5 of the volunteers, all of the coalition partners for
6 the great united effort. The NAACP Houston Branch,
7 you are definitely a model.

8 We had a fabulous time with the
9 national partnership that came in. And Claude, we
10 really applaud your work and the convening of the
11 meetings, phone meetings with the national office to
12 get all the resources here.

13 And now you're here again tonight
14 after the election because you want to address the
15 critical issue of eradicating voter
16 disenfranchisement. I really have to applaud you for
17 being here and I have to let you know emphatically
18 that we will not relent, we will not slow down, we
19 will not slack off until voter disenfranchisement in
20 America is definitely not available to us. So you
21 thank you for being here.

22 MR. JEFFERSON: Okay. Ms. Sylvia
23 Brooks with the Urban League.

24 MS. BROOKS: Good evening everybody.
25 I am very happy to be here also, but I'm most

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1 importantly happy to be a part of the coalition. The
2 Urban League was asked to help to organize the
3 coalition. We served as physical agent, and just the
4 whole idea of organizations getting together working
5 together to achieve the same goal.

6 As I understand, there was an 11
7 percent increase in our voting strength, so we thank
8 Glenda to begin with, and we are looking forward to a
9 great year next year. Thank you.

10 MR. JEFFERSON: Thank you very much.
11 And now, before we get into the hearing and having
12 the people to come up, let me kind of set the stage a
13 little bit. The struggle is not yet over. I want to
14 make that perfectly clear. With 9-11, we said we
15 were together. We all came together apple pie and
16 Chevrolet. That is not the case. The struggle is
17 not yet over.

18 When it comes down to voting and
19 minorities and black and white, there is a
20 difference. And we have got to know that. We have
21 got to understand that, and we have got to fight that
22 that does not continue. Let me give you a little bit
23 of what happened the Thursday before that when we
24 met. The Thursday before the Saturday election. And
25 this is not to point fingers, because I want to let

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1 you know that the county was a part of getting the
2 votes together and getting the polling places. . But
3 the city also had a role in this in terms of where
4 you go, what you choose.

5 Now, so that I can get you a little
6 fired up, we went down there on Thursday, the
7 coalition, led by Glenda, group of us, 35 or 40, and
8 we stood around with the county clerk down there.
9 And we said, what poling places have been changed?
10 And I know they were still bringing in numbers and
11 they were trying to fix the numbers. And they said
12 50 or 60. And so we said, let us see them.

13 Let's see. Where are they? Where are
14 the poling places that are changed? And so when they
15 got the list, when they came up with the list, there
16 was 100 poling places that were changed from
17 November 6th to the election. That was hell. That's
18 a problem.

19 But, more than that, on election day,
20 there was 171 poling places that had changed. And
21 that is significant. That is significant. We don't
22 want that to happen. Look, this is Thursday when we
23 found out about the 50 and 100. And so we worked
24 with the office of Tony down there to try to get some
25 signs up to tell the people where to go vote. And,

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1 you know, we have a lot of senior citizens that get a
2 cab to go vote.

3 They can't get no cab and go vote, get
4 to a voting place and they say it's down here on
5 Podunk Street and they got to pay another \$3 to ride
6 to Podunk Street before they go home. So I'm telling
7 you, we want to fix that. We don't want that to
8 happen.

9 We demand that that don't happen any
10 more. Because if affects the voting of everybody in
11 the city. And I want to let -- in terms of things
12 that happened, putting people in jail because they're
13 trying to vote, people coming and not -- having their
14 license and not being allowed to vote, we want to
15 stand up. And if this -- when this comes around
16 again, we want this group to be standing behind us.

17 Now, we're ready to move on into the
18 voting. We will try to hold your testimony to three
19 or so minutes so that we can get all of the
20 information. Okay. Go ahead.

21 MR. PARKER: We're going to make sure
22 we understand the rules so that we don't have to go
23 back. First of all, everybody in here, if you'd like
24 to stay, we are asking you to cut your cell phones
25 off or put it on one beep. Cut it off or put it on

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1 one beep. It's not respectful. We hear phones
2 ringing when somebody is talking. That's Shape's
3 rules. Okay. Shape's rules.

4 MR. JEFFERSON: I'm guilty.

5 MR. PARKER: Cut them off. If you're
6 a doctor, give it to somebody else outside and they
7 will get you. Really, do that, please. Cut the cell
8 phones off. Thank you very much. And your pagers,
9 beepers, or whatever else, if you feel like it will
10 interrupt the testimony.

11 Secondly, we are going to stick with
12 the time period. If my momma comes in here, I might
13 think about it a second time, but I have to go with
14 the time. Anyway, you know I'm serious. We will
15 have to stick -- otherwise, we will be here all
16 night.

17 And time keeper, we have her over
18 here, right? And if you get -- if you don't hear
19 that, you got Brother Howard over here, he has a bell
20 here. So one of these you got to hear. Okay. So
21 that's it. When time is over, if they give you some
22 grace period, some time, that will be done by the
23 consensus of the panel. Okay? Is that okay? Make
24 sense? Okay.

25 The other thing is that we are not

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1 going -- we have an hour and 30 minutes. We're
2 looking at 9:00 being the time. So the rest of this
3 time, all of the rest of this time will be dedicated
4 to hearing your testimony. Your testimony. That's
5 it.

6 MR. JEFFERSON: Thank you. Okay.
7 Yolanda, what is the process? Okay. The persons who
8 are to testify, will you raise your hands.

9 MR. PARKER: She has it.

10 MR. JEFFERSON: Felicia? Okay. Hold
11 your hands up. Come on up and start, and that kind
12 of stuff.

13 MS. DOUGLAS: She needs to be sworn
14 in.

15 MR. JEFFERSON: She needs to be sworn
16 in. And who is going to swear her in? Where is the
17 court reporter? Okay. Come on up. Felicia?

18 THE WITNESS: Okay.

19 MR. PARKER: From now on, everybody
20 come down the center aisle so it's easier for you to
21 get here.

22 MR. JEFFERSON: Okay. Everybody who
23 wants to testify, will you stand. Everybody, come
24 on. That's okay. Here we go. All right. Come on.
25 Everybody. Because we're going to swear you all in

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1 at one time so we don't have to do it again. Okay.
2 Is everybody standing? Okay. Everybody raise your
3 right hands.

4 (Witnesses duly sworn)

5 GROUP RESPONSE: I do.

6 MR. JEFFERSON: Thank you very much.
7 Proceed. And you will have three minutes. Go ahead
8 and tell what happened.

9 FELICIA DYKES,
10 having been first duly sworn, testified as follows:

11 DIRECT TESTIMONY

12 THE WITNESS: Okay. I voted at
13 Charlotte B. Allen Elementary School. I have been
14 voting there since I was 18 years old. I'm 43 now.
15 On the 6th, of course, I was able to vote there.
16 December 1st, I was not able to vote there. And they
17 told me to go to Stovall Middle School. And I didn't
18 go. Well, my physical address is at 7200 TC Jester,
19 but my business address is 142 Bizerte, where I
20 always -- I own a business.

21 So I went to Oaks of Inwood, which is
22 across the street from my apartments, to the club
23 house. Went there twice. The Precinct Judge told me
24 that I couldn't vote there. My vote wouldn't matter.

25 And I asked, can I fill out the

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1 paperwork? And she looked on the precinct -- I'm
2 kind of nervous.

3 MR. JEFFERSON: That's okay. Do you
4 know her name?

5 THE WITNESS: Sherry Shannon.

6 MR. JEFFERSON: Tell it.

7 THE WITNESS: Sherry Shannon. She had
8 me fill out the paperwork and asked me to put on the
9 statement the reason why I feel like I should be able
10 to vote over here. I put that reason down.

11 And she told me they had the right to
12 reject my vote. And when I got through and signed my
13 name, she rejected my vote, but she still gave me a
14 pole -- I mean a card to go and vote, and told me
15 that my vote wouldn't count.

16 MR. JEFFERSON: Thank you very much.

17 MR. FOSTER: I have a --

18 MS. GASTON: I have a question.

19 MR. PARKER: Give her the mike.

20 MS. GASTON: The location where
21 Ms. Shannon was is the place that you had been voting
22 previously?

23 THE WITNESS: No.

24 MS. GASTON: That was a new location?

25 THE WITNESS: It was a new location,

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1 but 142 Bizerte is where I have voted since I was 18.
2 And I voted there November 6th -- I mean, the first
3 voting, I voted there. And since my name was not on
4 the list, the Allen school called over there and said
5 it was on their list. I got there, my name was not
6 on the list. And Ms. Sherry Shannon, she called, I
7 assume the main office. They had deleted me from the
8 voting.

9 MS. GASTON: So I'm sure I understand,
10 the place where you had previously been voting, voted
11 On November 6th, referred you to a second site? They
12 told you to go to this other place. And when you
13 went to this other place, even though you were told
14 you could vote there, they told you your name was not
15 on the list?

16 THE WITNESS: Right.

17 MS. GASTON: And you filled out the
18 paperwork and she said your vote would not count?

19 THE WITNESS: Yeah. And I went there
20 twice because the first time they wouldn't let me
21 fill out the paperwork. And I called Shape and they
22 told me to go back because it was not right. I went
23 back and asked to fill out the paperwork. That's
24 when the Precinct Judge rejected my vote and said my
25 vote wouldn't count.

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1 MR. JEFFERSON: Any other questions?
2 Tony?
3 MR. PARKER: Speak into the
4 microphone, Tony.
5 MR. SIRVELLO: Ms. Dykes, what is your
6 voting Precinct Number? Do you know?
7 THE WITNESS: I don't remember.
8 MR. BETTENCOURT: What is the number?
9 THE WITNESS: My address.
10 MR. SIRVELLO: What is your address?
11 THE WITNESS: 142 Bizerte,
12 B-I-Z-E-R-T-E, Houston, Texas, 77022.
13 MR. SIRVELLO: On November 6th you
14 voted at Allen Elementary?
15 THE WITNESS: Yes, sir.
16 MR. SIRVELLO: And it was open
17 December 1st, but the election Judge -- excuse me,
18 Allen Elementary said you had to go to Stovall,
19 right?
20 THE WITNESS: Yes.
21 MR. SIRVELLO: But you didn't go, you
22 went to Oaks of Inwood; is that right?
23 THE WITNESS: Right, because I was
24 disgusted.
25 MR. SIRVELLO: When you went to Oaks

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1 of Inwood the first time, you were turned away and
2 the second time you were allowed to vote after --

3 *THE WITNESS:* The second time --

4 *MR. SIRVELLO:* -- you challenged the
5 affidavit and were told the vote would not count?

6 *THE WITNESS:* Yes, sir.

7 *MR. SIRVELLO:* Obviously, that was not
8 the proper procedure. But if it makes you feel
9 better, your vote did count because in the State of
10 Texas, anyone that votes under a challenge affidavit,
11 the vote is counted unless the District Judge orders
12 the vote to be ruled from the count. So your vote
13 did count.

14 *THE WITNESS:* Okay.

15 *MR. SIRVELLO:* Whether she thought it
16 did or not, it did count. I will at least let you
17 know that.

18 *MR. JEFFERSON:* Thanks. But whoever
19 the person is, we would like not to have them at that
20 precinct next time intimidating folks.

21 *THE WITNESS:* I have one more
22 question, please. Just one question. What I
23 couldn't understand is I went to vote at Charlotte at
24 9:30 that morning. Charlotte called the main --

25 *MR. JEFFERSON:* Come up on.

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1 *THE WITNESS:* -- main number. Okay.
2 My name was on the list, but five minutes to 7:00 --
3 at five minutes to 7:00 that night, precinct -- Ms.
4 Sherry Shannon, she called back there, and they had
5 deleted my name just that fast. I don't understand.
6 She told me my name was deleted from the poll.

7 *MR. JEFFERSON:* Okay.

8 *MR. MATA:* I have a question. When
9 you got ready to go vote, you went to your normal
10 voting precinct?

11 *THE WITNESS:* Yes, sir.

12 *MR. MATA:* And that's when you found
13 out it had been changed?

14 *THE WITNESS:* No, sir. They told me
15 that when I was at Stovall. My name was at Stovall,
16 and I voted there on the 6th.

17 *MR. MATA:* And you were told --

18 *THE WITNESS:* To go to Stovall Middle
19 School.

20 *MR. JEFFERSON:* Okay. We have to move
21 onto the next one. Terence. Come on around,
22 Terence. Come all the way around. Speak in the
23 mike. Speak nice and loudly.

24

25

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1 what you have to do, sir. So he called the police.
2 I was arrested for trespassing at a church where the
3 doors should always be open. That's what I was told.

4 But anyway, I got out of jail. The
5 media said I voted, but I did not vote. The city
6 jail did everything they could to give me a chance to
7 vote, but I missed it by seven minutes. So I did not
8 vote. I wasn't upset and I wasn't bitter and I
9 publicly and privately apologized to everybody
10 involved. I'm not upset, I'm not a radical, I'm not
11 a racist, but I am persistent and I do plan to stand
12 stronger with anybody else who is willing to fight
13 this thing through to the end.

14 Let me just say this before I close.
15 We beat up on America. America has a lot of
16 problems, but I have to say this is the greatest
17 country in the world and I wouldn't want to stay
18 anywhere else.

19 Even though we have problems, at least
20 we have the right to speak up and I plan to exercise
21 that right. Thank you.

22 MR. JEFFERSON: Any questions?

23 MR. BETTENCOURT: Mr. Scott, I want to
24 stand so I can see you. I want to commend your
25 public spirit for trying to get out and go vote.

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1 MS. RUSSELL: I want to tell that you
2 the reason why you were registered across town is
3 because you sent a card to my office on August --
4 let's see, May 5th, year 2000, registering you at Oak
5 Bay Drive.

6 Sadly, the law in the State of Texas
7 doesn't allow same day registration. So by going to
8 the poll that you are staying with -- you were
9 staying with your mother and sister, right?

10 THE WITNESS: Right.

11 MR. BETTENCOURT: The Judge didn't
12 have any choice under Texas law, could not have
13 allowed you to vote at that location.

14 THE WITNESS: All right.

15 MR. BETTENCOURT: And that's why. We
16 could have gotten you to Precinct 450, and
17 unfortunately you had to make an unscheduled detour
18 and missed it by seven minutes.

19 So please -- and I think the moral of
20 this, and I hope you would agree, is that if you've
21 got a question about where you are registered, you
22 can call voter registrar. Tony mentioned that that's
23 my job and we will tell you where you're registered
24 to vote, tell you the location to go. Because we
25 want you to vote. But when you turn in a card to my

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1 office, then I have to register you where you tell
2 me.

3 THE WITNESS: Right.

4 MR. BETTENCOURT: And if I don't have
5 a new card, I cannot let you vote in that other
6 precinct, and neither can the Judge. Because if he
7 did, he would be, you know -- he would be violating
8 the law.

9 THE WITNESS: Right. Fortunately sir,
10 I say this, I did fill out two cards after that fact
11 to change my address to the proper address.

12 MR. BETTENCOURT: And you will be --

13 THE WITNESS: For some reason I guess
14 they didn't do it.

15 MR. BETTENCOURT: You filled out a
16 card when you first registered and you were very
17 young. Thank you for doing it.

18 THE WITNESS: Okay.

19 MR. BETTENCOURT: You registered on --
20 let's see, on June 15, 1996.

21 THE WITNESS: Yes, sir.

22 MR. BETTENCOURT: So I do have those
23 two cards. And you were originally in Precinct 462.
24 You moved to 450, and the last one that you tried to
25 vote on was well-known, which is the precinct that

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1 you tried to vote, 525, which is the Lutheran Church,
2 Lamb of God. So I admire your spirit about not being
3 defeated.

4 THE WITNESS: Yes, sir.

5 MR. BETTENCOURT: But there is an
6 easier path, which is wherever you want to
7 register --

8 THE WITNESS: Yes, sir.

9 MR. BETTENCOURT: Wherever you live,
10 we will get that card in.

11 THE WITNESS: Yes, sir.

12 MR. BETTENCOURT: And we will have you
13 registered there. And I'm sorry that --

14 THE WITNESS: Yes, sir.

15 MR. BETTENCOURT: -- you know,
16 anything, anything bad happened, but I can see by
17 your character that you're a fine gentleman. And I'm
18 sad that he couldn't allow you to vote, but under the
19 laws of the State of Texas, you understand he could
20 not let you vote because he knew you were registered
21 in another precinct.

22 THE WITNESS: Yes, sir. So the other
23 two cards that I filled out, they have -- that
24 doesn't matter?

25 MR. BETTENCOURT: Well, believe me,

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1 sir, if they had come in, I have optical images of
2 your signature on these cards right now, and I will
3 go back and double check.

4 THE WITNESS: Okay.

5 MR. BETTENCOURT: But, unfortunately,
6 there is no other records since May 2nd, year 2000.

7 THE WITNESS: Okay.

8 MS. DOUGLAS: And also, on behalf of
9 the Local, Regional, and National Office of the
10 NAACP, I really want to applaud you for your
11 character, integrity and persistence, Terence.
12 Because despite the explanation that Paul so aptly
13 gave you this evening, there are so many people
14 represented by you this evening. They are treated in
15 a hostile manner; they are not given reasonable
16 explanations when they are at the polling places. I
17 think that a very simple solution is that each polling
18 place, there is a master list. I think Carmen
19 Watkins, if she is here tonight, even suggested that
20 on the radio on Sunday, so that people are not just
21 turned away, or worse yet, arrested.

22 THE WITNESS: But they are told.

23 MS. DOUGLAS: Yes, sir. They are told
24 where they can go to vote. I also applaud your
25 persistence, because you were actually arrested, but

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1 you did not have a very hostile response.

2 THE WITNESS: No, ma'am.

3 MS. DOUGLAS: You still came and tried
4 to vote, and I want all the people of America to be
5 just as persistent. And we will continue to look
6 into your situation, because there is some
7 frustration.

8 THE WITNESS: Thank you.

9 MR. JEFFERSON: Thank you. One last
10 question.

11 MS. BROOKS: Just one point. There
12 was several -- six us in the room. It was my
13 understanding that if anyone asked for a challenge
14 vote that they could get it. Is that not true,
15 Mr. Bettencourt?

16 MR. JEFFERSON: If anybody asks for a
17 challenge vote, do they get it?

18 MR. BETTENCOURT: No. In the
19 circumstance of where the Judge knows that someone is
20 registered in another precinct, they can't complete
21 the affidavit. Because what the code tells them to
22 do is tell them to go to the precinct and register to
23 vote. So, this particular case, that's my
24 understanding of it. Tony, I don't know if you have
25 a different one --

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1 MS. DOUGLAS: Was he told -- were you
2 told to go to a different precinct?

3 THE WITNESS: I was told on the
4 presidency and mayor's runoff -- I was given the run
5 around. This discourages youngsters because they
6 already don't want to vote. And if they run into a
7 problem, we have to do something to change it in the
8 future.

9 MR. JEFFERSON: Thank you. And one
10 thing would have solved most of this, if 171
11 precincts had not been moved, and had they been
12 informed earlier about this, they would not have had
13 this problem. Thank you, brother.

14 MS. KIZZEE: Wait. What were you
15 charged with?

16 THE WITNESS: I was charged with
17 trespassing.

18 MR. JEFFERSON: Okay.

19 MR. BETTENCOURT: Don't look at me, I
20 don't know how that charge applies.

21 MR. MATTA: No, it's just irritating.

22 MR. JEFFERSON: Okay.

23 MR. BONEY: There were two questions,
24 Howard. One is, Mr. Sirvello, in the newspaper,
25 Ms. Kaufman said that everybody that requested a

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1 challenge vote had to be given a challenge vote, it
2 was not to the discretion of the Precinct Judge.
3 That was all that was in the paper. And the
4 important -- the part that you said was not reported
5 nor was the public advised.

6 Now, presuming that's true, then why
7 did the Precinct Judge not, at that first time,
8 explain to the young man what precinct he needed to
9 go to and where? Because what we have is
10 inconsistencies in whatever the rules are and
11 whatever everybody says. So we can't resolve it.

12 MR. BETTENCOURT: Counsel, the only
13 thing I can say from listening to Mr. Scott, and I
14 guess he is back in the audience, I believe what I
15 was told was that the Election Judge, from listening
16 to his testimony, tried to tell him to go to Precinct
17 450 where he was registered. And I believe that was
18 the -- and that was under the law the correct thing
19 for him to do at that point.

20 Now, the bottom line is, you know,
21 look, can I imagine waking up in a scenario where
22 somebody gets arrested even for trespassing at a
23 poll? No. But I wasn't there, and most of us in the
24 audience weren't. The sad thing is that if you are
25 registered to vote, you have an absolute right to go

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1 to that poll and to vote. And, I know, you know, the
2 representative of the Justice Department would agree
3 with that.

4 And I'm sad Mr. Scott either didn't
5 get that message or which I believe everybody was,
6 you know, was obviously very interested in the
7 election and a little bit interested also didn't hear
8 it.

9 MR. JEFFERSON: Okay. We're going
10 to -- state your name.

11 LINDA D. MITCHELL,
12 having been first duly sworn, testified as follows:

13 THE WITNESS: Linda D Mitchell,
14 L-I-N-D-A, D. M-I-T-C-H-E-L-L. I have my voter
15 registration card here. I have my precinct on here,
16 which is 506. I went to Precinct 506, me and my
17 sister. When we arrived, we went inside and -- do
18 you want to see it? This is it.

19 MR. JEFFERSON: Go ahead.

20 THE WITNESS: And they looked on the
21 list and didn't see my name there. But I'm supposed
22 to vote there because the precinct that I went to
23 prior to that, they told me that they are not -- they
24 are not voting there anymore. So I finally went to a
25 lot of different precincts and they kept giving me

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1 the runaround.

2 So finally, I find that there is a
3 place I'm supposed to go vote. They had it on the
4 window, but they had it scratched off, 506, which I
5 didn't understand why they had it up there. But you
6 could see 506 scratched off. Shipley -- Judge
7 Shipley was there. It was a white female judge
8 there. I don't know her name. She was very, very
9 rude to me and my sister.

10 She told me and my sister -- she told
11 me that I could not vote. I couldn't understand why
12 I could not vote when I live in Missouri City, but I
13 cannot vote for Missouri City mayor, I can vote for
14 the Houston mayor because of where I live. She
15 didn't try to give me any information or anything, so
16 I kind of got mad and left. And it was other people
17 that left that stayed there in Houston, but they told
18 them they couldn't vote either. They sent them away.

19 So as me and my sister went to get
20 into the car, she came out there and I was trying to
21 get her to explain to me why couldn't I vote. She
22 told me, you just can't vote. And me and my sister
23 and the Judge, we got into a big argument, and she
24 told us to get off the property, which I thought was
25 very rude.

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1 So I went home and I was upset and I
2 talked to my husband. He got his clothes on. And he
3 came back with me. And he went inside and him and
4 Judge Shipley got into it because he told my husband
5 that we couldn't vote. My husband said, why? This
6 is Precinct 506, you have it scratched off. He said,
7 just wait a minute, sir. He calmed down. My husband
8 got into it with some other people. All that
9 shouldn't have went on, because it was a lot of
10 things going on at that precinct. Because the Judge
11 had too many things going on. He was on the phone
12 trying to call people to find out where we're
13 supposed to vote.

14 In the meantime, I kept telling him
15 that I have my right to vote. So I was talking to
16 some lady, I can't remember her name. She told me to
17 ask for a challenge ballot, which I did. And he
18 still didn't want to give me a challenge ballot for
19 me or my husband. So finally, he got on the phone
20 and he talked to somebody and said, I'm going to let
21 you and your husband vote. So we did vote, and we
22 left. But had I not went home and took the extra
23 step to find out why we couldn't vote, we wouldn't
24 have been able to vote.

25 Now, I do stay in Missouri City, but I

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1 can't -- I can vote for the Houston mayor. Because I
2 voted for the mayor before, and I voted before, so I
3 don't understand why I can't vote. And I have my
4 voter registration card here. Maybe you-all can tell
5 me why is it that the people that live in Missouri
6 City that pay taxes for Houston and Missouri City
7 cannot vote.

8 MR. JEFFERSON: Okay. Questions?
9 Tony?

10 MR. SIRVELLO: Okay looking at the
11 records, Ms. Mitchell, 506 was moved to Precinct 372
12 at the Fondren Park Community Building. It was
13 posted there. I don't know why someone would have
14 scratched it out, so where -- you actually voted at
15 506?

16 THE WITNESS: I voted at 506.

17 MR. SIRVELLO: So your name at 506
18 would have been at the polling location Fondren Park
19 in Precinct 372. Now, I don't know what distance
20 from 506 that is, but if you had gone to 372, you
21 would have been allowed to vote at that location.
22 Again, that's the same problem we have discussed
23 about --

24 THE WITNESS: Right, but nobody told
25 me to go to 372. And I could have went home, if I

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1 hadn't told my husband about it -- he got real upset.
2 He got up and put his clothes on and said, I'm going
3 over there. And he just went off. He really went
4 off on the Judge.

5 MR. SIRVELLO: What we would like an
6 election Judge to do in a case like that is rather
7 than to get into a disturbing conversation with you
8 is to call our office or Mr. Bettencourt's office.
9 We could have resolved that issue.

10 MR. JEFFERSON: Okay. We're going to
11 have --

12 MS. DOUGLAS: Howard, may we ask a
13 question?

14 MR. JEFFERSON: Thank you. We have to
15 move on. But see, Tony, that's the problem. These
16 Judges think they are gods instead of Judges. And so
17 we want a report coming out of your office about
18 these Judges that we are identifying. Because we're
19 going to be dealing with the Justice Department.
20 These Judges got to answer to us.

21 MS. DOUGLAS: I have one question,
22 Mr. Jefferson. We had requested and had been told
23 that a poster would be --

24 MR. JEFFERSON: Sure was.

25 MS. DOUGLAS: -- that a poster would

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1 be posted. Was there a visible poster that said 506
2 is changed to 372?

3 *THE WITNESS:* No, 506 was scratched
4 out. That's when my husband and Judge --

5 *MS. DOUGLAS:* Was there a note posted
6 that directed you to another poll or number?

7 *THE WITNESS:* No.

8 *MR. JEFFERSON:* Let me do this. We
9 were promised when we were down there -- Keryl,
10 you're exactly right. It was one of the things that
11 we negotiated with Tony and Beverly Kaufman. And we
12 wrote them down. Yolanda wrote them down for me.
13 And I went before the press and they said that's what
14 we have agreed on. They are going to post it out
15 there. We are going to do the best we can. Now we
16 see that that didn't happen.

17 Let's have the next person.

18 *MS. GASTON:* I'm sorry, quick
19 question.

20 *THE WITNESS:* Do I have a right to
21 vote for Houston mayor? Because a lot of my
22 neighbors did not go and vote because -- my neighbor
23 didn't vote because she didn't know. I couldn't tell
24 her.

25 *MR. SIRVELLO:* It's a Houston address?

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1 THE WITNESS: But look how many votes
2 you missed.
3 MR. JEFFERSON: Wait. Go ahead.
4 MR. MATA: What time did you go to the
5 polls?
6 THE WITNESS: Well, I started off at
7 10:00. I didn't get to vote until about 12:30.
8 Because I went to so many different polls. I was
9 just --
10 MR. MATA: Did you get to vote?
11 THE WITNESS: Finally.
12 MS. GASTON: Mr. Sirvello?
13 MR. PARKER: Wait.
14 MR. JEFFERSON: Wait. Wait, let me
15 handle this now. Come on, we're going to have
16 this -- and this is the last thing.
17 MS. GASTON: And I will be quick.
18 MR. JEFFERSON: We have a lot of
19 people.
20 MS. GASTON: You said that she should
21 have called your office. Do they have phones
22 available or who is responsible? Should people carry
23 cell phones to the polls or do you make phones
24 available to them to get the issue corrected?
25 MR. SIRVELLO: We issue cell phones.

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1 The election Judges that are there have landlines.

2 THE WITNESS: But you have to use a
3 calling card at the telephone. At one precinct, he
4 didn't know the calling card number.

5 MR. JEFFERSON: Okay. We will end
6 this and bring the next one.

7 MR. PARKER: Come on.

8 DEBRA RILEY,
9 having been first duly sworn, testified as follows:

10 THE WITNESS: My name is Debra Riley.

11 MR. PARKER: Attention please.

12 THE WITNESS: I was a driver for the
13 NAACP. We were canvassing that area, 506. Actually,
14 they crossed it out. They crossed out the precinct
15 and there were a lot of people turned away. I
16 actually talked to Judge Shipley and he stated to me
17 he called to find out why the people couldn't vote
18 and they kept playing footsie -- excuse me, kept
19 playing footsie back and forth. And people just
20 couldn't vote. So it was a whole lot of people
21 disenfranchised.

22 MR. JEFFERSON: Okay.

23 MR. SIRVELLO: Did they explain why
24 they crossed out the number?

25 THE WITNESS: No. He did not say.

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1 MR. JEFFERSON: They're assuming we're
2 getting the name of the Judge if we want to know that
3 answer. Okay. Thank you. Next?

4 Okay. Tony? Do you have a comment on
5 that?

6 MR. BETTENCOURT: You're talking about
7 the polling places?

8 MR. JEFFERSON: Yeah. Okay. We will
9 complete the witnesses.

10 Okay. Let's have your attention now.
11 Come on.

12 **DENISE JORDAN,**
13 having been first duly sworn, testified as follows:

14 THE WITNESS: I'm Denise Jordan.
15 D-E-N-I-S-E, J-O-R-D-A-N. First of all, thanks to
16 everybody for coming out. Thanks to the panel for
17 being here. Okay. If everything was fair and just,
18 none of us would be here tonight. I'm here on behalf
19 of my mother. I'm a direct witness to what occurred.
20 On December 1st, I voted, so I called my mother to
21 find out if she had voted. She said no, they are
22 giving me all these different places. I go there and
23 they are closed. And if they were open, they were
24 telling her she couldn't vote there. So I said, oh,
25 no, this can't be happening. My mother has taught

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1 for 30 years, paid her dues, you know. So I had been
2 listening to Sheila Jackson-Lee on KCOH.

3 So luckily, she was still at the
4 station. I immediately called KCOH and spoke with
5 her. And hats off to Ms. Jackson. She didn't
6 hesitate. She called my mother. I gave her the
7 phone number. And she told us to meet some
8 representatives she was going to send to 506, the --
9 Precinct 506, and Reverend Dixon showed up. Thank
10 God he showed up. And the NAACP was wonderful, I
11 must add. There was a Judge, Mr. Shipley, who was
12 very rude. But then there was another female white
13 Judges who was even worse. She was so rude. She
14 talked to people like they were less than an animal.

15 She yelled at the NAACP people to
16 leave. She screamed at them to leave.

17 MR. JEFFERSON: Who is this now?

18 THE WITNESS: I don't know her name.
19 I only know Judge Shipley's name and he was horrible,
20 too.

21 MR. JEFFERSON: Second or third time
22 we have heard Shipley's name. Go ahead.

23 THE WITNESS: Okay. On the outside of
24 this polling place which was hidden in a
25 neighborhood, this particular club house was behind

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1 homes. You couldn't see it unless you actually -- it
2 was like around and hidden and on a dead end street.
3 There was a notice on the window of this place with
4 506 crossed out with a big X on it. And it said
5 nobody in the 506 precinct could vote in the mayor's
6 election. A picture of that sign was taken with a
7 camera.

8 MR. JEFFERSON: It said you couldn't
9 vote in the mayor's election?

10 Didn't say you could go to another
11 place?

12 THE WITNESS: Didn't say. I read the
13 thing over and over. Again, it didn't say where you
14 should go -- where you could go, and nobody was
15 helpful.

16 Judge Shipley looked at my mother and
17 said, how can I help you? You have already been
18 here. And they called the police. It was a female
19 police officer there, poll watchers there. This just
20 shouldn't happen. This is 2001, almost 2002, and
21 this is still happening.

22 MR. JEFFERSON: Okay. Thank you very
23 much.

24 MR. PARKER: Allow one question from
25 the panel.

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1 MR. JEFFERSON: We have one question
2 from the panel. I have to watch myself because I'm
3 supposed to be the president up here, but I'm getting
4 a little mad. To tell you the truth, the more I
5 hear, the madder I am here. Go ahead, Tony.

6 MR. SIRVELLO: Okay. I don't have all
7 of my records here, but I do have the records of the
8 turnout in voting at Precinct 506 for November 6th
9 and December 1st. On November 6th, one person voted
10 in the City of Houston election. And in December, no
11 one voted. Now, I do not have the data here that
12 tells me, but that would indicate that 506 is not a
13 precinct that is in the City of Houston at all or if
14 it is, it is a very small portion of the precinct in
15 which voters can vote in the City of Houston ballot.

16 THE WITNESS: Okay.

17 MR. JEFFERSON: Tony, excuse me. Why
18 is the poll open if you can't vote? Ray Charles
19 could see that.

20 THE WITNESS: My question is, why do
21 you find this out when you go on the day of the
22 election? That's bizarre to me. Let people know
23 ahead of time so that they will know and it's
24 explained to them why they can't vote.

25 They shouldn't be wondering. These

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1 people pay taxes on expensive homes, and the thing
2 is, it really doesn't even matter about the price of
3 the home. Everybody should have the right to vote.
4 Every living human being who is registered should be
5 able to vote.

6 MR. JEFFERSON: Okay. I have to move
7 things along, Delloyd. Willie Bolden. Ms. Rames.
8 Okay. Next witness.

9 THE WITNESS: Good evening.

10 MR. JEFFERSON: Give her your
11 attention, please.

12 MELODY RAMES,
13 having been first duly sworn, testified as follows:

14 THE WITNESS: My name is Melody Rames,
15 M-E-L-O-D-Y, R-A-M-E-S. I was honored to be a
16 volunteer with the NAACP during the elections on
17 December 1st. I witnessed a lot of the things that I
18 have never seen before in my life. People being
19 turned away from the polls, voters being
20 disenfranchised. I never even knew that this
21 actually happened. Very proud to be here. And
22 Shape, this flag right here, the Virgin Island flag,
23 that's where I've lived for the last 25 years. It's
24 a United States territory. And this thing has never
25 happened. I have worked in politics and I have

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1 worked for two senators for over 12 years, and I have
2 never seen one person turned away from the polls.

3 And when I read about the things that
4 happened in Florida, and other things that happened
5 here in the Continental United States, I mean, it's
6 like a fairy tale. But I came to Texas and I saw it
7 firsthand. It was amazing to me. We were working at
8 the Forrester Elementary School, and we were
9 canvassing neighborhoods in the area to help people
10 get out and vote, registered voters to help them come
11 out and vote. If they needed a ride, we would give
12 them a ride. I was driving that day. I had on my
13 NAACP hat and my NAACP T-shirt.

14 I took a young lady to the polls that
15 lived about two blocks away. I walked inside the
16 polling place. I know about elections. I know that
17 you can't walk inside if you have a T-shirt of a
18 candidate on or any type of -- passing out any type
19 of paraphernalia for a candidate. And I had on my
20 NAACP shirt and hat on. I took this lady in to vote.
21 When I looked in, I surveyed the room. I came about
22 3 feet into the room. When I surveyed the room, I
23 saw a lady sitting on the right-hand side, about five
24 of them, sitting on the right-hand side, I guess
25 signing in people.

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1 There was a white gentleman on the far
2 end of the room at the far end of the table sitting
3 over there on the left-hand side of the room. There
4 was some voting boxes. And right next to me, on the
5 other side of the door was a ballot box. They were
6 doing the punch ballots there. Like I said, I
7 stepped about three steps into the room, and a
8 gentleman came up to me, later identified himself as
9 the Precinct 6 Judge.

10 And we are standing there talking,
11 having a very nice conversation about the people who
12 were coming out, you know, lot of people coming out.
13 We talked about the weather. I watched this lady go
14 over from the right-hand table and do what she had to
15 do, sign in. I watched her go over to the voting
16 booths and do what she needed to do there. And all
17 the time I was standing there talking to this
18 Precinct Judge. And I watched the lady come toward
19 me with the ballot in her hand because the ballot box
20 was right next to me. And she came towards me. And
21 I said, everything okay? And she said, yeah.

22 As soon as she said yeah, I don't know
23 where this man came from. But like I said, I had
24 seen him before, the white gentleman sitting at the
25 end of the room. He rushed across the room, okay,

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1 assaulted me, pushed me forcibly on my arm, and
2 backed me up to the door. It was so forcefully, I
3 backed up three spaces.

4 I stepped outside of the threshold.
5 All I had to do was put my foot back a half step and
6 I was outside of the threshold. As I stepped outside
7 of the threshold, I looked at him and said, what did
8 I do? What's wrong? He says, no, you got to get
9 out. Get out. Get out of here.

10 Now, this is what he said when he
11 pushed me the first time. And I stepped back. And
12 as I stepped back over the threshold, I asked him,
13 what did I do? What's wrong? He says, no, you can't
14 be in here. He was yelling at me, screaming at me.

15 MR. JEFFERSON: Okay.

16 THE WITNESS: Okay. He ran back to
17 the other side of the room and he brought a paper and
18 he ran back to me, and he showed me something. He
19 read it as he put his finger on it, and it said no
20 loitering within 100 feet of the polling place. I
21 looked at him, I said, sir, I'm not loitering. I
22 brought my friend to vote. What's wrong? He said
23 no, get out, you can't be in here.

24 And I was like, okay. I'm in Texas, I
25 know about y'all. I heard about y'all. I read about

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1 y'all. I stepped back, I came back, I called my
2 office and asked them what I should do.

3 About an hour later, they called me in
4 and a police officer came and took my statement and
5 that's about as much as I know about that.

6 MR. JEFFERSON: Okay. Do we have that
7 information at the NAACP headquarters?

8 MS. DOUGLAS: Yes, sir.

9 THE COURT: Okay. Thank you very
10 much.

11 MR. FOSTER: If I could just say --

12 MR. JEFFERSON: We have a quick
13 question, trying to move fast.

14 MR. FOSTER: If I could ask, what is
15 the Precinct Number?

16 MS. DOUGLAS: Forrester Elementary?

17 THE WITNESS: Right.

18 MR. FOSTER: Elected officials.

19 Melody was one of our workers, because we anticipated
20 problems. So they were out there to assist voters to
21 help the county do its job. And Melody, your
22 complaint is with the Justice Department and we have
23 some attorneys looking to see what further actions we
24 can take. So they have assured us that that's being
25 dealt with.

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1 MS. DOUGLAS: We do want to let the
2 public know. As she stated, the office called her
3 in. Because Claude called me and I had him file an
4 official police report right away. We want you as a
5 voter to know we will take every necessary step to
6 protect your rights and your body.

7 MR. JEFFERSON: Okay.

8 MR. BONEY: I --

9 AN AUDIENCE MEMBER: I have a
10 question: You know, if I were to take my mother, are
11 we not allowed inside that doorway?

12 AN AUDIENCE MEMBER: No, not taking
13 someone there.

14 MR. PARKER: That is not true. It's
15 allowed.

16 MR. BONEY: The answer is yes, you are
17 allowed if you want to take a voter to the polls, and
18 you're actually allowed to give them assistance.

19 Three things. One, the lady from Fort
20 Bend County who was in Precinct 506 who had voted
21 previously mayor and city counsel of Houston is still
22 allowed to vote mayor and city counsel of Houston.
23 And many parts of Missouri City are not in Houston
24 and parts of them are in Fort Bend County. Part of
25 Fort Bend County is in the City of Houston. Whether

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1 506 was crossed out or not, she was allowed to go
2 somewhere, wherever you designate, and vote. Nobody
3 told her that. Second, the person that pushed that
4 lady was a poll watcher.

5 THE WITNESS: No, he was a Judge,
6 Precinct Judge. A Precinct Judge.

7 MR. BONEY: A Precinct Judge runs the
8 election. Other people below her are supposed to
9 follow her instructions. And you do have a right to
10 come to the polling places as long as you don't
11 disrupt. We had a number of poll watchers that did
12 other than what they are allowed to, which is to sit,
13 watch, take notes, and make phone calls.

14 MR. JEFFERSON: Okay. All right,
15 Tony?

16 MR. SIRVELLO: Let me say something
17 about going into the polling location. Let me
18 explain what -- I tell you, some of these things I
19 may be addressing tonight, I'm not telling you what
20 the County Clerk's Office thinks the law ought to be,
21 I'm telling you what the law currently is. And if
22 you-all don't like it, we need to get the law
23 changed. Because these are some of the problems that
24 we have. I had problems myself explaining to voters
25 sometimes why the law is as it is, but we are bound

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1 to follow the law.

2 According to the Texas Election Code,
3 no one is allowed in the polling location except the
4 voter or a child 18 years of age or younger, a pole
5 watcher, secretary, state inspector, a peace officer
6 that is called in to preserve the peace. If you are
7 called in, if you are there to assist the voter, you
8 can only assist the voter for the following reasons:

9 The voter cannot read or speak the
10 English language; voter has some type of disability
11 that would prevent the voter from voting on their
12 own. The fact that your mother -- and I know this
13 sounds cruel, but I'm telling you, that is what the
14 law says, that your mother needs your help because
15 you just want to be there to help her. The fact that
16 you may be older and depending on your relative to
17 help you does not allow you to go into the polling
18 place under the current laws of the Texas Election
19 Code.

20 MR. JEFFERSON: Okay.

21 MR. PARKER: So that's selective
22 enforcement. That's the issue, selective
23 enforcement. You decide when you're going to enforce
24 it, and that's wrong.

25 MR. SIRVELLO: I'm not saying that,

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1 that's one of the issues.

2 MS. DOUGLAS: Yes.

3 MR. JEFFERSON: Okay. Richard?

4 MR. SAMBRANO: I don't know whether
5 this is the proper place or time to ask a question,
6 because this is the -- kind of wonder who actually
7 didn't hear. It kind of gives the impression there
8 is deception, there is racial motivation -- let me go
9 a little further. Okay?

10 And my question is this: The people
11 that are running the elections, the people that
12 you're going to refer it to, are they white,
13 Hispanic, or what? Because if those are the people
14 that they are doing something against, obviously, the
15 blacks, the fact that you talk about the NAACP, what
16 they have done, would they have done the same thing
17 if it was a LULAC shirt? And that's my question. I
18 think that's what this appears to be all about.

19 And a very important question, I
20 think, to address with the election committee or
21 whoever is in charge, County Clerk's Office and
22 others, the makeup of the people running the
23 election. And I don't know who they are. Are they
24 black, are they Hispanic, Anglo, the people that we
25 are talking about?

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1 MR. JEFFERSON: Okay. All right.
2 Thank you very much.

3 **BERNADINE THORN,**
4 having been first duly sworn, testified as follows:
5 **THE WITNESS:** Good afternoon. My name
6 is Bernadine Thorn. That's B-E-R-N-A-D-I-N-E, Thorn,
7 T-H-O-R-N. On December 1st around 5:15, before I
8 left home, I called the Tax Assessor's office just to
9 confirm my precinct number and where I would go to
10 vote. I spoke with Rene. I left about 5:20, 5:30.
11 And upon arriving to the school, which was Howard
12 Middle School, where I was told to vote and where I
13 had been voting for the past 12 years. I had been at
14 that address for 12 years.

15 When I got there, they had combined
16 both precincts 428 and 488. One lady asked to see my
17 driver's license, and I gave her that. And she gave
18 it to a gentleman that was standing to the side.

19 I later found out that he was one of
20 the Precinct Judges. His name was Larry Binham. He
21 took my driver's license, looked at the sheet of
22 paper and told me that I could not vote in a mayor's
23 election. And I tried to explain to him, I said,
24 well, I don't understand this. I have been voting at
25 the same place for the past 12 years.

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1 I have been at my current address for
2 the same length of time. I have always voted at
3 Howard Middle School. I even told him that I had
4 gotten my certificate number when I called. And if
5 you want to see it -- he told me that I could not
6 vote because I was outside of the city limits. Okay.

7 I said, well, can you tell me where I
8 need to go to vote? Where do I go? He told me I
9 couldn't vote. With that, I left. When I returned
10 home, I called Shape Community Center, called the
11 NAACP, I called Jew Don Boney's office, and I'm here
12 today. I have two children that cannot vote for
13 themselves. This is my job and their father's job to
14 make their decisions for them until they are able to
15 do it themselves. It's time for us to take a stand.

16 MR. JEFFERSON: Thank you very much.
17 Questions? Okay. One.

18 MR. BETTENCOURT: Yes. Burnadine, do
19 you have your certificate number right now, or do you
20 remember it?

21 THE WITNESS: Yes. Here it is right
22 here.

23 MR. BETTENCOURT: That's wonderful.

24 THE WITNESS: I went home and
25 documented everything and you can have that copy if

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1 you'd like.

2 MR. BETTENCOURT: I would like to --
3 by the way, Howard, I have some good news for you.
4 Precinct 506, Judge Shipley, his appointment is not
5 permanent. It's in the hands of El Franco Lee. All
6 right? So, if Judge Shipley is up for permanent
7 appointment, then you know who to call.

8 MR. JEFFERSON: Thank you.

9 MR. PARKER: Next? And I still think
10 Tony needs to talk about how polling places are
11 assigned in this election, because there is a lot
12 with Ms. Russell here.

13 MR. JEFFERSON: Let me ask you
14 something before we leave that. Do the county
15 commissioners appoint these people?

16 MR. BETTENCOURT: In the upcoming
17 primary cycle.

18 MR. JEFFERSON: Now, you said call El
19 Franco Lee. Don't put it on El Franco Lee. That's
20 what you're doing.

21 MR. BETTENCOURT: I'm not putting it
22 on him. That's what the law says.

23 MR. JEFFERSON: County commissioner?

24 MR. BETTENCOURT: Both big parts,
25 split a little.

Bernadine Thorn - December 12, 2001
Direct Testimony

1 MR. JEFFERSON: Okay.

2 MR. BETTENCOURT: And it's up to
3 commissioner's court to appoint that person as a
4 permanent county election --

5 MR. JEFFERSON: Okay. I would like to
6 say if they would have let us know where to vote
7 early, we wouldn't have had all this. Changing 171
8 polling places the day before the election, not
9 telling them until they get to the polling places
10 causes a lot of the problems.

11 The other thing is even if the people
12 who were trying to vote was wrong in where they were
13 supposed to vote, they didn't have to be treated that
14 way. So the kind of people that you-all are
15 selecting, we need to have a come-to-Jesus meeting
16 with those folks. Okay.

17 THE WITNESS: Okay.

18 MR. JEFFERSON: Okay. Be quiet and
19 listen. Sue.

20 SUE SCHECHTER,
21 having been first duly sworn, testified as follows:

22 THE WITNESS: Good evening. My name
23 is Sue Schechter. I chair the Democratic Party and
24 I'd like to just address three issues: Election
25 Judges; polling locations; and voter registration.

Sue Schechter - December 12, 2001
Direct Testimony

1 I have read the election code and we
2 have lawyers in our office on election day and we
3 have a staff answering the phone, and I know I have
4 talked to the lawyer that was here at Shape Center
5 and listened. She told me about some six phone calls
6 they got here. And the testimony tonight, a lot of
7 the problem is always the Election Judges.

8 MR. JEFFERSON: Yes.

9 THE WITNESS: And you are right that
10 we send our precinct chair list to county
11 commissioners. And that's our decision on who they
12 hire as the Election Judge on election day. And
13 that's our first choice and that's who they go with
14 first. But you know what? It's a problem that is
15 not getting better.

16 Y'all know that in our party, precinct
17 chairs are getting older, elections are getting more
18 complicated. Who is going to go to work from 7:00 in
19 the morning to 10:00 at night for \$7 an hour or
20 whatever it is we're paying, on a job that has -- \$6
21 an hour, excuse me, on -- giving them books of stuff
22 to read. I mean, the code is like this thick. You
23 need a CD rom to actually get through it, you know,
24 in two days.

25 I mean, what are we going to do? Are

Sue Schechter - December 12, 2001
Direct Testimony

1 we going to pay people more and train them more?
2 People aren't going to keep doing this. And it's an
3 age-old problem. So when we ran the primary in
4 March, last time, last primary, we ran every party
5 headquarters. By 5:00 on Monday, 20 precinct chairs
6 hand called in and saying, I'm not opening the poll
7 in the morning. So we actually hired until midnight
8 that night Election Judges. We put out some people
9 to run those polls that had never voted in an
10 election because we were just desperate to open the
11 polls.

12 It has to be solved long-term. And we
13 keep talking around the problem. Because there has
14 to be a long-term solution. It is schools at HCC,
15 U of H, TSU. Do we train them? Where are we going
16 to train people to know all these areas of the law to
17 run the election? Because most of the problems are
18 people spouting off the law that don't have a clue
19 what they're talking about. Telling somebody only
20 the elderly can vote by mail or telling them, ask for
21 a challenge affidavit, but it will be denied.

22 Well, that's wrong. But we have got
23 to educate Election Judges so that they know what the
24 law is when they are there. It's an age-old problem.
25 We don't have any solutions.

Sue Schechter - December 12, 2001
Direct Testimony

1 MR. JEFFERSON: Thank you very much.
2 But Sue, we don't want to raise that because then
3 they will stop hiring black folks. That was a crack.

4 MR. BETTENCOURT: It's \$5.15, in the
5 primary even lower.

6 MR. JEFFERSON: \$5.

7 THE WITNESS: I have one thing,
8 polling locations. We have to get further ahead on
9 our planning. It's not a surprise that we're going
10 to have an election in March. It's not a surprise an
11 election is in November. Let's contract with those
12 places now for the next two years and get them in.
13 And on voter registration, you know, we don't have
14 the same day registration in Harris County, there are
15 other states that have it.

16 A democrat filed a bill for same day
17 registration which is what got Jessie Ventura elected
18 to office. And excuse me, but I don't mean to --
19 with all due respect, you said tonight, Mr.
20 Bettencourt, sadly our state doesn't have same day
21 registration. Well, you opposed that bill because
22 you spend more time perjuring the roles and getting
23 people off than trying to get people on.

24 MR. JEFFERSON: Okay. Wait a minute.
25 Wait. Wait.

Sue Schechter - December 12, 2001
Direct Testimony

1 MR. BETTENCOURT: I'm on the spot.

2 Give the people time --

3 MR. JEFFERSON: Okay. Thirty second
4 response and then we are through with that. That's
5 the way it is. Okay.

6 MR. BETTENCOURT: At least tonight.
7 Sue, three things. One, we don't have same day
8 registration in the State of Texas by law.

9 Two, the -- that is not a bill that
10 was up that I know of that we testified on.

11 Three, we answered every call, first
12 ring in the tax office. That's my commitment to not
13 having any disenfranchisement, so you have instant
14 access to the right records.

15 THE WITNESS: But you spend your
16 energy purging the role, seeing who you can get off
17 and not who you can get on.

18 MR. BETTENCOURT: That's not true. I
19 have 15 seconds left. I counted. Okay. We're up
20 to -- by this document right here, Sue, which I will
21 hand it to you, we had over 1 million people in the
22 City of Houston that registered to vote. We have
23 1.84 million people registered to vote in the county,
24 a record for a nonpresidential year. And we have
25 always added, every year that I have been here, more

Sue Schechter - December 12, 2001
Direct Testimony

1 than -- more than we have taken off. You have the
2 facts. I give you all the deletes and adds. And --

3 THE WITNESS: That's right.

4 MR. BETTENCOURT: And you know that
5 I'm right. So I hate to say you're wrong.

6 MR. JEFFERSON: That's it. Hold,
7 hold, hold. We're coming back tomorrow night for a
8 debate. All right. Sue, thank you.

9 MR. BETTENCOURT: I'll be there with
10 you, Sue. All right.

11 MR. JEFFERSON: All right. Somebody
12 else?

13 MR. MATA: Howard, before -- Sue,
14 before you leave --

15 THE WITNESS: Sorry.

16 MR. MATA: I --

17 MR. JEFFERSON: Just stand. Just
18 stand. What is the question?

19 MR. MATA: It's not a question. From
20 my observation, we're addressing discrimination,
21 prejudice based on color, based on what I'm hearing
22 here, and I think that is the issue. I agree on the
23 other, but right now, it's still voter right
24 violations when people are disenfranchised, and
25 that's what the hell we are hearing. And I think we

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Direct Testimony

1 need to address that first.

2 MR. JEFFERSON: I think you're right.
3 Thank you very much. Come on. We have the Chairman
4 of Harris County, I mean Fort Bend Democratic Party.

5
6 FELICIA FARRAR,
7 having been first duly sworn, testified as follows:

8 THE WITNESS: I'm Felicia Farrar,
9 Chairman of the Fort Bend Democratic Party. I'm
10 sorry, F-E-L-I-C-I-A, F-A-R-R-A-R.

11 We had some voters that the husband's
12 name was on the list, the wife's name wasn't on the
13 list. By the way, we have an election administrator
14 that happened to be from Briar County, Florida, and
15 so that was, I think, part of our issue.

16 They were called out to the election
17 administrator office and we were -- they were told to
18 reject the voter. I have Election Judges here today,
19 when they actually received the training from the
20 election administrator, he harped on rejecting the
21 voter. He and I have been going back and forth for
22 two months about a challenge ballot.

23 I don't know what book you guys are
24 reading, but the first thing I see when I -- see
25 about Election Judges, it says that they are to offer

Felicia Farrar - December 12, 2001
Direct Testimony

1 a challenge ballot to the voters. And that we seem
2 to have a problem with that between the Republican
3 party and Democratic Party. Real quickly, some
4 things that happened in Fort Bend County. They send
5 a private carrier to our polls to pick up our ballot
6 boxes. We are -- our elected administrator sent the
7 Constable for Precinct 4 to follow the Election
8 Judges to the drop off place.

9 Well, Orlando Sanchez sent a poll
10 watcher. One of the election Judges talked to David
11 Birney, because I felt the need to drive around and
12 see that the Election Judges needed supplies instead
13 of staying in the office making sure that people are
14 on the roles and registered to vote. The poll
15 watcher asked to be moved behind the clerk,
16 intimidating the clerk.

17 David Birney moved this poll watcher
18 behind the clerk over by the Election Judge in the
19 office now. And later the Secretary of State came
20 in, disqualified that poll watcher because he just
21 happened to live in Sugar Land, and she lived in the
22 City of Houston. So that poll watcher had to leave.

23 These are just some of the things that
24 happened in Fort Bend County. I'm still livid from
25 the box trying to be picked up by these private

Felicia Farrar - December 12, 2001
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1 carriers, which we have the name of the carrier that
2 tried to pick up our polling boxes.

3 Somehow, the change of address --

4 MR. JEFFERSON: Do you have the names?

5 THE WITNESS: Yes, we have the names.

6 I don't have it with me.

7 MR. JEFFERSON: Would you give the
8 names to us and we will pass it on to the panel and
9 particularly to the Justice Department. Richard,
10 this guy right here with the beautiful white hair.
11 Make sure that Richard gets that.

12 THE WITNESS: Now, somehow in the
13 early election, we pushed early voting in Fort Bend
14 County big time to keep things from happening on
15 election day. On the early ballot, which is in
16 Chasewood, the early ballot Judge experienced this.
17 We knew that a voter lived in Precinct 2. This --
18 somehow this voter, a change of address form was
19 filled out for this voter.

20 And I e-mailed it to the Texas
21 Democratic Party for us to start looking out for
22 this. We don't know who put in the change of address
23 form. The husband was on the roll. Why? Who did
24 it? Where did it come from? Someone else lives
25 there? It just happened to be one of the Election

Felicia Farrar - December 12, 2001
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1 Judge's cousin, so that's how we caught it so
2 quickly. So we don't know if this was a scam that's
3 coming up soon, but we will look into that also.

4 MR. JEFFERSON: Okay. Thank you. We
5 have to move it on here. Any -- thank you very much.

6 MS. DOUGLAS: One quick question.

7 MR. JEFFERSON: We have one question,
8 short.

9 MS. DOUGLAS: Did I understand you to
10 say, perhaps, that a person who did not send in a
11 change of address form, for that person a change of
12 address form had miraculously gone there?

13 THE WITNESS: Yes.

14 MS. DOUGLAS: Okay.

15 MR. JEFFERSON: Next, DeLloyd? Give
16 me somebody. Before we leave, we're going to ask a
17 question. And the question is that we're going to
18 ask -- so stay around for it -- we have the City
19 secretary here, we have the County Clerk. The
20 question that we are going to ask is who authorized
21 the moving of 171 precincts? We're going to ask that
22 question here tonight. And we're going to also ask
23 the question, is it law that it must be posted and
24 the voters must know before a day before? We're
25 going to ask that question. We have some people here

Felicia Farrar - December 12, 2001
Direct Testimony

1 who will be able to answer that. All right. Come
2 on.

3 **CHRISTY BOSADOS,**

4 having been first duly sworn, testified as follows:

5 *THE WITNESS:* My name is Christy
6 Bosados.

7 *MR. JEFFERSON:* Okay.

8 *THE WITNESS:* B-O-S-A-D-O-S.

9 *MR. JEFFERSON:* Let's give her
10 respect.

11 *THE WITNESS:* Okay. I am registered
12 to vote over at the Edison Middle School. I voted
13 for the presidential election there. I have been
14 living at the same address for five years. I went to
15 go vote. First time for the mayor, they told me I
16 wasn't on the list, that I would have to sign an
17 affidavit. But being it was a quarter until 7:00,
18 she didn't have any affidavits, so I wasn't eligible
19 to vote because they didn't have anything.

20 So I went, thank God, to the second
21 one. Got there, I was the first voter, and they told
22 me, you're not registered to vote here, you're over
23 on 59 and Crosstimbers. I haven't lived there in six
24 or seven years. And I got all the way over there,
25 they told me, you're not even a registered voter.

Christy Bosados - December 12, 2001
Direct Testimony

1 You don't exist. They gave me numbers to call.

2 I went back, called Ms. Kaufman's
3 office. They told me I had to call to verify
4 registration. They give me the phone number. I
5 waited 20 minutes. Her name was Gloria. She said,
6 I'm sorry, I don't know how to transfer the phone. I
7 am a supervisor. I will call you back, and we will
8 get you to vote. I never did vote.

9 MR. JEFFERSON: Now that's -- okay.
10 Thank you very much. And did you get the name and
11 everything? You have it? Okay. DeLloyd, bring
12 somebody else. Okay. Thank you. Come on. Next.

13 And as you come, try to get straight
14 to the point of what happened without -- see how
15 quick she was, and straight to the point? So let's
16 get straight to the point. Okay.

17 FLORENCE MITCHELL,
18 having been first duly sworn, testified as follows:

19 THE WITNESS: I'm Florence Mitchell,
20 Houston Acorn Board Member. I was a poll watcher.

21 MR. JEFFERSON: Spell your name.

22 THE WITNESS: F-L-O-R-E-N-C-E,
23 M-I-T-C-H-E-L-L. Okay. Okay. If you will allow me, I
24 have a problem that occurred the day before the
25 election. A lady called me from the Martin Luther

Florence Mitchell - December 12, 2001
Direct Testimony

1 King Center and reported that she was getting
2 numerous of calls that they were just locating the
3 mayor and telling them not to vote for him.

4 And I'm sorry I don't have the name,
5 but I felt like that was very appalling for a person
6 to do. That close to election anyway. Okay.

7 Now, I did poll watching at Eisenhower
8 School, and every time I went there, it was dozens of
9 people that were being turned away. Why? Because
10 they were told they lived in the county. They asked
11 them to explain why. They would say because of odd
12 and even numbers of your house address. Okay?

13 So my question is: Why would they
14 wait until the day of the election to tell these
15 people that they lived in the county and they
16 couldn't vote for the mayor? Okay? We had another
17 little lady that we brought to the polls to vote.
18 According to her address, she could vote there at
19 Eisenhower School. They turned her down.

20 When she came out, I told her to go
21 back and challenge her vote. They would not allow
22 her to do so. They told her she had to go over on
23 Long Point. So the driver went on and taken her over
24 on Long Point. I assume she voted.

25 MR. JEFFERSON: Thank you. Now we're

Florence Mitchell - December 12, 2001
Direct Testimony

1 getting this over and over again, not allowing people
2 to challenge.

3 MR. FOSTER: I have a question to you
4 all. When they say they ran out of challenge
5 ballots, they use the same ballots, just an affidavit
6 that they sign. That can be done and a scratch piece
7 of paper. Do Election Judges know that?

8 MR. SIRVELLO: Yes, they are
9 instructed. Claude, they start off with 25
10 affidavits, which is stapled in their supplies. But
11 a lot of times, early voting is an indication to us
12 that there might be more need. So we printed extra
13 forms and had them available when the Election Judge
14 picked up their supplies. And we said, please take
15 as many as you think you might need.

16 During the day, we also had trucks
17 throughout the county and we did receive calls from
18 your office and from other offices saying that a
19 Judge was running out and we sent other ones out
20 there. A couple of places, when we got there, said,
21 we don't need these, we have enough. But none the
22 less, we don't ask questions. You call us, we do
23 send them out. But the Judge is instructed if a
24 voter -- if you run out of those affidavits, you're
25 not to turn a voter away because you do not have that

Florence Mitchell - December 12, 2001
Direct Testimony

1 piece of paper. You can take a blank sheet of paper
2 and write that information down and still allow the
3 voter to vote under the challenge procedure.

4 MR. JEFFERSON: Okay. Thank you. You
5 see, in that, they have told the Judge that. This
6 Judge needs to be dealt with. This Judge don't need
7 to be back out there no more, and we got to tell it
8 like it is. And we're going to see how you've going
9 to handle that. Next?

10 MR. PARKER: She is there.

11 STELLA GRAVES,

12 having been first duly sworn, testified as follows:

13 THE WITNESS: My name is Stella
14 Graves. S-T-E-L-L-A, G-R-A-V-E-S. I'm here on
15 behalf of my father. I took him to vote at Jackson
16 Middle School, where we has been living in the
17 neighborhood for 30 years. They told him that he
18 couldn't vote in the runoff election because he voted
19 by mail, which he did vote by mail for the first
20 election.

21 But I asked him what did that have to
22 do with the runoff. They said, well, it's here that
23 they mailed in his ballot. I said, he didn't vote in
24 the second election yet. I brought him here. She
25 said, well, it's already checked on here that he

Stella Graves - December 12, 2001
Direct Testimony

1 voted by mail.

2 I want to know what happened. They
3 never sent a package to the house after he voted the
4 first time.

5 MR. JEFFERSON: Okay.

6 MR. SIRVELLO: Okay. I can check your
7 father's application. More than likely, when he
8 applied the first time, there is a box on the
9 application where the voter checks runoff, if
10 applicable. And what it says is if there is a
11 runoff, please mail me one. So he was
12 automatically -- we had approximately 9,200 people
13 who did that. So in the first election, they checked
14 runoff if applicable, and they were automatically
15 mailed a ballot.

16 Now, again, he may never have received
17 it, but I can definitely check to tell you if he
18 checked the box. Again, I will tell you what the law
19 says. And again, I'm not telling you that I agree
20 with it. The law says if we mail a voter a ballot
21 and the voter did not present that ballot to the
22 Election Judge at the precinct, the Election Judge
23 must require the voter to come to the county clerk's
24 office and get an affidavit from us to allow him to
25 go back and vote.

Stella Graves - December 12, 2001
Direct Testimony

1 If your father had the ballot in his
2 hand and gave it to the Election Judge, the
3 instructions are to the Judge to cancel the mail
4 ballot and let them vote on Election Day.

5 *THE WITNESS:* She tried to explain
6 that to me, but like I told her, he never got a
7 ballot.

8 *MR. JEFFERSON:* Again --

9 *THE WITNESS:* They were supposed to
10 make --

11 *MR. JEFFERSON:* -- the Judge is making
12 the decision.

13 *THE WITNESS:* If they were supposed to
14 mail him another ballot, what happened to it?

15 *MR. SIRVELLO:* What I'm say, we mailed
16 the ballots as soon as we could, within a week of the
17 first election being over. If he never received it,
18 I can't answer that question. But if you call me at
19 the office, I can definitely tell you the date we
20 mailed it; what the name was; and the address that we
21 mailed the ballot to.

22 *MR. JEFFERSON:* Okay. Thank you very
23 much. Are there any other questions by the panel?

24 *MR. PARKER:* Okay. If you didn't get
25 the ballot -- excuse me. If you didn't get the

Stella Graves - December 12, 2001
Direct Testimony

1 ballot in the mail, he still could file a challenge
2 vote? He can.

3 *THE WITNESS:* Oh, he could? They
4 wouldn't give me one.

5 *MR. PARKER:* It's their word against
6 his word, and he can file it. I know that is the
7 law. And I wanted to clarify that.

8 *THE WITNESS:* I asked her about a
9 challenge vote.

10 *MR. PARKER:* They just didn't follow
11 the rules.

12 *MR. JEFFERSON:* Let me see --

13 **DARYL CARTER,**
14 testified as follows:

15 *MR. CARTER:* Howard -- Howard, just to
16 make sure, what Howard said, with all due respect,
17 was wrong. He would have had to go to the County
18 Clerk's office. There is specifically law addressing
19 that. He can't challenge it there. He has to go to
20 the county.

21 *MR. PARKER:* I understand what you are
22 saying, but I'm telling you if a person goes to vote,
23 it's up to the discretion -- at that particular
24 point, he said he didn't get it.

25 *MR. CARTER:* No, that is not correct.

Daryl Carter - December 12, 2001

1 He sat there and told them that he had already
2 checked the ballot. If he checked to get it, then
3 there is a ballot somewhere out there. The process
4 is a challenge vote is used when you say, I live in
5 this precinct. I don't care what that states.

6 MR. PARKER: I understand. But, if he
7 was sent a ballot and he didn't get the ballot --

8 THE WITNESS: He has to go to the
9 Clerk's Office.

10 MR. PARKER: Who said they sent the
11 ballot?

12 MR. CARTER: He still has to go the
13 clerk's office.

14 MR. PARKER: Then perhaps it needs to
15 be changed.

16 MR. FOSTER: The law needs to be
17 changed.

18 MR. JEFFERSON: Let me see the other,
19 because I don't want to waste time because we're
20 going to be out of here at 9:00.

21 MR. PARKER: All of those who want to
22 testify, stand up and come to the front. Anybody
23 else? We have one person. Second person come to the
24 front, please.

25 MR. JEFFERSON: We will get started.

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1 I want to recognize my fellow president over there,
2 Ms. Tammy. Tammy is in the house, from Fort Bend
3 County, president. Give her a hand. Thank you.

4 THE WITNESS: I'm Rita Bolden.

5 R-I-T-A, B-O-L-D-E-N. I'm speaking on behalf of
6 myself and my husband, Precinct 506. And I was
7 saddened to say, I did not get a chance to vote.

8 MR. JEFFERSON: Why?

9 THE WITNESS: They turned me down and
10 said I could not vote.

11 MR. JEFFERSON: Talk about it a little
12 bit.

13 THE WITNESS: They said our address
14 was not in Precinct 7.

15 MR. PARKER: Slow down.

16 THE WITNESS: I'm sorry I am at 7747
17 Royan Drive, Houston. R-O-Y-A-N, Drive, Houston,
18 Texas, 77071. And I was saddened to say we did not
19 vote.

20 MR. JEFFERSON: Okay. Thank you very
21 much. Any questions by the panel? Thank you. You
22 live in the city?

23 THE WITNESS: I live in Houston,
24 Texas, 506.

25 MS. DOUGLAS: When is the last time

Daryl Carter - December 12, 2001

1 you voted at 506?

2 *THE WITNESS:* When Mayor Lee Brown got
3 in the first time. And I have been there.

4 *MR. SAMBRANO:* What reason did they
5 give you?

6 *THE WITNESS:* She showed me a map and
7 said I couldn't vote.

8 *MR. SAMBRANO:* In that precinct?

9 *THE WITNESS:* It had 506 on the door
10 scratched out.

11 *MR. SAMBRANO:* Okay.

12 *MR. JEFFERSON:* Okay. We can check
13 that. Thank you very much. Next. Next. Come on.

14 Okay. State your name. Spell it real
15 quick. Okay.

16 **BARRY THOMPSON,**
17 having been first duly sworn, testified as follows:

18 *THE WITNESS:* My name is Barry
19 Thompson. B-A-R-R-Y, T-H-O-M-P-S-O-N, and I am a
20 member of the Black Heritage Society. On the day of
21 election, we took upon ourselves --

22 *MR. PARKER:* Speak out a little
23 louder.

24 *THE WITNESS:* On the day of election,
25 we acquired the task of aiding the community in

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1 documenting various irregularities at various polls.
2 And we got a lot of good stuff. But once we decided
3 to check in at Shape Center, we heard something about
4 a precinct, Precinct 110, that had turned away over
5 100 folk who happened to be African American.

6 So we thought it would be interesting
7 to go out there and check it out. And unbenounced to
8 us, the media had already been there. And we got
9 there at about 7:00, and the Judge -- Precinct Judge
10 who was new, this was his first year, was afraid of
11 the idea of another camera coming into the building.
12 But we talked our way in. And he became somewhat
13 relaxed, and we had an interview with the Judge and
14 the poll watcher who happened to have poll a poll
15 watcher for Mayor Brown. And the information that we
16 acquired was quite interesting.

17 What we determined was that the
18 document also that should have been there -- first of
19 all, he had nine precincts piled onto the precinct
20 that he was responsible for in the general election.
21 This was his first time. Ths the footnote. So he
22 really wasn't aware of different runoffs. Luckily,
23 Mary had 14 years of experience as a Precinct Judge,
24 so she was able to map out what took place there.

25 Apparently, the Precinct Judge did not

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1 receive maps, basically, marking the areas where the
2 various precincts were split. And that was very
3 important, because he couldn't determine who could
4 vote, who could not. This took -- this went on for
5 about four hours. It was four hours of
6 misinformation provided to him by way of not having a
7 map.

8 In addition, there was another form,
9 sorry, other documents that states who has voted
10 early. And that was to be given to him by precinct.
11 It turns out that each of those documents were blank
12 when they were opened up for each precinct, and I
13 thought this was interesting. The question to me
14 would be how many of these Judges were new, and how
15 many of them were not given proper information in
16 order to make the proper decisions?

17 MR. JEFFERSON: Okay. Any questions
18 from the panel? Okay. DeLloyd, next one.

19 MR. PARKER: Do we have anyone else
20 that would like to testify? Come on up. That's
21 right. Sorry.

22 MR. JEFFERSON: Anyone else? Because
23 I want to give a little wrap up here, do a wrap up.
24 I assume this is the last one?

25 MR. PARKER: We have one more.

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1 MR. JEFFERSON: Okay.

2 MR. PARKER: Unless there is somebody
3 else. Sorry, two more, and that's it.

4 MR. JEFFERSON: Okay. State your
5 name.

6 PATRICIA HOWARD-CRAWFORD,
7 having been first duly sworn, testified as follows:

8 THE WITNESS: Good evening. My name
9 is Patrice, P-A-T --

10 MR. JEFFERSON: Speak up and push your
11 chair up.

12 THE WITNESS: My name is Patrice
13 P-A-T-R-I-C-E, Howard-Crawford, H-O-W-A-R-D,
14 C-R-A-W-F-O-R-D. And originally, I was addressed in
15 Harris County not actually in the city limits.

16 But I did a -- when I renewed my
17 driver's license, before the expiration of my
18 birthday, November 2nd, I had sent it by mail to the
19 Texas Department of Public Safety to change my
20 address and my name over. And it was returned to me.
21 But prior to the election, I didn't know that it was
22 being returned to me. I did the change of address
23 for the voter registration at the same time, and I
24 didn't realize that I was able to vote even though my
25 new address was within the city limits. Because like

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1 I said, I hadn't received my new license yet.

2 A couple of my friends told me that I
3 could take my driver's license and a utility bill
4 showing my address and just ask for an affidavit to
5 change it over at the polls. So when I went to the
6 polls, which was at Harvest Time Church on Imperial
7 Valley Drive, I went in and before I could even get
8 to the table to show my driver's license to find out,
9 you know, whether or not my name was on the list, the
10 Election Judge, Sandi Jo Seale-Mason, S-E-A-L-E and a
11 hyphen, M-A-S-O-N. She was stopping everyone at the
12 door, basically just asking, where do you live?
13 Where do you live?

14 She wouldn't allow them the
15 opportunity to even get to the table and see if their
16 name was on the list. Where do you live? Where do
17 you live? Give me your driver's license. She was.

18 MR. JEFFERSON: What is the name of
19 this person again? Say it slowly.

20 THE WITNESS: Sandi, S-A-N-D-I,
21 capital J-O, Seale-Mason.

22 MR. JEFFERSON: Thank you. Go ahead.

23 THE WITNESS: She stopped me, asked me
24 where do I live, you know, give her my driver's
25 license. I gave it to her. She said, have you voted

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1 here before? Have you voted here before? I said,
2 no, I just moved in this area and I did a, you know,
3 an address change, I just haven't received my new
4 license yet, so that's why I brought bills to show
5 you.

6 She never looked at the bills. She
7 was on the phone with I don't know who. She gave
8 them my address. She told her what precinct I was
9 supposed to go to. And I told her that I had voted
10 there previously, but I don't live there anymore, I
11 live in the city now, and I know that that precinct
12 is outside of the city limits.

13 So, there were a few other people
14 coming in behind me and she was stopping them as
15 well. Where do you live? Give me your driver's
16 license. A police officer came in in uniform, she
17 took his driver's license and whoever she spoke with
18 on the phone, obviously, she give more reverence to
19 the police officer because he was in uniform.
20 Because she said oh, I have a Houston police officer
21 here, you go right ahead and vote, sir.

22 And the rest of us were just standing
23 around. And it's about 6:30, so, in fact, the time
24 is winding down. They started packing up some of the
25 ballot booths. And she told me that I couldn't vote,

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1 I was outside the city limits. And I had already
2 spoken with someone, I think it was here at the Shape
3 Community Center.

4 MR. JEFFERSON: What was the ethnicity
5 of the Judge?

6 THE WITNESS: She was Caucasian.

7 MR. JEFFERSON: Okay.

8 THE WITNESS: I had already spoken
9 with someone here and they told me that I could ask
10 for an affidavit, that I could ask for a challenge
11 ballot. And if I was refused, to call from the
12 polling place. So I dialed the number to call them
13 back and tell them that she was not allowing me to
14 vote. She took my affidavit, basically, just tossed
15 it to the side. I don't know if it was a file or
16 something specific she was supposed to do with it,
17 but she just kind of tossed it to the side, gave me
18 my driver's license back and said go ahead, and went
19 onto the next person. She never really explained to
20 me, you know, what was going on.

21 So during the course of my
22 conversation, when I called back to tell them they
23 weren't going to allow me to vote, the noise in the
24 background was really loud, so they couldn't hear me.
25 I went outside because I was in the church, so I

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1 wasn't going to just yell in the phone in the church.

2 I went outside and while I was on the
3 phone outside, Sandy Jo came outside to smoke a
4 cigarette. But she never lit the cigarette. She
5 just stood there listening to me on the phone. She
6 kept saying, who are you talking to? Who are you
7 talking to? And I ignored her at first. And they
8 gave me a number to call, told me to call this number
9 on Tuesday because, you know, I was experiencing some
10 sort of irregularity while trying to vote, and to ask
11 for a challenge ballot.

12 So she kept -- I was repeating the
13 number out loud because I didn't have paper in my
14 hand to write it down. I was repeating the number.
15 And she said, who are you talking to? Who are you
16 talking to?

17 MR. JEFFERSON: Kind of wrap it up.

18 THE WITNESS: Basically, just told her
19 it really wasn't her business who I was talking to.
20 She went to her truck and got a pen to write down the
21 number. And I told her I needed to get a challenge
22 ballot. She said, well, when did you change your
23 driver's license? When did you change your address?
24 And I said, prior to my birthday.

25 You know, they mail it to you, what,

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1 about a month or so in advance. And I wasn't exactly
2 sure what date I put it in the mailbox. So because
3 of that, she said I didn't change my registration 30
4 days prior to the election date, and if I wanted to
5 do a challenge ballot, she was going to deny it. So
6 I asked her for it two more times before she actually
7 gave it to me. I filled it out and she was just kind
8 of rushed. She was like, well, you know, you can't
9 vote and this is why. And --

10 MR. JEFFERSON: Okay.

11 MR. PARKER: And did you vote?

12 THE WITNESS: No.

13 MR. JEFFERSON: Okay. Any questions?

14 No? Next person. Thank you very much. Next person.

15 We have one person after this, DeLloyd?

16 MR. PARKER: Yeah, one more.

17 MR. JEFFERSON: Okay, and then,
18 because we have to ask that question -- y'all want to
19 hear this. Who moved the polls?

20 EARL MCDONALD,
21 having been first duly sworn, testified as follows:

22 THE WITNESS: My name is Earl
23 McDonald. Earl is E-A-R-L, McDonald is
24 M-C-D-O-N-A-L-D. I'm not going to take a long time.
25 There weren't any serious transgressions against me

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1 on election day. First thing, I got there, they had
2 a table set up outside the polling room, a guy
3 sitting at the table.

4 MR. JEFFERSON: Where was this? What
5 school?

6 THE WITNESS: On West Gray. On West
7 Gray. I think it was the Center for the Mentally
8 Impaired.

9 MR. JEFFERSON: Okay.

10 THE WITNESS: And that fades into the
11 story. But, anyway, there was somebody out front and
12 he had looked at a list of streets. They weren't
13 addresses, just a list of streets. And I walked up
14 and gave them my driver's license. He checked that
15 and said, I'm sorry, you can't vote here. And I
16 said, no, I can vote here because I always vote here.
17 And my address is like right around the corner. It's
18 less than a block away. He looked again. Sorry,
19 it's not on the list. And I looked at the list.

20 And it was No. 3 on the list. So I
21 pointed it out, that's it right there. He said, oh,
22 okay. Well, yeah, you can vote here. Well, thanks.

23 So then I go inside, and the next
24 thing I saw was there was a person who was mentally
25 impaired and she wanted to vote. There is a question

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1 I have for you. What you listed before was if
2 someone is physically impaired, but she is mentally
3 impaired and she seemed to be able to make decisions,
4 but you could tell she was mentally impaired. Can
5 she receive help? Because, I mean, we were standing
6 there.

7 I was there, I didn't know if I was
8 supposed to help her or not. Because I didn't know
9 if it was against the rules, and nobody told me
10 otherwise.

11 There was one person who was walking
12 around inside the polling room and she appeared to be
13 working, maybe she was a poll watcher, I'm not sure.

14 MR. JEFFERSON: Let him answer the
15 question. Okay.

16 Go ahead.

17 MR. SIRVELLO: What the election code
18 says is you can be assisted for any type of
19 disability. What you have to be concerned with in
20 that situation, that if the person has a type of
21 mental disability that prevents them from functioning
22 to cast their own ballot, so that the person
23 assisting is basically voting twice, voting their own
24 ballot. But the Election Code in Texas, the Election
25 Code goes very far to grant the voter the right to

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1 say whether or not that person has the mental
2 capability to vote on their own.

3 So in that case, yes, she could have
4 been assisted.

5 MR. JEFFERSON: Okay.

6 THE WITNESS: Hold on a second. You
7 said any type of disability, but before you said a
8 physical disability.

9 MR. SIRVELLO: Right.

10 THE WITNESS: Which is it? The woman
11 that came in with her mother, that is a type of
12 disability. If she's old, that's called infirmity.

13 MR. SIRVELLO: Well, I don't think
14 that has been -- I don't think that the Secretary of
15 State has interpreted that to include that if you
16 wanted to say that that was the disability. When you
17 assist a voter, you are signing an affirmation
18 yourself that you are assisting that voter for the
19 following reasons. And if the person is assisting
20 the voter and the voter wants to state that they
21 are -- they have some type of disability that
22 prevents them from exercising the right to vote
23 themselves, yes, you could do that.

24 MR. JEFFERSON: Okay. Thank you.
25 Questions? Anybody? Okay. Next.

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1 **JOHNNY ROBERSON,**

2 having been first duly sworn, testified as follows:

3 *THE WITNESS:* Okay. My name is Johnny
4 Roberson. J-O-H-N-N-Y, R-O-B-E-R-S-O-N. You know, I
5 have been hearing testimony of people saying they
6 were treated so bad, I just want to say I was treated
7 with the utmost respect at Precinct 135. Most of the
8 people there was African Americans, and you had
9 Hispanic, and you had some white people there also.
10 But they all was very nice.

11 And you know what? During this
12 election, they made, or tried to make us look like
13 we -- or sound like we was some kind of animals or
14 something, you know, and that's wrong. Even though I
15 didn't get there -- they still wouldn't let me vote,
16 but they treated me with the utmost respect. And you
17 know what? You know what? You know, y'all laughing,
18 but, you know, that means a lot.

19 Because we're just as human as any
20 other people walking the face of the earth. I know I
21 am. And we all should learn to respect one another.

22 The people that they choose for Judges
23 they need to look at that.

24 MR. JEFFERSON: That's right..

25 *THE WITNESS:* And screen those people

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1 and make them -- make them swear that they will be
2 nice to people no matter what color they are. Okay.
3 Thank you.

4 MR. JEFFERSON: Thank you very much.

5 MR. PARKER: One more.

6 MR. JEFFERSON: He is giving you a
7 fair trial and hanging. We are proud to have
8 Ms. Dora Olivia here. Would you raise your hand.
9 Fort Bend. Good person. Always on the battlefield,
10 and we appreciate you very much.

11 OVIDE DUNCANTELL,

12 having been first duly sworn, testified as follows:

13 THE WITNESS: One thing I was glad --

14 MR. PARKER: Excuse me.

15 THE REPORTER: I need you to state
16 your name.

17 THE WITNESS: All right. I assume
18 everybody knows who I am. I am Ovide, O-V-I-D-E,
19 Duncantell, D-U-N-C-A-N-T-E-L-L. I raise enough hell
20 in this town, I bet you all the people at the police
21 department know who I am. One of the things come off
22 clear here and you're getting a better understanding,
23 I appreciate it, I want to thank the Shape Center and
24 thank the NAACP for the diligent job that they have
25 put together here to have this forum, and the people

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1 for coming from the county. Whatever reason you came
2 here, you are here and you are giving hopefully some
3 permanent answers.

4 I was with the camera crew and did the
5 filming, you have a copy of it with the NAACP now,
6 where the 100 people were denied the right to vote.
7 We rushed right out there to make damn sure we got
8 that on film. One hundred people, all black, being
9 denied to vote at someplace. There had to be a
10 reason. We found a lot of this stuff.

11 MR. JEFFERSON: Where was that?

12 THE WITNESS: Precinct 110, right over
13 on the boarder off Greens Road.

14 MR. JEFFERSON: Precinct 110?

15 THE WITNESS: Here is a precinct that
16 had a bunch of other precincts thrown into it, a
17 brand new Precinct Judge. One thing we can do, I
18 think the film would clear the Precinct Judge, he
19 said, hell, I don't know what's going on out here.
20 He was that lost. He was brand new.

21 But the -- the county did not give
22 this man the proper tools to work with or the proper
23 information. And a lot of times this is what's
24 happening out there. And one of the things we're
25 going to have to be very concerned about, I'm glad to

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1 understand that you understand now that El Franco
2 Lee, who is over most of the precincts in this county
3 that affect us, is one of the men who appoints a lot
4 of these inept Precinct Judges. And I hope you
5 remember that.

6 I hope you remember that at the
7 appropriate time, because we're going to have to deal
8 with not only the Precinct Judges, we have to deal
9 with the county commissioner that appoints some of
10 these people. And I'm simply saying to you, I want
11 to say that I want to thank all of you people who got
12 out and went out to vote. You did it despite.

13 I told Beverly Kaufman we were not
14 going to have a Florida here or there would be
15 consequences if it was. And we went out and did what
16 we had to do to make sure that it didn't happen. And
17 everybody needs to be at a poll with a camera. Thank
18 you.

19 MR. JEFFERSON: Okay. That will
20 conclude our testimony. And now it's time for the
21 question.

22 And I would imagine there are three
23 people who could answer this question. Anna Russell,
24 Paul, and Tony. I would ask that you three, if you
25 would stand if you don't mind. Would the three of

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1 you stand.

2 MR. BETTENCOURT: I'm only the
3 registrar, I can't answer the question.

4 MS. DOUGLAS: We have questions for
5 you, too.

6 MR. JEFFERSON: Okay. Whoever
7 authorized the changing of 171 precincts and why?
8 That is the first question.

9 MR. SIRVELLO: I will start off.

10 MR. JEFFERSON: I don't know which one
11 of you -- okay. Anna, do you want to go first?

12 MS. RUSSELL: Well, let me get into
13 the mike. And for the runoff election, the City
14 Planning Department did prepare the combinations of
15 the various polling places.

16 There is a problem between the general
17 election and runoff election. Some of the precincts
18 that were consolidated for the state, the county, the
19 city, the school district, some of those locations
20 were outside the City of Houston. Those precincts
21 had to be moved back inside the city. So, some of
22 those that had previously been outside the city were
23 combined.

24 Or if there were enough voters that
25 voted in the prior election, they were what we called

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1 a stand-alone precinct.

2 I have not verified, I have not
3 counted, I will take your word for it. I know that
4 there is information prepared for the Justice
5 Department on the change in polling places. There is
6 documentation on them. Unfortunately, we cannot
7 reserve these polling places a year or two years in
8 advance. We don't know for sure that there is going
9 to be a runoff. We don't know what date the runoff
10 will be held. Election officials that conduct the
11 election just run with the date when we are told when
12 it's going to be.

13 And some of the places that were used
14 in November were not available in December for the
15 election. There is a private contractor that does
16 lease the polling places for us for the one day.
17 They did post signs of all the changes that were
18 made. But, I personally know that it's possible for
19 signs to be removed, because I have had it,
20 complaints.

21 And Ms. Jefferson who is with me has
22 been out at 10:00 the night before election to post a
23 sign that had previously been posted that somebody
24 took away. We do post the signs, but we cannot
25 guarantee that they are going to leave them there.

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1 We are hopeful that they would, but they are not
2 always left there.

3 Another thing on our split precincts,
4 and not knowing whether you're in the city or in the
5 county, the Precinct Judges are furnished by Harris
6 County, when it is a city election only, a list of
7 Houston only voters. If the precinct Judge reads the
8 information, they go to the school that's conducting
9 it, they know all of this. The county provides
10 excellent instructions in the supplies to the Judges.
11 We get calls from Judges, what do you do about a
12 challenge voter? Well, rather than read them the
13 material, we say, go to your supply box and get your
14 little red, white, and blue what-to-do book. Go down
15 to the fourth or fifth, wherever it is, and read
16 that. And then if you have any questions, we can
17 answer it.

18 That little what-to-do-if book tells
19 you almost -- an answer for almost every question
20 that comes up at the polls. There is also another
21 book, it's printed for the Precinct Judges on how to
22 set up the polls and different things.

23 They get lots of information if they
24 read it. But, some of them don't read it. Also, our
25 office was open at 6:00 on election day. We steadily

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1 answered calls all day long. Most of them called and
2 said, where do I go vote? Well, do you know your
3 Precinct Number? No. So we looked them up in the
4 computer. If they were in a split precinct, we then
5 looked them up to see whether or not they were in or
6 outside the city.

7 One of the things that would be very
8 helpful and solve a lot of the problems that are
9 created on election day is if we had voter
10 certificates that people would take pride in and put
11 next to their Visa Card and their driver's license.
12 Could we probably get a laminated card that could be
13 carried in a billfold?

14 MR. BETTENCOURT: Well, we use -- I'm
15 sure you can, but I can't laminate them, but I don't
16 have it in the code to do it, but that's a great
17 idea. I will be happy to talk about that. I'd love
18 to have a laminated card.

19 MS. RUSSELL: A lot of problems could
20 be solved if the person had their voter certificate
21 with them when they go to vote. Sometimes they go
22 down to vote, they have a driver's license with their
23 current address on it, but that's not where they are
24 registered.

25 MS. SMITH: I think also, if their

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1 names are on -- if they have their cards, because
2 many of the complaints that I think we heard, they
3 had their cards or some form of ID, but the names are
4 not on the list. So if names are being purged, it's
5 a moot point to have a card.

6 MS. RUSSELL: I have an answer for
7 that. Keryl asked me a question I'd like to be able
8 to respond to.

9 MR. JEFFERSON: Okay. Let's --

10 MS. RUSSELL: Let me tell you one more
11 thing about the precinct that you are concerned about
12 the change.

13 MR. JEFFERSON: We have -- okay.

14 MS. RUSSELL: Or the change on
15 precincts. The City Planning Department started
16 working on the combinations for runoff elections even
17 before the November election was held. We did not
18 know what runoffs we might have, so some of the
19 polling places that had, say, Districts A and H in
20 it, or not H, say A and B, we did that precinct so
21 that it would only be one district. Because we
22 didn't know what district would have a runoff. So we
23 wanted to maintain the district lines for the
24 district positions of counsel. So some of those were
25 changed because of district lines also. And I don't

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1 know how many of those --

2 MR. JEFFERSON: Okay. I guess the

3 question that I would ask is we knew On November 6th

4 that there would be a runoff. Then why wasn't the

5 people informed about that Thursday and Friday?

6 People didn't know where they were going to vote

7 until they went to the polls. So we knew On November

8 6th there was going to be a runoff. Why didn't the

9 people know?

10 AN AUDIENCE MEMBER: That's 30 days.

11 MS. RUSSELL: There was a note posted

12 in the newspaper.

13 MR. JEFFERSON: No, ma'am. No, ma'am.

14 MS. RUSSELL: There was a legal

15 publication.

16 MR. JEFFERSON: It was posted on that

17 Friday or Saturday because --

18 MS. SMITH: Saturday.

19 MR. JEFFERSON: It was posted and --

20 no I'm talking --

21 MR. PARKER: A reason was given?

22 MR. JEFFERSON: Wait. Go ahead.

23 MS. RUSSELL: Under the law, the city

24 is required to publish the election notice. That was

25 done. How many days is it before? I don't know.

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1 MR. SIRVELLO: Ten.

2 MR. CARTER: Ten.

3 MR. JEFFERSON: Speak in the mike.

4 MS. RUSSELL: Ten days before.

5 MR. JEFFERSON: What was posted?

6 MS. RUSSELL: The notice of election
7 saying what the election was for and listing all the
8 precincts.

9 MR. JEFFERSON: Listing all --

10 MS. RUSSELL: As precincts were
11 changed -- is it not working? As precincts were
12 changed, notices were published again in the
13 newspaper. That we're required to do by law. And I
14 think we published three additional notices in
15 addition to the main notice that was published in the
16 newspaper.

17 AN AUDIENCE MEMBER: Where was it
18 published in the newspaper?

19 MS. DOUGLAS: We were told at the
20 meeting they were not published --

21 MR. JEFFERSON: Yes. Tony, you said
22 that they were not.

23 MS. DOUGLAS: -- how many precincts
24 had changed. So I'd like to know. Howard, also,
25 were there any polling places changed On November

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1 6th? Were there any changes for the November 6th
2 election?

3 MR. BETTENCOURT: He has a list.

4 MS. DOUGLAS: If there were polling
5 places changed On November 6th, I think that county
6 was responsible for the -- fully responsible for the
7 November 6th election. Can you clarify? Because now
8 we're saying the city for runoff, but who was
9 responsible for November 6th?

10 MR. SIRVELLO: All right. Let me
11 explain the difference between the notice that Ms.
12 Russell is talking about and what you-all asked us at
13 the meeting that we had with you-all on Thursday.
14 There is a legal notice required by the Texas Code
15 called Notice of Election. And it says: Notice is
16 hereby given that the following polling places will
17 be open on December 1st for the purpose of electing a
18 mayor and four city councilmen, et cetera, et cetera.
19 Polls will be open from 7:00 a.m. to 7:00 p.m. And
20 then the polling locations are listed in numerical
21 order.

22 That is posted in Legal Notices, not
23 an area where most people look in the newspaper,
24 unless you read it from stem to stem. So when we met
25 with you-all on Thursday -- and again, the State law,

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1 Mr. Jefferson, requires us only to post the notice on
2 the morning of the election. There is no further
3 requirement.

4 But as you said to us at that meeting,
5 and I thought you made a very good point, there are
6 things you do that the law requires you to do and
7 things you can do to go that extra step to help the
8 voters so they do know where to vote. And we are
9 looking at that in the future.

10 If it happens, and it's going to
11 happen more in odd number year elections than even
12 numbers, because even number year elections, we don't
13 deal with split precincts. And that's a precinct
14 where only part of it is in the city, part out. We
15 won't have this problem in 2002.

16 But, when we were approached by
17 you-all on Thursday to ask us not just to say what
18 the polling places are, but what are the ones that
19 changed. We had a news conference on Friday morning,
20 and we gave all the information in the format that
21 you had asked me for, where it didn't just say 171
22 vote at 310, but what was 310. And we presented
23 that, and I e-mailed that to Ms. Brooks on Friday.
24 So that -- on Friday night, I stayed at the office
25 late that night, and every call I received was from a

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1 voter who watched the 6:00 news stating, I think my
2 polling place changed, can you tell me? And we would
3 tell them.

4 And I did one thing because I think
5 this -- and I'm not going to justify it that the fact
6 that people didn't know until election morning
7 because I know the voters don't pay attention to
8 voting like those of us that deal with it every day
9 until the morning of the election. But, out of 171
10 precincts that were changed between November and
11 December, 58 of those precincts had zero voters.
12 They were in split precincts, what we call strip
13 areas of the city where there is a geographical area
14 or area in the City of Houston, but no registered
15 voters, unless a homeless person stopped 30 days
16 before the election, camped out there and said, this
17 is my polling place.

18 Fifty-eight of those places had no
19 change at all between November and December. Twenty
20 precincts had a higher turnout in November than
21 December. Ninety-three precincts voted more people
22 in December than they did in November. So that makes
23 me feel good that even though some people didn't
24 know, a lot more knew than didn't know. Because we
25 had a much higher turnout in December in those 171

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1 precincts.

2 And as far as the Judge in Precinct
3 110, he was not supposed to have -- perhaps whoever
4 addressed that question, each Judge was given a poll
5 book. And in that poll book were the names of the
6 voters who lived in the City of Houston with
7 information provided by the City of Houston to the
8 voter registrar and then to us. And that's how we
9 prepare the poll books. So there was not supposed to
10 be maps.

11 MR. JEFFERSON: Okay.

12 MR. PARKER: We have three questions
13 from the audience.

14 MR. JEFFERSON: Okay. Questions from
15 the audience.

16 MR. PARKER: Three questions. One,
17 two, three, four.

18 **TAMMY CAMPBELL,**

19 having been first duly sworn, testified as follows:

20 THE WITNESS: I'm Tammy Campbell.

21 MR. PARKER: Louder, please.

22 THE WITNESS: I'm Tammy Campbell,
23 President of the Missouri City NAACP. What I want to
24 know, of the 171 precincts, how many were majority
25 African American of the 171?

Tammy Campbell - December 12, 2001
Direct Testimony

1 MR. SIRVELLO: Okay. I think Ms.
2 Brooks might be able to answer that question better
3 than me because that was one of the reasons she
4 wanted me to e-mail the information to her. And I
5 think we did have a conversation where a lot of these
6 were on the exteriors of the city and I don't think
7 involved as many of the intercity.

8 MR. JEFFERSON: She is asking for a
9 specific number. What is the number? Let's get to
10 the point. Do you have the number?

11 MR. SIRVELLO: No. We were primarily
12 looking for those precincts that we were targeting to
13 get out to vote to encourage people to vote. Right,
14 Glenda?

15 MS. KIZZEE: Exactly. So we would
16 know.

17 MR. SIRVELLO: Right.

18 MR. PARKER: Another question from the
19 audience.

20 NICK CLAYTON,
21 having been first duly sworn, testified as follows:

22 THE WITNESS: My name is Nick Clayton.

23 THE REPORTER: A little louder for me,
24 please.

25 THE WITNESS: My name is Nick Clayton,

Nick Clayton - December 12, 2001
Direct Testimony

1 and you talked about contractors who prepared voting
2 places. Then since we pay the county to perform this
3 task, why is it that the county is paying an
4 independent party that they blame it on instead of
5 the county doing it themselves?

6 Number two, I'd also like to know, do
7 we have any African Americans doing that? Okay.

8 And number three, I'd like to know,
9 y'all invented the literacy test, why are you
10 allowing people who are not prepared to be Precinct
11 Judges to be Precinct Judges? Thank you.

12 MS. RUSSELL: Let's see if I can
13 remember it all.

14 MR. PARKER: Don't try to answer all,
15 because we would be here all day. And I think we
16 know the answers to some of it.

17 MS. RUSSELL: Okay. As far as the
18 contractor that is hired, it's a company that's been
19 doing it -- I don't know what his -- how many
20 employees he has, I know it's a one-owner company as
21 far as I know.

22 THE WITNESS: White company?

23 MS. RUSSELL: He may have African
24 American subcontractors.

25 MR. PARKER: He has a contract with

Nick Clayton - December 12, 2001
Direct Testimony

1 the city?

2 MS. RUSSELL: With the county. And
3 however, when the city has had an election, we have
4 always used him, so I don't want to say that we have
5 never used him. And I did work close with him on
6 this election, also on some of the places that had to
7 be changed and the different problems that they had.

8 And some of them may have been checked
9 with the legal department, if it was suitable for us
10 to make some changes on some of them. We had -- I
11 don't know, I don't have anything to do with -- we do
12 use the County Precinct Judges for City Elections,
13 easiest thing to do. I' hate to think that I would
14 have to go out and find 500 people.

15 THE WITNESS: Literate people.
16 Literate people. Literate people. That's all I want
17 to know.

18 MR. JEFFERSON: Okay.

19 MS. RUSSELL: There is no
20 qualifications in the Election Code except that they
21 be a qualified voter.

22 MR. JEFFERSON: Excuse me, Ms.
23 Russell, who is the person that actually have the
24 final say in hiring the contractor?

25 MS. RUSSELL: The county took bids.

Nick Clayton - December 12, 2001
Direct Testimony

1 You took bids?

2 MR. SIRVELLO: Right.

3 MR. JEFFERSON: Okay. So you picked
4 the final person, right?

5 MR. SIRVELLO: No, there was bids
6 submitted.

7 MR. JEFFERSON: Wait. Tony, listen,
8 read my lips. What single person is responsible for
9 hiring the contractor?

10 MR. SIRVELLO: The Harris County
11 Purchasing Department in cooperation with our office.

12 MR. JEFFERSON: So the Purchasing
13 Office for the county --

14 MR. SIRVELLO: Right.

15 MR. JEFFERSON: -- is the person who
16 hires the people.

17 THE WITNESS: The good old boys.

18 MR. SIRVELLO: The purchasing office.
19 If there is more than one bid, we are required to
20 take the low bid. We have a good reason for that.
21 In the last few years we have had the contract, only
22 one person has bid because it's basically a
23 thankless job.

24 MR. JEFFERSON: So if the Urban League
25 who gets jobs and things for people and have

Nick Clayton - December 12, 2001
Direct Testimony

1 contracts, if the Urban League wanted to apply, they
2 could apply to do the job, right?

3 MR. SIRVELLO: Absolutely.

4 MR. BETTENCOURT: Sure.

5 MR. JEFFERSON: Okay. DeLloyd,
6 anybody else?

7 MR. PARKER: We have a question.

8 MS. EDWARDS: I have one question.
9 I'm confused. Democratic, Republican is driven by an
10 informed continency, and it seems to me there is a
11 lot of ducking and hiding behind policy here going
12 on. And I guess my question is: Is it ever going to
13 come a time where we sit down and say, this is not
14 working, policies are not working, and we're going to
15 fix it? Seems like we keep having the same
16 conversations over and over. So I'd like to hear if
17 there is going to be any -- any kind of saying this
18 doesn't work.

19 MS. DOUGLAS: Yes.

20 MS. EDWARDS: And we're not getting
21 good returns for the money. To do good business, or
22 government senses, are we ever going to do anything
23 different is my question.

24 MR. JEFFERSON: Okay.

25 MR. MATA: I'd like to respond to her

Nick Clayton - December 12, 2001
Direct Testimony

1 question. I think first of all, I want to thank the
2 coalition for what they have done and inviting all of
3 us to be here.

4 Secondly is that there was so much
5 said here and a lot of finger pointing, and it's been
6 my experience that it's not a matter of who is going
7 to do it, I think we as a community need to come
8 together. And not only that, but we need to also
9 bring in some of the legislators. Because whatever
10 excuse is there for not working, we can't be accused
11 of Florida.

12 We need -- we the community need to
13 make the changes.

14 We elect the people, people that
15 represent us, and they're accountable to us. And if
16 they can't, then we need to get somebody that will.

17 MR. JEFFERSON: That is true. Thank
18 you-all very much. And we're going to have to cut
19 this because we're only going to go until 9:00.
20 Anybody else, DeLloyd?

21 MR. PARKER: We got -- come on up
22 here, man. You and Taylor come on up. And we're
23 going to close it up. And Howard is going to make
24 the final --

25 MR. JEFFERSON: These are absolutely

Nick Clayton - December 12, 2001
Direct Testimony

1 it.

2 MR. PARKER: Come on. Who is that?

3 Okay. We want to close this out. Make this real

4 quick.

5 MR. CARTER: Howard, 30 quick seconds.

6 I came hear to hear about voter intimidation. I did

7 hear some stuff about it and we heard some good

8 information. What I know, because I've worked every

9 election since I was 18, I'm a lawyer, we have a very

10 complicated system.

11 If anything comes out of here, it's

12 like Mr. Mata said, we need to get together with

13 LULAC or other organizations, Black Caucus, and go up

14 to the legislative sessions and simplify the process.

15 Get away from clamming on other things, same day

16 voter registration. We have to start to simplify

17 this process.

18 It's too complicated. You'd have to

19 have a Phd in the Election Code to understand

20 everything that goes on. And Mr. Sirvello, I would

21 be happy to visit with you and any of your

22 colleagues. And that's what we need, voter

23 simplification, pure and simple.

24 MR. JEFFERSON: All right. Thank you.

25

Ron Jackson - December 12, 2001
Direct Testimony

1 **RON JACKSON,**
2 having been first duly sworn, testified as follows:
3 **MR. JACKSON:** I heard the Judge --
4 what is his name at the end of the table? Mr. Tony.
5 He had made a statement and he said that I know that
6 certain people don't read this particular section of
7 the paper where you post it. The statement -- so if
8 you know that people don't read that particular
9 section, why post it in that particular section?
10 **MR. PARKER:** Okay.
11 **MR. JEFFERSON:** Well, okay. We need
12 to put it in the right place.
13 **MR. SIRVELLO:** The reason it's posted
14 there is that's the requirement. We know The
15 Chronicle is going to publish them for free. And we
16 asked The Chronicle would they put an extra notice in
17 there about the polling places that said: Attention
18 voters. The following polling places have changed,
19 if you see your number on here. But as I said
20 earlier, Mr. Jefferson made the suggestion at the
21 meeting we had on Thursday about the fact that
22 perhaps in the future, when we have polling place
23 changes like that, we just address that sooner and
24 make every attempt to have voters vote early. We are
25 talking about that right now, thanks to Mr. Jefferson

Ron Jackson - December 12, 2001
Direct Testimony

1 making that suggestion.

2 MR. JEFFERSON: Mr. Green, very last
3 question. You-all have been a good audience. You
4 have stuck around and this is unusual. This is very
5 interesting.

6 LARRY GREEN,
7 having been first duly sworn, testified as follows:

8 THE WITNESS: Larry Green from
9 Congressman Sheila Jackson-Lee's office. This fact
10 goes back again to the contractor. If, in fact, you
11 entered into a contract with a subcontractor to pick
12 a polling place, couldn't you stipulate that he must
13 have the polling places combined more than seven days
14 out, more than three days?

15 MR. JEFFERSON: No, two days out,
16 three days.

17 THE WITNESS: I understand the law
18 says election day. But not withstanding, you can
19 still stipulate if you're going to get a contractor,
20 we need to be where everybody's going to vote at
21 least 14 or 21 days out. You can do that, can't you?

22 MR. JEFFERSON: Okay. I have a right
23 to say we're going to bring this to a close now.
24 Yolanda, would you come up and close this out. Just
25 take one minute. Yolanda is the person most

Larry Green - December 12, 2001
Direct Testimony

1 responsible for putting this thing together. She is
2 going to close it out. She do all the work, I get
3 all the credit.

4 MS. SMITH: He is really telling the
5 truth. Just kidding. Just kidding. I want to thank
6 everybody for being here. And on behalf of the
7 NAACP, but most importantly, on behalf of the Houston
8 Coalition for Black Civic Participation specifically,
9 I want to talk about an announcement that we had a
10 deadline to enter the names to be an election
11 official for your particular precinct. The deadline
12 is fastly approaching. Jean? I don't have the date.
13 January 2nd. Okay.

14 MR. BETTENCOURT: Yes.

15 MS. SMITH: And we're asking you to
16 call Paul Bettencourt.

17 MR. BETTENCOURT: Call the County
18 Clerk's office.

19 ROBYN SHORT,
20 testified as follows:

21 THE WITNESS: No, that is a primary
22 election. So if you want to run as a -- if you want
23 to run as a Precinct Judge, you need to file with
24 your party by January 2nd so that you can be -- so
25 that your name can be submitted by the parties to the

Robyn Short - December 12, 2001
Direct Testimony

1 County Commissioners for the election in November.
2 Are their phone numbers that we may give?
3 MR. SIRVELLO: Democratic Party is
4 (713) 739-7785.
5
6 MS. SMITH: Are there any other
7 numbers?
8 MR. SIRVELLO: Republican party is
9 713 --
10 MR. PARKER: I don't think anybody can
11 hear nothing you're saying.
12 MR. BETTENCOURT: She has it.
13 MR. SIRVELLO: (713) 838-7900.
14 MS. SMITH: We want to make sure
15 everybody has that information. Again, the
16 Democratic Party number is (713) 739-7785, and the
17 Republican Party phone number (713) 838-7900. So for
18 any individuals that would like to file with their
19 party to be a Precinct Judge, we would ask you-all to
20 please contact those two numbers.
21 MR. PARKER: Okay. Before -- don't go
22 anywhere. Yolanda, let me let you know, this is
23 something that you need to know. On election day, we
24 had hundreds of people working out of Shape Community
25 Center. Our building -- I mean, hundreds of people:

Robyn Short - December 12, 2001
Direct Testimony

1 Grass root rank and file people. Okay. People that
2 look like you and me working hard.

3 We also had people working out of the
4 NAACP Center office, I mean, regional offices and
5 doing a lot of work. A lot of grass root people did
6 a lot of work. I mean, you know, you know who I'm
7 talking about. And we just want to make sure.
8 Because if it was dependent upon one person, we
9 wouldn't be here. I think Ada said something on her
10 show that says it. Come on say it. Everybody did?
11 Come on.

12 **ADA EDWARDS,**

13 testified as follows:

14 **MS. EDWARDS:** No one can do
15 everything, but if everyone does something,
16 everything will get done.

17 **MR. PARKER:** No one can do everything,
18 but if everyone does something, everything will get
19 done. So remember that on this night, everybody did
20 something. Everybody did something. And
21 everything -- and it got done.

22 **MR. JEFFERSON:** Yes. Praise the Lord.
23 We want to thank you for housing us and we're going
24 to have some more of these hearings at Shape
25 Community Center. I want to thank all of you for

Ada Edwards - December 12, 2001

1 coming. Tony, Anna, and all the rest of you-all for
2 coming out here tonight. At least we know people who
3 we can go to. We have a relationship with them now.
4 And Mr. DeLloyd Parker.

5 *AN AUDIENCE MEMBER:* Howard, tell us
6 how this is going to be done, so we have an idea.
7 What's going to happen?

8 *MR. JEFFERSON:* I will let Yolanda
9 tell you who to call about that. She promised we are
10 going to get a committee and we're going to bring
11 some of the problems to it. And Tony -- Yolanda, do
12 you want do tell them what's going to happen to the
13 data from this?

14 *MS. SMITH:* It will be forwarded to
15 the NAACP, the Justice Department, the Coalition for
16 Black Civic Participation, to the -- the Secretary of
17 State, as well as many other individuals in an effort
18 to address those situations, address the many
19 complaints that we received today so we don't have
20 those problems again.

21 *AN AUDIENCE MEMBER:* Where can the
22 general public get a chance to get this?

23 *MS. SMITH:* It is very costly, but we
24 will be able to provide the information. The NAACP
25 office we will have a copy.

Ada Edwards - December 12, 2001

1 MR. PARKER: The information has names
2 and addresses on them and phone numbers, so we can't
3 give them out to the general public, because it's
4 private, you know. But we can give you --

5 AN AUDIENCE MEMBER: The hearing is a
6 public hearing. So we heard it.

7 MR. PARKER: I'm not talking about
8 that, brother, I'm talking about names and phone
9 numbers of the people cannot be given unless they
10 allow this. But you can get the data.

11 MR. JEFFERSON: Let me tell you, we
12 will try to find a way to get the meat of the thing
13 to the public. I don't know how we're going to do
14 that, but we will let them know the results.

15 We're going to put some of it on the
16 web site, NAACP web site. We may be able to put some
17 in some of the libraries around here. But we have a
18 program on the radio, KCOH. We will announce how we
19 can do that. That is a good question.

20 Thank you all very much. Thank you
21 all for coming, and good night.

22 (END OF PROCEEDINGS)

23
24
25

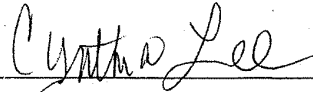
Voter Irregularity Hearing
December 12, 2001

1 STATE OF TEXAS
2 COUNTY OF HARRIS
3

4 I, CYNTHIA J. LEE, Certified Court Reporter in
5 and for the State of Texas, do hereby certify that
6 the above and foregoing contains a true and correct
7 transcription of all portions of evidence and other
8 proceedings requested by the parties to be included
9 in this volume of the Reporter's Record, all of which
10 occurred at Shape Community Center and were reported
11 by me.

12 I further certify that this Record of the
13 proceedings truly and correctly reflects a record of
14 the proceedings.

15 I further certify that the cost of the record was paid by
16 the NAACP.

17 
18

19 CYNTHIA J. LEE, CSR

20 Texas CSR 3732
21 Court Reporter
22 12207 Carrswold Drive
Houston, Texas 77071
23 (713) 777-4032
24 Certificate Expires 12-31-03
25



**NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
SOUTHWESTERN REGION VI**

3003 South Loop West, Suite 500, Houston, Texas 77054 (713) 662-2727 Fax: (713) 661-5982

November 27, 2001

JULIAN BOND
Chairman, National Board

KWEISI MFUME
President/ CEO

KERYL B. DOUGLAS
Regional Director

DORA R. GRIFFIN
Regional Youth Field Director

REGION VI
*Arkansas
Louisiana
New Mexico
Oklahoma
Texas*

Hon. Beverly B. Kaufman
Harris County Clerk
Harris County Clerk's Office
1001 Preston
Houston, Texas 77002

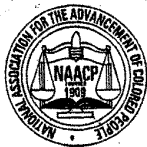
**RE: INVESTIGATION OF NOVEMBER 6TH ELECTION
COMPLAINTS**

Dear Ms. Kaufman;

During the November 6th, 2001 Elections, the NAACP Region VI Office and other community Voter Empowerment coalition partners received numerous complaints. We learned that on Election Day, several qualified voters telephoned Harris County Clerk's Office and were told by employees of your office that Harris County Clerk's Office had not designated a voting location for several Precincts hardest hit by flood damage (the floods of June or July 2001). Additionally, the NAACP received complaints that qualified voters were told by employees of your office that the voter could not vote on Election Day because they recently moved to a new residence within Harris County. The NAACP is now conducting an investigation of these and other similar complaints and would like an opportunity to visit with you regarding these and other matters pertaining to the protection of voters' rights in Harris County elections.

Harris County Clerk's Office is assigned with the task of administering county and state elections. Therefore, your office is responsible for assigning polling locations for all the Precincts in the County and for informing qualified voters of their rights to cast a ballot in an election. Qualified voters have a right under the Voting Rights Act and the Motor Voter Law to cast their ballot on election day at a polling place within their Precinct. Furthermore, qualified voters who move to another residence within the county are required to register within their new precinct, but they can still cast a full ballot at their previous precinct if their registration has not become effective in their new precinct. Based on the complaints the NAACP received, Harris County may have committed serious violations of the Voting Rights Act, the Motor Voter Law, and Texas Election Laws.

PREPARING TOMORROW'S LEADERS TODAY



"HARRIS COUNTY VOTER ASSISTANCE TASK FORCE" LAUNCHED
Community Groups Coalesce in Response to Allegations by Voters of Intimidation

A coalition of human rights, civil liberties, and labor groups today announced the formation of the Harris County Voter Assistance Task Force, an effort designed to educate voters about their rights and investigate claims of voter intimidation. The task force, which includes the NAACP, LULAC, the Houston Chapter of the ACLU, the American Jewish Committee, the AFL-CIO, the Houston Federation of Teachers, the Afro American Sheriff Deputy League, and the League of Women Voters, was formed in response to reports from citizens who felt intimidated by persons who claimed to be investigating petitions filed by judicial candidates to place their names on the March primary ballot.

The alleged actions include:

- appearing unannounced at the residents' homes after dark on a Saturday
- failing to identify themselves
- claiming to be affiliated with the campaign of a candidate whose petition the voter had signed
- showing what appeared to be a badge
- asserting that they were investigating fraud
- asking the voter to sign a form verifying their signature on the petition

3822

HOUSTON POLICE DEPARTMENT

Incident No. 165700701C

Title ASSAULT

Address 3003 S. LOOP W 500

Date 12-01-01

Officer's Name R.F. NINO

Unit No. 15E42E

PAT-0055

3823



**NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
SOUTHWESTERN REGION VI**

3003 South Loop West, Suite 500, Houston, Texas 77054 (713) 662-2727 Fax: (713) 661-5982

FOR IMMEDIATE RELEASE

December 1, 2001

**NAACP VOTER EMPOWERMENT WORKER
FILES ASSAULT CHARGES AGAINST
ELECTION OFFICIAL**

JULIAN BOND
Chairman, National Board

KWEISI MFUME
President/ CEO

KERYL B. DOUGLAS
Regional Director

DORA R. GRIFFIN
Regional Youth Field Director

REGION VI
Arkansas
Louisiana
New Mexico
Oklahoma
Texas

An NAACP Voter Empowerment Worker filed an assault charge against a Houston County Election Official. Melody Rames, working for the NAACP as a Voter Empowerment Volunteer, reported that while assisting a voter to the polling station, she was, without provocation and/or prior warning, pushed, shoved and verbally abused by an alternate precinct judge.

Claude Foster, Region VI & Texas State Voter Empowerment Coordinator said: "This is only one of many incidents reported to the NAACP Region VI Voter Empowerment Office by NAACP workers while providing assistance to voters.

Keryl Douglas, Region VI Voter Empowerment Coordinator sent a letter on Thursday, November 27th to Beverly Kaufman, Harris County Clerk, to express concerns that the Region VI Office and the Houston Chapter of the National Coalition on Black Civic Participation had received from voters during the November 6th 2001 General Election. In the same letter, she requested a meeting with Beverly Kaufman to discuss matters of concern and offer assistance in resolving and avoiding voter disenfranchisement or voter difficulties during the December 1, 2001 election. Community Leaders were shocked to learn that over 174 precincts had been changed from the November 6th general election to the December 1st runoff. Howard Jefferson, Houston Branch NAACP President, warned officials at the meeting that there would be mass confusion at the polls if immediate measures were not taken to notify voters of the changes. In an effort to avoid confusion and assist voters in exercising their constitutional right to vote, the NAACP in collaboration with the National Coalition on Black Civic Participation utilized trained volunteers to monitor polling sites to help ensure full voter participation at the polls.

Contacts: Keryl Douglas, NAACP Region VI Director, Mobile: 713-858-2560, Claude Foster, Region VI Voter Empowerment Coordinator, 713-662-2727, Howard Jefferson, Houston NAACP Branch President, 713-526-3389.

PREPARING TOMORROW'S LEADERS TODAY

MINORITY VOTER INTIMIDATION REPORT FORM

Use this form for taking information regarding allegations of voter intimidation. Get as much information as possible, and use the back of the form to fill in details that do not fit under the listed categories.

First, get reference information on the caller:NAME: Nobody Ramos PHONE #:() _____

STREET ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

Next, find out where the conduct in question is taking place:

If the conduct is taking place before election day, be sure to get as much information about the location as possible. In particular, ask the caller for:

STATE: _____ CITY: _____

ELECTION DISTRICT: _____ PRECINCT: _____

If the conduct is occurring at a polling place on election day, ask the caller to get the phone number of the polling location and the name of any official ballot-watchers, especially any representatives from the state or local board of elections, if available.

NAME & TITLE: Forester Elementary PHONE #:() _____

DISTRICT: _____ PRECINCT: _____

(This information will be available from the polling place.)

Next, get a quick description of the caller's complaint.

Try to summarize the allegations briefly in the space below; there are more detailed questions about certain aspects of the allegations on the following pages.

NOTE: If the caller was turned away from a polling place, removed from a registration list, or was otherwise prevented from voting by election officials themselves, there may be implications under the National Voter Registration Act of 1993, commonly referred to as "Motor Voter." Specific questions about Motor Voter violations are on the last page, but be sure to go through all the questions with the caller anyway; Motor Voter violations could indicate other violations.

Your Name: Nobody Ramos Time & Date of Call: 2:00

Please describe any instances of intimidation or threats related to either registering to vote or actually voting.

I was accompanying a voter to the polls. I went inside the polling place with her. I was speaking casually to the Election Judge Ulysses Dotson about the election. ~~She~~ I observed the person I brought sign in and vote, as she was about to place the ballot in the box, I asked her if everything was ok, she replied yes and put the ballot in the box. At that same time a man ran across the room and put

Please describe any efforts made to persuade you or others not to vote, even if the persuasion was not intimidating, threatening, or forceful.

his hand on my shoulder and began pushing me, saying "you have to get out of here now, get out now", while pushing me out the door. I asked him why, what did I do? he went and got a paper and showed & read me a sentence that said "There is to be no loitering at the polling place". I told him I was not loitering, that I was accompan-

Please describe any aspects of the conduct that would indicate a racial or ethnic motivation for the activities. Be as specific as possible -- if there were any specific racial or ethnic slurs or offensive language used, please list those here.

my friend to vote he said I could not come in there. I left the premises and called the NAACP office. ~~The man was~~ I asked the man his name and he replied John Herbert, he is the ~~assistant~~ alternate precinct judge.

MINORITY VOTER INTIMIDATION REPORT FORM

Use this form for taking information regarding allegations of voter intimidation. Get as much information as possible, and use the back of the form to fill in details that do not fit under the listed categories.

First, get reference information on the caller:

NAME: Gloria McCrea PHONE #: (281) 444-2136
STREET ADDRESS: 7730 Whispering Wood Lane
CITY: Houston STATE: _____ ZIP CODE: 77086

Next, find out where the conduct in question is taking place:

If the conduct is taking place before election day, be sure to get as much information about the location as possible. In particular, ask the caller for:

STATE: Houston, Texas CITY: Houston
ELECTION DISTRICT: Willie B. Ermel PRECINCT: 628
7703 Woodsmarts Trail

If the conduct is occurring at a polling place on election day, ask the caller to get the phone number of the polling location and the name of any official ballot-watchers, especially any representatives from the state or local board of elections, if available.

NAME & TITLE: Bob Baeh PHONE #: () _____
DISTRICT: Willie B. Ermel PRECINCT: 628
(This information will be available from the polling place.) 281-591-3668
Egg's Island Elem

Next, get a quick description of the caller's complaint.

Try to summarize the allegations briefly in the space below; there are more detailed questions about certain aspects of the allegations on the following pages.

George McCrea, Vanessa Hamilton & Gloria. Normally vote at Egg's Island, told to go to another location and was told not to vote. Vanessa & Gloria from Egg's Island & needed to vote. Told they were outside the limits of city.

NOTE: If the caller was turned away from a polling place, removed from a registration list, or was otherwise prevented from voting by election officials themselves, there may be implications under the National Voter Registration Act of 1993, commonly referred to as "Motor Voter." Specific questions about Motor Voter violations are on the last page, but be sure to go through all the questions with the caller anyway; Motor Voter violations could indicate other violations.

Your Name: Granger Martin Time & Date of Call: 6:30 12-1-2001

MINORITY VOTER INTIMIDATION REPORT FORM

Use this form for taking information regarding allegations of voter intimidation. Get as much information as possible, and use the back of the form to fill in details that do not fit under the listed categories.

First, get reference information on the caller:

NAME: Leonard Freeman PHONE #: (713) 807-8053
(713) 857-1859
STREET ADDRESS: 2708 Wichita
CITY: Houston STATE: TX ZIP CODE: 77004

Next, find out where the conduct in question is taking place:

If the conduct is taking place before election day, be sure to get as much information about the location as possible. In particular, ask the caller for:

STATE: Texas CITY: Houston
ELECTION DISTRICT: _____ PRECINCT: St. Mary's Church

If the conduct is occurring at a polling place on election day, ask the caller to get the phone number of the polling location and the name of any official ballot-watchers, especially any representatives from the state or local board of elections, if available.

NAME & TITLE: Precinct Judge PHONE #: ()
Denkins-Smith
DISTRICT: _____ PRECINCT: 210
(This information will be available from the polling place.)

Next, get a quick description of the caller's complaint.

Try to summarize the allegations briefly in the space below; there are more detailed questions about certain aspects of the allegations on the following pages.

Tried to vote and Precinct Judge told him he was not on rolls. ~~He~~ told he could not vote in elections.

NOTE: If the caller was turned away from a polling place, removed from a registration list, or was otherwise prevented from voting by election officials themselves, there may be implications under the National Voter Registration Act of 1993, commonly referred to as "Motor Voter." Specific questions about Motor Voter violations are on the last page, but be sure to go through all the questions with the caller anyway; Motor Voter violations could indicate other violations.

Your Name: Monique Shelby Time & Date of Call: 6:00 p.m. December 1, 2001

713 222-2222

MINORITY VOTER INTIMIDATION REPORT FORM

Use this form for taking information regarding allegations of voter intimidation. Get as much information as possible, and use the back of the form to fill in details that do not fit under the listed categories.

First, get reference information on the caller:

NAME: Bernadine Thornu PHONE #: (281) 498-6142
 STREET ADDRESS: 9630 Benythos Dr.
Houston STATE: TX ZIP CODE: 77023

Next, find out where the conduct in question is taking place:

If the conduct is taking place before election day, be sure to get as much information about the location as possible. In particular, ask the caller for:

STATE: TX CITY: Houston
 ELECTION DISTRICT: _____ PRECINCT: 428

If the conduct is occurring at a polling place on election day, ask the caller to get the phone number of the polling location and the name of any official ballot-watchers, especially any representatives from the state or local board of elections, if available.

NAME & TITLE: Holub Middle School Larry Bynum Precinct Judge
 PHONE #: ()
 DISTRICT: Holub Middle School PRECINCT: 428
 (This information will be available from the polling place.)

Next, get a quick description of the caller's complaint.

Try to summarize the allegations briefly in the space below; there are more detailed questions about certain aspects of the allegations on the following pages. Caller WAS Told by precinct judge that she couldn't vote b/c she was not in city limits. She voted at that same place for 12 yrs.

NOTE: If the caller was turned away from a polling place, removed from a registration list, or was otherwise prevented from voting by election officials themselves, there may be implications under the National Voter Registration Act of 1993, commonly referred to as "Motor Voter." Specific questions about Motor Voter violations are on the last page, but be sure to go through all the questions with the caller anyway; Motor Voter violations could indicate other violations.

Your Name: Aris Wooten Time & Date of Call: 12.17.01-01

MINORITY VOTER INTIMIDATION REPORT FORM

Use this form for taking information regarding allegations of voter intimidation. Get as much information as possible, and use the back of the form to fill in details that do not fit under the listed categories.

First, get reference information on the caller:

NAME: Lynn Craft PHONE #: (281) 873-8184
 STREET ADDRESS: 3000 Audrey Lane Apt 337
 CITY: Houston STATE: TX ZIP CODE: 77015

Next, find out where the conduct in question is taking place:

If the conduct is taking place before election day, be sure to get as much information about the location as possible. In particular, ask the caller for:

STATE: TX CITY: Houston
 ELECTION DISTRICT: _____ PRECINCT: _____

If the conduct is occurring at a polling place on election day, ask the caller to get the phone number of the polling location and the name of any official ballot-watchers, especially any representatives from the state or local board of elections, if available.

NAME & TITLE: Cimaron Elementary PHONE #: ()
 DISTRICT: _____ PRECINCT: 413
 (This information will be available from the polling place.)

Next, get a quick description of the caller's complaint.

Try to summarize the allegations briefly in the space below; there are more detailed questions about certain aspects of the allegations on the following pages.

Showed a list of signed names of the only people could vote. White people of same zip code were allowed to vote.

NOTE: If the caller was turned away from a polling place, removed from a registration list, or was otherwise prevented from voting by election officials themselves, there may be implications under the National Voter Registration Act of 1993, commonly referred to as "Motor Voter." Specific questions about Motor Voter violations are on the last page, but be sure to go through all the questions with the caller anyway; Motor Voter violations could indicate other violations.

Your Name: Aris Wooten Time & Date of Call: 6:30 12-01-01

MINORITY VOTER INTIMIDATION REPORT FORM

Use this form for taking information regarding allegations of voter intimidation. Get as much information as possible, and use the back of the form to fill in details that do not fit under the listed categories.

First, get reference information on the caller:

NAME: Raguel Marion PHONE #: (713) 787-7822
STREET ADDRESS: 1445 Lakeside Estate Dr. Apt 2603
CITY: Houston STATE: _____ ZIP CODE: 77042

Next, find out where the conduct in question is taking place:

If the conduct is taking place before election day, be sure to get as much information about the location as possible. In particular, ask the caller for:

STATE: TX CITY: Houston
ELECTION DISTRICT: _____ PRECINCT: 0565

If the conduct is occurring at a polling place on election day, ask the caller to get the phone number of the polling location and the name of any official ballot-watchers, especially any representatives from the state or local board of elections, if available.

NAME & TITLE: Louise Clark PHONE #: ()

DISTRICT: Joseph C. Jenkins PRECINCT: 0565

(This information will be available from the polling place.)

Next, get a quick description of the caller's complaint.

Try to summarize the allegations briefly in the space below; there are more detailed questions about certain aspects of the allegations on the following pages.

The women would not let her vote. Did not try to help her find out what precinct to vote in and ultimately was discouraging.

NOTE: If the caller was turned away from a polling place, removed from a registration list, or was otherwise prevented from voting by election officials themselves, there may be implications under the National Voter Registration Act of 1993, commonly referred to as "Motor Voter." Specific questions about Motor Voter violations are on the last page, but be sure to go through all the questions with the caller anyway; Motor Voter violations could indicate other violations.

Your Name: Aris Wooten Time & Date of Call: _____

MINORITY VOTER INTIMIDATION REPORT FORM

Use this form for taking information regarding allegations of voter intimidation. Get as much information as possible, and use the back of the form to fill in details that do not fit under the listed categories.

First, get reference information on the caller:

NAME: Tamara Walker PHONE #: (13) 774-3511
 STREET ADDRESS: 7700 Corporate Dr. Apt 1105
 CITY: Houston STATE: TX ZIP CODE: 77036

Next, find out where the conduct in question is taking place:

If the conduct is taking place before election day, be sure to get as much information about the location as possible. In particular, ask the caller for:

STATE: _____ CITY: _____
 ELECTION DISTRICT: _____ PRECINCT: _____

If the conduct is occurring at a polling place on election day, ask the caller to get the phone number of the polling location and the name of any official ballot-watchers, especially any representatives from the state or local board of elections, if available.

NAME & TITLE: _____ PHONE #: () _____

DISTRICT: Betty Best Elementary PRECINCT: 736
 (This information will be available from the polling place.)

Next, get a quick description of the caller's complaint.

Try to summarize the allegations briefly in the space below; there are more detailed questions about certain aspects of the allegations on the following pages.

Drive 30 miles to vote from original precinct and was again told she couldn't vote. Never allowed to vote today.

NOTE: If the caller was turned away from a polling place, removed from a registration list, or was otherwise prevented from voting by election officials themselves, there may be implications under the National Voter Registration Act of 1993, commonly referred to as "Motor Voter." Specific questions about Motor Voter violations are on the last page, but be sure to go through all the questions with the caller anyway; Motor Voter violations could indicate other violations.

Your Name: Aris Wooten Time & Date of Call: 12:58 12-01-01

MINORITY VOTER INTIMIDATION REPORT FORM

Use this form for taking information regarding allegations of voter intimidation. Get as much information as possible, and use the back of the form to fill in details that do not fit under the listed categories.

First, get reference information on the caller:

NAME: Kecia (A) Small White PHONE #: (713) 816-5203
STREET ADDRESS: 12800 Dunbar #601
Houston STATE: TX ZIP CODE: 77085

Next, find out where the conduct in question is taking place:

If the conduct is taking place before election day, be sure to get as much information about the location as possible. In particular, ask the caller for:

STATE: Ford Elementary CITY: _____

ELECTION DISTRICT: _____ PRECINCT: 0337

? Kindra Troncos said she couldn't vote
If the conduct is occurring at a polling place on election day, ask the caller to get the phone number of the polling location and the name of any official ballot-watchers, especially any representatives from the state or local board of elections, if available.

NAME & TITLE: _____ PHONE #: ()

DISTRICT: _____ PRECINCT: _____
(This information will be available from the polling place.)

Next, get a quick description of the caller's complaint.

Try to summarize the allegations briefly in the space below; there are more detailed questions about certain aspects of the allegations on the following pages. They asked her name what asking for I.D. & told her she was not eligible to vote, she received the

NOTE: If the caller was turned away from a polling place, removed from a registration list, or was otherwise prevented from voting by election officials themselves, there may be implications under the National Voter Registration Act of 1993, commonly referred to as "Motor Voter." Specific questions about Motor Voter violations are on the last page, but be sure to go through all the questions with the caller anyway; Motor Voter violations could indicate other violations.

Your Name: Sharon (volunteer) Time & Date of Call: 2pm 10/1/01

Challenge Ballot, & when she tried to submit the ballot, they rejected it saying she could not vote, after they

MINORITY VOTER INTIMIDATION REPORT FORM

Use this form for taking information regarding allegations of voter intimidation. Get as much information as possible, and use the back of the form to fill in details that do not fit under the listed categories.

First, get reference information on the caller:

NAME: Anna Coover PHONE #: (713) 455-9448
 STREET ADDRESS: 6095 Normandy Apt 43
 CITY: Houston STATE: TX ZIP CODE: 77015

Next, find out where the conduct in question is taking place:

If the conduct is taking place before election day, be sure to get as much information about the location as possible. In particular, ask the caller for:

STATE: Houston CITY: TX
 ELECTION DISTRICT: _____ PRECINCT: 266

If the conduct is occurring at a polling place on election day, ask the caller to get the phone number of the polling location and the name of any official ballot-watchers, especially any representatives from the state or local board of elections, if available.

NAME & TITLE: Cimaron Elementary PHONE #: ()
 DISTRICT: _____ PRECINCT: 266
 (This information will be available from the polling place.)

Next, get a quick description of the caller's complaint.

Try to summarize the allegations briefly in the space below; there are more detailed questions about certain aspects of the allegations on the following pages.

Told she could not vote b/c she wasn't in the county. White people were allowed to vote though.

NOTE: If the caller was turned away from a polling place, removed from a registration list, or was otherwise prevented from voting by election officials themselves, there may be implications under the National Voter Registration Act of 1993, commonly referred to as "Motor Voter." Specific questions about Motor Voter violations are on the last page, but be sure to go through all the questions with the caller anyway; Motor Voter violations could indicate other violations.

Your Name: Aris Wroten Time & Date of Call: 6:28 12-01-01

MINORITY VOTER INTIMIDATION REPORT FORM

Use this form for taking information regarding allegations of voter intimidation. Get as much information as possible, and use the back of the form to fill in details that do not fit under the listed categories.

First, get reference information on the caller:

NAME: Anita Moore + Lawrence Moore PHONE #: (713) 507-8733
 STREET ADDRESS: 14611 Turning Point Ct.
 CITY: Houston STATE: TX ZIP CODE: 77015

Next, find out where the conduct in question is taking place:

If the conduct is taking place before election day, be sure to get as much information about the location as possible. In particular, ask the caller for:

STATE: TX CITY: Houston
 ELECTION DISTRICT: _____ PRECINCT: 2646

If the conduct is occurring at a polling place on election day, ask the caller to get the phone number of the polling location and the name of any official ballot-watchers, especially any representatives from the state or local board of elections, if available.

NAME & TITLE: _____ PHONE #: () _____

DISTRICT: _____ PRECINCT: 2646
 (This information will be available from the polling place.)

Next, get a quick description of the caller's complaint.

Try to summarize the allegations briefly in the space below; there are more detailed questions about certain aspects of the allegations on the following pages.

Saw a list of hand written names and was told that those people's votes wouldn't count.
Also her husband was on that list and she was
 NOTE: If the caller was turned away from a polling place, removed from a registration list, or told she was otherwise prevented from voting by election officials themselves, there may be implications under the National Voter Registration Act of 1993, commonly referred to as "Motor Voter." was Specific questions about Motor Voter violations are on the last page, but be sure to go through Not all the questions with the caller anyway; Motor Voter violations could indicate other violations. Allegation to VOTF

Your Name: Aris Wooten Time & Date of Call: 5:58-12-1-01

3835

Please describe any instances of intimidation or threats related to either registering to vote or actually voting.

The precinct or school
called the police.

Please describe any efforts made to persuade you or others not to vote, even if the persuasion was not intimidating, threatening, or forceful.

Black people were not being allowed
to vote.

Please describe any aspects of the conduct that would indicate a racial or ethnic motivation for the activities. Be as specific as possible -- if there were any specific racial or ethnic slurs or offensive language used, please list those here.

MINORITY VOTER INTIMIDATION REPORT FORM

Use this form for taking information regarding allegations of voter intimidation. Get as much information as possible, and use the back of the form to fill in details that do not fit under the listed categories.

First, get reference information on the caller:

NAME: Leonard Freeman PHONE #: (713) 807-8053
(713) 857-1859
STREET ADDRESS: 2708 Wichita
CITY: Houston STATE: TX ZIP CODE: 77004

Next, find out where the conduct in question is taking place:

If the conduct is taking place before election day, be sure to get as much information about the location as possible. In particular, ask the caller for:

STATE: Texas CITY: Houston
ELECTION DISTRICT: _____ PRECINCT: St. Mary Church

If the conduct is occurring at a polling place on election day, ask the caller to get the phone number of the polling location and the name of any official ballot-watchers, especially any representatives from the state or local board of elections, if available.

NAME & TITLE: Precinct Judge PHONE #: ()
Denning Smith
DISTRICT: _____ PRECINCT: 010
(This information will be available from the polling place.)

Next, get a quick description of the caller's complaint.

Try to summarize the allegations briefly in the space below; there are more detailed questions about certain aspects of the allegations on the following pages.

Tried to vote and Precinct Judge told him he was not on rolls. He told he could not vote in elections.

NOTE: If the caller was turned away from a polling place, removed from a registration list, or was otherwise prevented from voting by election officials themselves, there may be implications under the National Voter Registration Act of 1993, commonly referred to as "Motor Voter." Specific questions about Motor Voter violations are on the last page, but be sure to go through all the questions with the caller anyway; Motor Voter violations could indicate other violations.

Your Name: Monie Zebry Time & Date of Call: 11:00 p.m. December 11, 2001

713 282-2822

3837

Did you see any armed, or official-looking "security" personnel at your polling place?

Have you or your neighbors or friends received any suspicious mail or leaflets relating to voter eligibility or the repercussions of illegal voting? (If yes, describe the activity here and ask the caller to retain or collect copies of any actual mailpieces received.)

Did you see any signs or leaflets at your polling place threatening arrest or deportation for anyone violating election laws? (Again, if possible collect & retain copies of the actual materials.)

Please describe any instances of intimidation or threats related to either registering to vote or actually voting.

Claimant states that Precinct Judge tried to push a voter registration card to him & stated He was not registered & could not vote in this election. Rep. Garnet Coleman came in & corrected Precinct Judge to give voter a right to cast a challenged number.

Please describe any efforts made to persuade you or others not to vote, even if the persuasion was not intimidating, threatening, or forceful.

He observed many voters coming out of polls polling location with voters registration cards who were told they were not registered to vote.

Please describe any aspects of the conduct that would indicate a racial or ethnic motivation for the activities. Be as specific as possible -- if there were any specific racial or ethnic slurs or offensive language used, please list those here.

3839

Did you see any armed, or official-looking "security" personnel at your polling place?

Have you or your neighbors or friends received any suspicious mail or leaflets relating to voter eligibility or the repercussions of illegal voting? (If yes, describe the activity here and ask the caller to retain or collect copies of any actual mailpieces received.)

Did you see any signs or leaflets at your polling place threatening arrest or deportation for anyone violating election laws? (Again, if possible collect & retain copies of the actual materials.)

MINORITY VOTER INTIMIDATION REPORT FORM

Use this form for taking information regarding allegations of voter intimidation. Get as much information as possible, and use the back of the form to fill in details that do not fit under the listed categories.

First, get reference information on the caller:

NAME: Malissie M. Price PHONE #: (832) 577-260
STREET ADDRESS: 13155 Woodforest Blvd #1010
CITY: Houston STATE: TX ZIP CODE: 77015

Next, find out where the conduct in question is taking place:

If the conduct is taking place before election day, be sure to get as much information about the location as possible. In particular, ask the caller for:

STATE: TX CITY: Houston
ELECTION DISTRICT: _____ PRECINCT: D354

If the conduct is occurring at a polling place on election day, ask the caller to get the phone number of the polling location and the name of any official ballot-watchers, especially any representatives from the state or local board of elections, if available.

NAME & TITLE: Cimarron Elementary PHONE #: ()
DISTRICT: _____ PRECINCT: O 3546
(This information will be available from the polling place.)

Next, get a quick description of the caller's complaint.

Try to summarize the allegations briefly in the space below; there are more detailed questions about certain aspects of the allegations on the following pages.

said they could not vote bc they were not in that county. They claimed they ran out of ballots + called

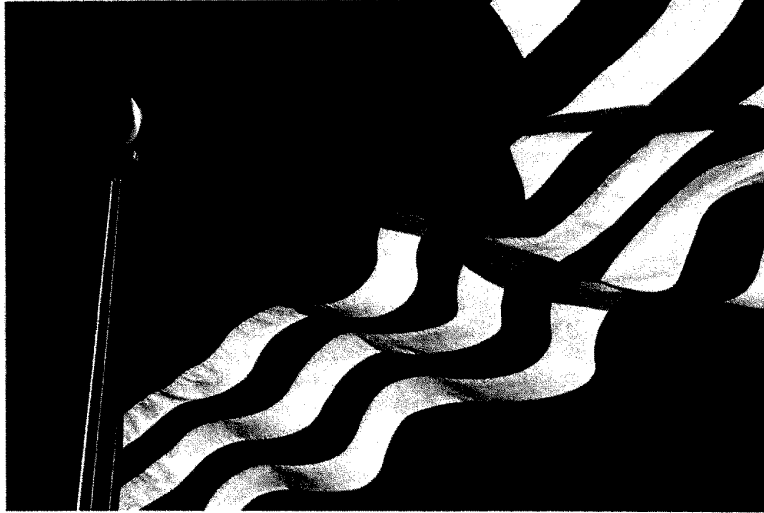
NOTE: If the caller was turned away from a polling place, removed from a polling place, or otherwise prevented from voting by election officials, then under the National Voter Registration Act of 1993, commonly known as the Motor Voter Act, specific questions about Motor Voter violations are on the last page of this form. If you have any questions about Motor Voter violations, please call the National Voter Assistance Center at 1-800-438-3839.

Your Name: Aris Wooden Time & Date of Call: _____

713
721-1870
Cinee FRANK
12500 Dunlap #116
Houston, TX
77035

3841

Penny Few
Exhibit 1



APACHE COUNTY
ANNUAL STATUS REPORT/COPY
FEBRUARY 1, 2005
MAILED MARCH 2, 2005

APACHE COUNTY ANNUAL STATUS REPORT

February 1, 2005

I. OUTREACH WORKERS

- A. Two, full-time, bilingual employees are on staff. If necessary, temporary employees are trained to assist in disseminating materials.
- B. Deputy Registrars
 - I. Each employee is trained as a Deputy Registrar to conduct voter registration and early voting drives. Additionally, each employee is also certified with the Navajo Nation Elections to more adequately assist each voter in both Navajo Nation and Arizona State election information.
- C. Chapter Visits
 - I. Regular visits to each chapter house are more frequent during the election cycle with ongoing regular visits throughout the year to help assist the voters and keep the citizens updated on election and voter registration information. During the year, presentations using both flip-charts, role play and PowerPoint presentations are given for added interest.
 - II. Presentations at schools, community meetings, etc. have also been useful in creating a fun, learning atmosphere. Kids Voting has been strongly encouraged through individual school classroom activities with games for the added spark. Incorporating election learning has been well received and has increased the number of questions posed by the audiences, both young and old. Kids Voting in the presidential election was well received with most of the schools in Apache County participating.
- D. Record Keeping
 - I. Each employee keeps a daily log of visits and contacts as he/she disseminates the information. A monthly report is submitted to the election director for monitoring of implemented programs.

II. TRAINING

- A. Poll Workers
 - I. Within 45 days of each election, county poll workers are trained extensively with manuals, presentations, question & answer periods. The training is done throughout the county to assure that each poll worker has the opportunity to attend. The training classes last approximately 4-6 hours, depending on the length and content of the ballot. Poll workers are compensated for the class time as well as mileage reimbursement.
- B. Translators
 - I. The training of the translators is extremely intense during a full-day training. Because most precincts have three assigned translators, who may attend a training class which is offered at various places within the jurisdictions. Smaller classes will ensure that each translator is able to question any information for clarity in a small-class setting. Translators are compensated for class time as well as mileage reimbursement.

- II. Each translator receives an audio cassette recording, written translation and also is given the opportunity to check-out an audio cassette recorder to play-back the recording. The remote areas of the county prohibit some workers from having this available to them in their homes. This was a trial project used during the March 11, 2003 election and was welcomed with great enthusiasm. All recorders were returned to be re-used in later elections. Role playing and reading out loud the translations has proven beneficial in determining those who are having trouble with the translations. During the 2004 Presidential Election, each polling place had available a cassette player and translation tape in the event a voter needed additional assistance.
- III. Adequate notice by mail, radio and newspaper ads give each translator the dates and times for each training class.
- IV. Monitors, judges, clerks and marshals are trained during the poll worker training day, while the translators and inspectors attend additional training classes.

III. ADVERTISEMENTS

- A. Chapter Houses
 - I. Each chapter house is equipped with a bulletin board purchased by the county to advertise upcoming elections or any information that will assist the communities' involvement. Periodic checks to assure only the information necessary is available on these boards. A record is kept of those chapters who may need more frequent visits.
 - II. Posters are placed at post offices, schools, justice of the peace offices, sub-offices, etc. as well as any other building that is frequented by community members, in an effort to make Apache County Elections more recognized, county-wide.
- B. Radio
 - I. Radio stations KTNN and KNDN are used to disburse the information to the public, be it important election dates or community forums. We have also begun efforts to use a local rock station to target the younger voters as well.
 - II. KNNB, the White Mountain Apache radio station, has become involved in the election announcements and was instrumental in the increased voter turnout during the 2004 Presidential Preference Election.
- C. Newspaper
 - I. Navajo Times and the Gallup Independent continue to cover the events surrounding elections. Also, any news-worthy article dealing with the happenings in our county have been included in their editions. They have been more than willing to assist in Public Service announcements.

IV. SATELLITE OFFICES

- A. County District Offices
 - I. Apache County has two county district offices which are on Reservation Land, District I, located in Chinle and District II, located in Ganado. These offices are available to the Outreach Workers. Equipment and space may be used as needed.
 - II. The Ganado Sub-office has provided election office space for the past few months and will continue to be permanent space for the outreach workers.
- B. County District Employees
 - I. The full-time employees at each district office are trained to assist the public in election procedures, i.e., voter registration, election deadlines, etc. This information is updated regularly with forms and supplies kept current.

V. DEPUTY REGISTRARS

- A. Chapter, NEA and Navajo Nation Officials have been invited to assist as Deputy Registrars as this is an ongoing process. Most have been willing to be involved in the process.
- B. State and Navajo Nation Voter Registration Drives were conducted during the Presidential Election at chapter houses as well as other locations. Apache County has seventy-six appointed DR's with over one hundred trained but didn't want to be appointed.
- C. Training sessions are held to update DR's in changing laws regarding elections and voter registration and also to encourage the workers in getting involved in their community or precinct.
- D. A listing of each registrar is kept in each chapter house with any pertinent information. This information is updated when necessary.
- E. Most chapter staff members are cooperative and willing to assist the community during business hours. Each chapter has an updated voter listing, voter registration forms and early voting request forms to assist in helping the public. Self-addressed, stamped envelopes are also placed in each facility to return to the Recorder.

VI. DEPUTY REGISTRAR TRAINING CLASSES

- A. Registrars are trained without compensation with the training classes conducted in Navajo and/or English.
- B. Each registrar is trained in translation of the registration and absentee/early materials.

VII. ACCEPT COLLECT CALLS

- A. Apache County happily accepts collect calls, to assist the caller in election-related information. In an effort to better serve the people, an '800' number is advertised on all out-going materials and advertisements.

VIII. NEA (Navajo Election Administration)

- A. All information is approved by the NEA prior to distributing, i.e., announcements (both radio and print), ballot translations, audio tapes, any other presentation information.
- B. All training schedules are provided to the NEA 10 days in advance.

IX. LANGUAGE GLOSSARY

- A. Any changes in the glossary are done through the committee with representatives from each entity. NEA will give final approval to any/all changes before disbursing updated copies

X. OUTREACH VISITS

- A. Regular meetings are scheduled and appear on agendas for the chapter visits. Presentations with flip charts, PowerPoint presentations, audio and other aids are used to better convey the information to the public.
- B. The presentations are given in the Navajo language as are most of the printed information.
- C. The political views of the outreach workers are kept un-biased and neutral at all times. Implementation to 'piggy-back' with the jurisdictions has been effective in that the outreach worker gives the factual ballot information and the jurisdictions are available to answer any additional questions that the public may have.

XI. NEWSPAPER

- A. The Gallup Independent and Navajo Times are continuing to offer excellent service in their publications and offer a 'certification of publishment' at the time the invoice is sent to our office.
- B. A printed request with the necessary information is faxed in a timely manner to the newspaper agency. All adds are tracked by the election director and filed upon completion, along with any invoices.

XII. RADIO

- A. KTNN and KNDN continue to offer the most listened to news and information spots to help disseminate the needed information.
- B. A prepared, approved audio tape is delivered to the radio stations to be distributed on air.

XIII. STATE AND COUNTY MONITOR EFFECTIVENESS

- A. Meetings are scheduled on Tri-State and Tri-County levels to discuss any issues that may need to be remedied. Any/all issues are handled by each county official to keep uniformity in the informational disbursement process.
- B. Tri-Counties work closely on translations and exchanges of information to better ensure uniformity in the disbursed information. While the meetings are still referred to as *Tri-County*, Gila County has become a mainstay at meetings, while collecting and preparing information in furthering their new Outreach Program.

- C. NEA officials are invited and usually attend these meetings to ensure that the translation matter is adhered to in the best possible manner.

XIV. ABSENTEE (EARLY) VOTING

- A. Ballot request forms are given to Chapter officials, County District Offices on the Navajo Nation, State offices, and the NEA office. The Outreach Worker has them with him/her at all times while traveling and presenting throughout the County. These forms are also available on the Apache County Website www.co.apache.az.us.
- B. Posters are created and distributed in as many visible places as possible to insure the public has ample notice of all elections.
- C. Early Voting drives are scheduled for the 33 days preceding an election and advertised on the radio, in the newspapers and posted at chapter houses, post offices and other pertinent locations.

XV. ELECTION DAY

- A. Apache County employs bilingual poll workers at each of the polling places; they have been adequately trained in ballot translation. Ongoing efforts are in place to constantly improve upon the workers who are required to perform this important duty.
- B. Each chapter has been requested by letter to help in securing poll workers who are capable of the translation and comprehension duties in relation to the election procedures and ballot translations.
- C. Each of the political parties, respectively, have been encouraged to help provide poll workers who reside in the precincts where it is difficult to have 'balanced' polls.
- D. NEA is sent a listing of all poll workers who have been approved to work in their respective precinct/chapter locations.
- E. When joint elections are held between the Navajo Nation and the County, all efforts are made to make certain that the poll workers are trained in County procedures and that a good working relationship is established between Navajo Nation and County officials for a smooth election day.
- F. Each polling place is monitored for effectiveness by a 'Troubleshooter'. This person is a county employee who has been trained in the election process and can identify and correct irregularities on-the-spot. This person also is responsible for assisting in delivery of any supplies to alleviate any unreasonable delays.

XVI. RECORD RETENTION

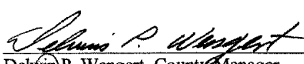
- A. Copies of tapes, posters and translations are kept with the information used in training classes and advertisements.
- B. Statistical records regarding voter registration, both by county-wide and precinct.
 - I. The number of voters on inactive list

- II. The number of voters reinstated at the polls and those reinstated by mail or re-registration.
- III. The number of requests for Absentee (Early) Ballots by precinct, itemized by mail and the location if processed in person. i.e., satellite office, recorder's office, fair, etc.
- IV. The number of ballots voted for Absentee (Early) Ballots by precinct, itemized by mail and the location if processed in person. i.e., satellite office, recorder's office, fair, etc.
- C. Records of all paid radio announcements, newspaper advertisements and election-related posters.
- D. Copies of pertinent information are sent to DOJ where appropriate.

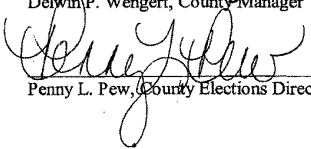
XVII. RESOLUTION OF CLAIMS

- A. Apache County is committed to providing the assistance to allow the Navajo people every opportunity to participate more fully in Federal, State, County and local elections for time unending. Whether formal requirements are in place is not the issue, but the service to the Navajo and Apache Communities will continue to be a priority to Apache County.

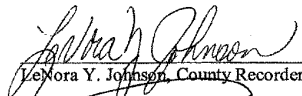
I have reviewed the information disclosed in the Apache County Status Report and authorize submission to the Department of Justice Civil Rights Division Voting Section.



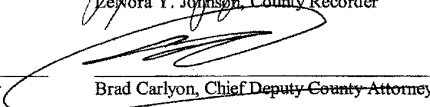
Delwin P. Wengert, County Manager



Penny L. Pew, County Elections Director



Lenora Y. Johnson, County Recorder



Brad Carlyon, Chief Deputy County Attorney

C
A
N
Y
O
N

ANNUAL REPORT

03	05	10	11	13	19	22	23	27	29	31	33	35	39	41	43	46	48	51	52	54	56

VOTER REGISTRATION

1st qtr totals	2268	1711	654	1175	892	2566	846	773	821	847	764	1381	589	1530	197	677	460	1069	181	725	988	649	6
2nd qtr totals	2306	1705	630	1124	845	2199	753	745	736	794	655	1372	554	1430	182	652	423	978	152	642	970	642	6
3rd qtr totals	2430	1922	656	1148	875	2416	785	849	779	868	699	1430	597	1546	188	684	436	1059	180	693	989	679	6
4th qtr totals	2438	1946	660	1169	917	2548	782	855	784	908	745	1446	596	1567	206	694	448	1073	187	728	1005	698	6
TOTALS	9472	7284	2600	4626	3632	11529	3266	3222	3178	3563	2660	5689	2333	6073	673	2707	1767	4180	680	2735	3672	2466	24

1st qtr totals	0	0	4	2	5	0	0	0	5	13	0	0	0	20	1	0	2	0	0	0	7	5	0
2nd qtr totals	38	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3rd qtr totals	124	217	26	24	30	217	32	104	43	74	44	59	33	116	6	32	13	81	28	51	29	37	0
4th qtr totals	8	24	4	21	42	132	7	6	5	40	46	16	9	21	18	10	12	14	7	35	6	19	0
TOTALS	170	241	17	48	77	169	45	57	63	67	65	72	42	57	43	54	37	55	15	95	40	61	0

1st qtr totals	30	47	0	0	3	4	0	1	0	0	1	1	1	1	1	2	0	0	0	0	0	1	1
2nd qtr totals	0	17	23	65	59	429	86	34	112	67	105	46	35	124	17	23	34	117	34	80	18	15	15
3rd qtr totals	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4th qtr totals	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTALS	30	64	23	65	63	433	86	34	112	67	105	46	35	124	17	23	34	117	34	80	18	15	15

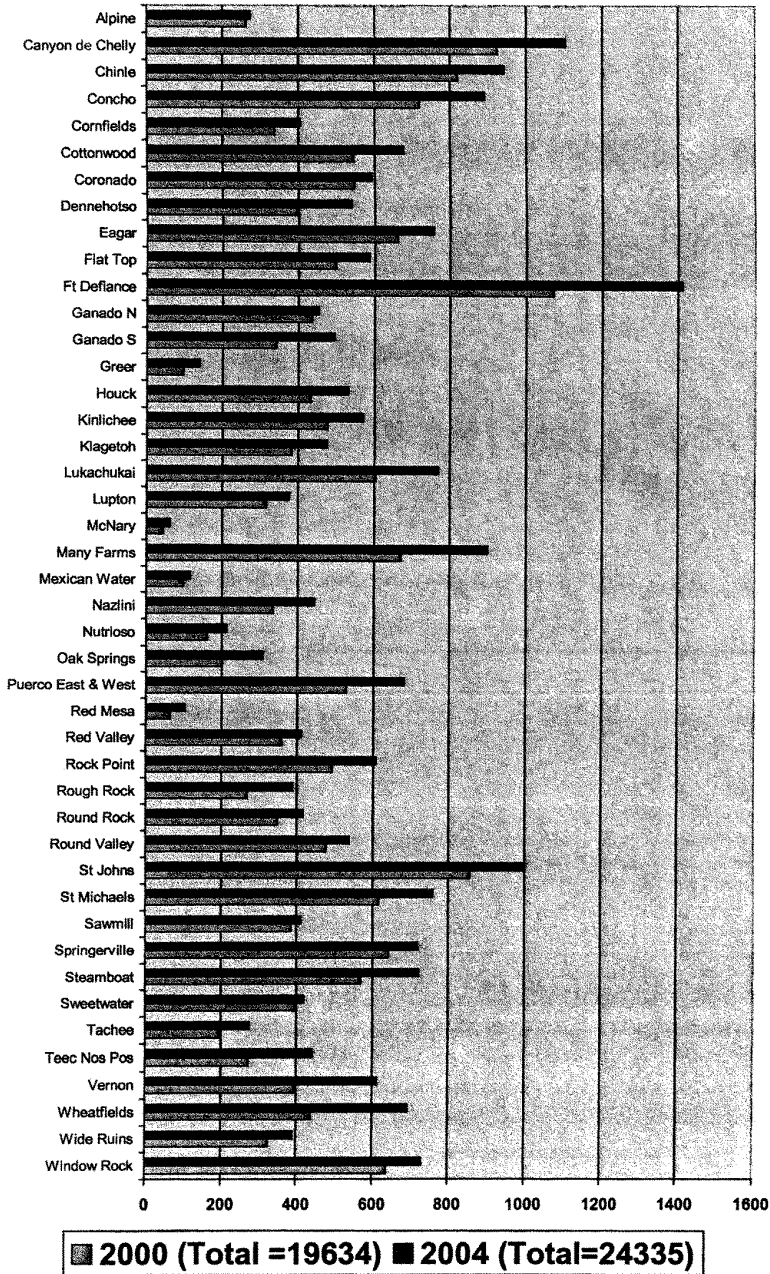
MAY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SEP	1	1	1	0	0	2	0	0	1	1	1	0	0	0	0	0	1	2	1	1	0	0	0
NOV	6	5	1	4	2	10	4	3	4	0	1	0	1	0	2	2	1	1	1	1	0	0	0
MAR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTALS	7	6	2	4	2	12	4	3	5	1	2	0	1	2	2	2	2	2	2	2	1	0	0

32	20	5	6	2	15	4	9	17	5	6	18	2	18	1	6	6	31	2	2	2	6	7	7
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of voters by precinct who are registered at voter registration drives

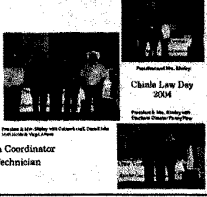
ELECTION TURNOUT COMPARISON

2000/2004 General Election Turnout Comparison

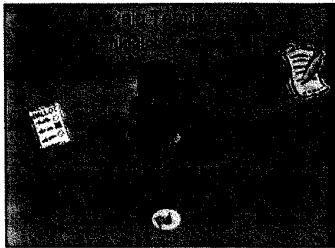


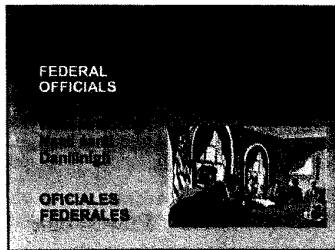
**Apache County Elections
Primary 2004**

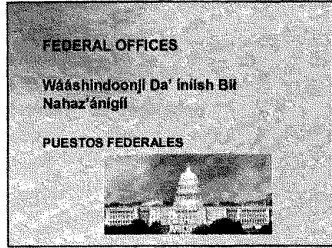
This presentation is provided as a courtesy from the Apache County Elections Office.

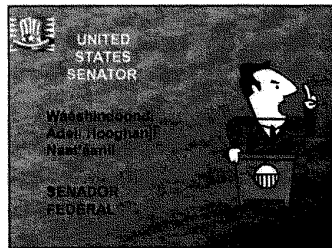


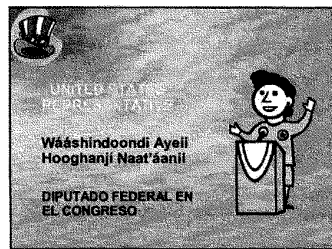
Peany L. Pew, Director
Matthew Noble, Outreach Coordinator
Virgil Atkinson, Outreach Technician



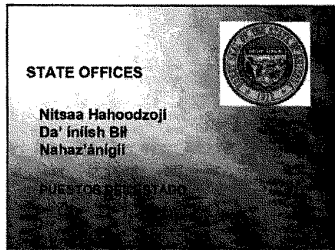


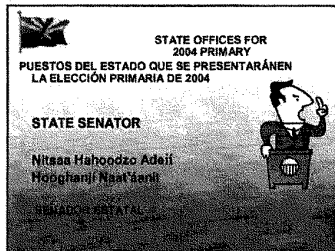


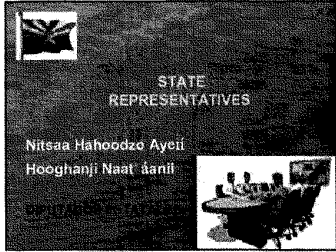


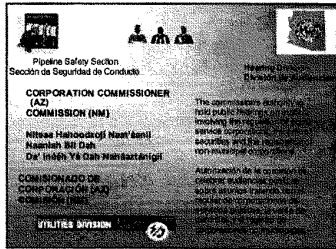


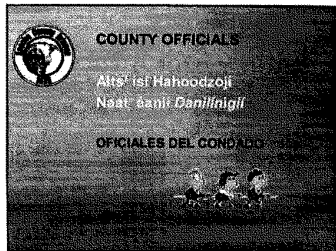


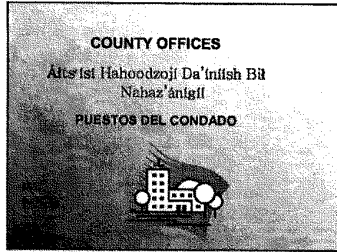


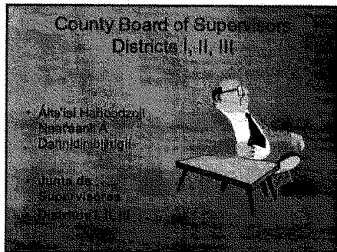


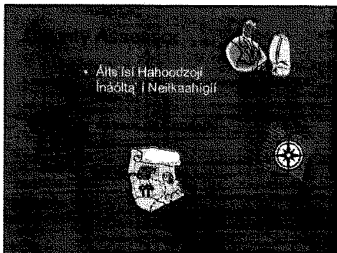


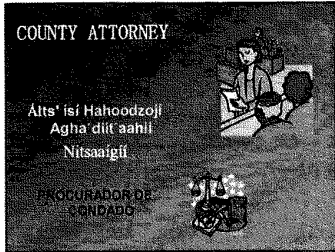


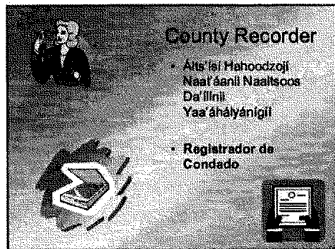




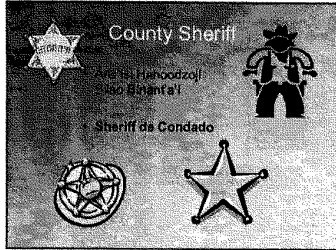


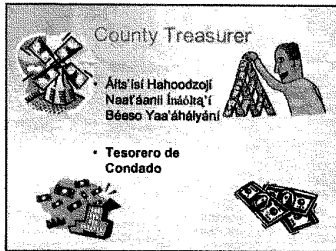


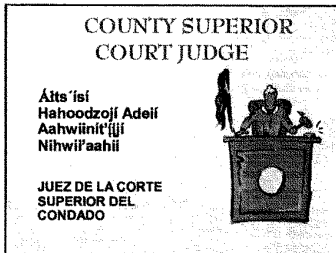


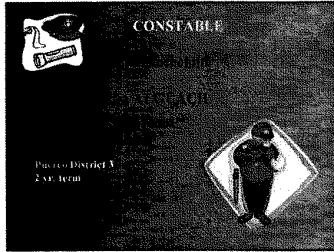


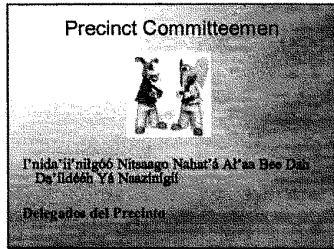


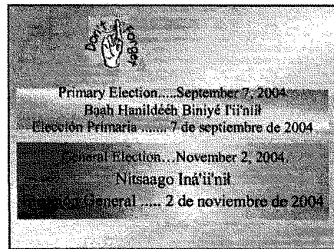


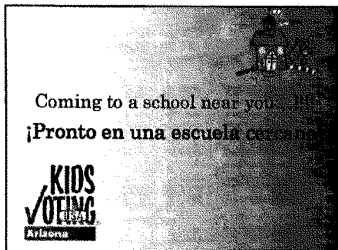


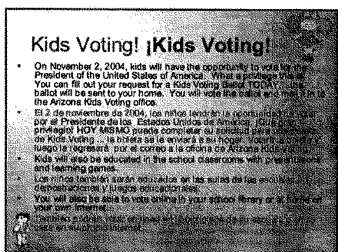


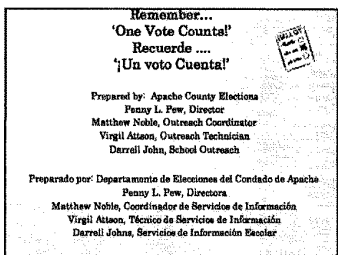
















**APACHE COUNTY ELECTIONS
2005**
COUNTY-WIDE TAX LEVY ELECTION
GANADO SCHOOL DISTRICT
BUDGET OVERRIDE
WINDOW ROCK SCHOOL DISTRICT
BUDGET OVERRIDE

**APACHE COUNTY TAX LEVY
OFFICIAL BALLOT**

- The Apache County Board of Supervisors has adopted a resolution, pursuant to A.R.S. § 42-17201, requesting the voters to authorize Apache County to levy secondary property taxes for the next seven years in excess of the primary property tax levy limits prescribed by A.R.S. § 42-17051.

- The purpose for providing the requested revenue to the County is to offset general fund revenues that will otherwise decline due to the expiration of the override authority granted at the special election held on May 19, 1998 (which will expire June 30, 2005) and to meet increased expenses for maintenance and operation and capital outlay for the following departments: the Juvenile and Adult Probation Departments and Justices of the Peace; the Superior Court, the Assessor's Office, the County Attorney's Office, the Finance Department, the County Health Department, Indigent Medical Expenses,

- the Human Resource Department, the Board of Supervisors, the Administration Department, the Building and Maintenance Dept, the Data Processing Department, the Development and Community Services Department, the Purchasing Department, the County Recorder's Office, the County School Superintendent's Office, the County Sheriff's Office, the County Treasurer's Office, the County Building Inspection Department and the County Elections Department.



The maximum dollar amount of secondary property tax which may be collected in each year if the levy is approved:

FISCAL YEAR	AMOUNT
2005-2006	\$1,700,000
2006-2007	\$1,950,000
2007-2008	\$2,225,000
2008-2009	\$2,525,000
2009-2010	\$2,850,000
2010-2011	\$3,200,000
2011-2012	\$3,575,000

The estimated secondary property tax rate which will be levied to provide \$1,700,000 in the first year if the voters approve the levy is \$0.4187.

**APACHE COUNTY
SPECIAL PRIMARY PROPERTY TAX
LEVY LIMIT OVERRIDE ELECTION**

QUESTION 1

Shall Apache County be authorized to levy secondary property taxes in excess of the County primary property tax levy limits otherwise prescribed by A.R.S. § 42-17051.

A yes vote shall have the effect of casting your vote in favor of authorizing Apache County to levy secondary property taxes in excess of the County primary property tax levy limits.

YES

A no vote, shall have the effect of casting your vote against authorizing Apache County to levy secondary property taxes in excess of the County primary property tax levy limits.

NO

Navajo Language Tax Levy Ballot Translation

Tsézhin Deez'áshjil Naat'áanii Á Dahnidimibijígíí saad bee ádána' hodit' aahii neidiit' tsoozgo éí A.R.S. ss 42-17201 binahjil, ánda'a'a'ígíí éí Tsézhin Deez' áshjil Naat' áanii Á Dahnidimibijígíí yee yáhooha' go éí eehólosonii bits' áádóó ináolq' í náhádíshángo tsoos' id n' dookah, éí Hoozdo Hahoodzójí Ináolq' í Bi Bee Haz'áanii A.R.S. ss 42-17051 daasdzhígíí bik'ehgo.

Biniyé béeso shoot'eehígíí éí díí Tsézhin Deez'áhi Bii Hahoodzójí béeso bee da' inishjigíí yiká' adoolwoit' dookahéí T' éétsok yizil' bii' dóó ná' hasaté' ts' áádah yookkátí áádóó ná' hasaté' ts' ándah dóó bi' aan ná' has' t' éí díj' dóó bi' aan tséébi' yihaháádq (May 19, 1998).

Béeso Binéidoodzohgo wókeed biniyé l' isinilgo bee lq' azjl'éó t' áá yisí yaa' dinéés' éé' áádoó k' adée bee e' e' aah. Ya' iishjáhshchilil yizil' bii' ta' dájn yoo lkáátí áádóó naaki di míl dóó bi' aan ashda' yihahgo bee e' e' aah (June 30, 2005).

Áádóó t' áádoole' í bájah da' iliníi dee dadeeskidigíí bininaa díí béeso bee da' inishjigíí áádóó díí da' inishjigíí bii' nahaz' ángóó béeso bá' ch'óó' inigíí éí: Nooséí dóó T' ááhooyáadii Aah Áat' íjil' Bii Da' inishjigíí áádóó Ayeil' Aahwiint' íjil' Nihwii' aahii Bii Hazánjii; Ináolq' í Neilkaah Bii Hazánjii; Áts' ís'í Hahoodzójí Agha' diit' aahii Nitsaigéí; N' iilyé Bii Hazánjii; Á ts' ís'í Hahoodzo Áts' ís' Baa Áháyá Bii Hazánjii; Bich' í Anáhóót' igo Azee' Bee Bik' í Adéést' íjil'.

Nidaanishí Yiká' anndaalwo' Bii Hazánjii; Naat' áanii Á Dahnidimibijígíí; Da' inishjigíí Adéést' íjil'; Kin dóó Annda' ino' jii Bii Hazánjii; Bóesh' Lich' í T' íshilgo Nitsékes Bii Hazánjii; Áda' doolnifí dóó Diné Bóká Ama'áwo' Bii Hazánjii; Bee Nida' anish Nichóhoot' ee Bii Hazánjii; Naat' áanii Naatsóos Da' iliníi Yaa' áháyánigíí Bii Hazánjii; Da' ólta' Binam' a' í Bii Hazánjii; Siláso Binam' a' í Bii Hazánjii; Adeil' Aahwiint' íjil' Nihwii' aahii Bii Hazánjii; Naat' áanii Ináolq' í Béeso Yaa' áháyání Bii Hazánjii; Kin Bee Ha' di' éí Haaalzid Bii Hazánjii; áádóó l' i' í' mii Bii Hazánjii.

Eehólosonii bits' áádóó ináolq' í náhádísháhgíí bee lq' azjl'igo éí nínsháhshjii' béeso ts' ádá agha' áncóit' ogo bee náhádísháhdoo.

Yíbah	Ánáté'e
2005-2009jii	t' áá'í' di míl nitsaigíí dóó bi' aan tsoos' íd' neeznádiin di míl áts' ís'ígíí béeso (\$1,700,000)
2006-2007jii	t' áá'í' di míl nitsaigíí dóó bi' aan náhástéidi neeznádiin dóó bi' aan ashda' diin di míl áts' ís'ígíí béeso (\$1,950,000)
2007-2008jii	naaki di míl nitsaigíí dóó bi' aan naaki di neeznádiin dóó bi' aan naadin ashda' di míl áts' ís'ígíí béeso (\$2,225,000)

Yíbah	Ánáté'e
2008-2009jii	naaki di míl nitsaigíí dóó bi' aan ashda' di neeznádiin dóó bi' aan naadin ashda' di míl áts' ís'ígíí béeso (\$2,525,000)
2009-2010jii	naaki di míl nitsaigíí dóó bi' aan tsoos' íd' neeznádiin dóó bi' aan ashda' diin di míl áts' ís'ígíí béeso (\$2,850,000)
2010-2011jii	Táá' di míl nitsaigíí dóó bi' aan naaki di neeznádiin di míl áts' ís'ígíí béeso (\$3,200,000)
2011-2012jii	Táá' di míl nitsaigíí dóó bi' aan neeznádiin dóó bi' aan tsoos' íd' in dóó bi' aan ashda' di míl áts' ís'ígíí béeso (\$3,575,000)

QUESTION 2

Shall the Ganado Unified School District No. 20 Governing Board adopt a Kindergarten through Third Grade Program Budget for 2005-06 which exceeds the budget limit specified by statute in the amount of \$347,550? The proposed increase will be based on a percentage of the school district's revenue control limit in future years, which shall not in any event exceed 5% of the revenue control limit.

Any budget increase authorized by this election shall be entirely funded by this school district with revenues from other than levy of taxes on the taxable property within the school district for the year for which adopted, and for six (6) subsequent years and shall not be realized from monies furnished by the state. In fiscal years 2011-2012 and 2012-2013 the amount of the proposed increase will be six and two-thirds percent and three and one-third percent, respectively, of the District's revenue control limit in each of such years, as provided in Section 15-481(P) of the Arizona Revised Statutes.

If the proposed budget is disapproved, the alternate budget shall be adopted by the school district governing board.

Budget Increase YES

Budget Increase NO

Navajo Language Ganado School Budget Override Ballot Translation

Bini'dii daats'i Lók'aahniteel Ólta' Bit Hahoodzoi, Tszhin Deez'áhi Hahoodzo bil' Lók'aahniteel Ólta' Binant'a'í Á Dahnidinibijigíí bee ba' didoot'áatgo díí béeso bee onishígíí ólta'íjí béeso ta' bá binéidoodzo éí t'áala'í doot'ízh (10%) bee haz'áanii bik'ehgo bee ahoot'í'ígíí binahjí' wókeed díí 2005-2006 yihahígíí áádóó bik'íjí' hastáá náahajíí.

Díí béeso ta binéidoodzo ha'ninígíí nináháhahgo béeso ólta' bá ninadit'áahígíí t'áá náábiláahgo wókeed díí k'ad 2005-2006 yihah bil', béeso wókeedígíí éí t'ááta'í díí mfil nitsaalígíí dóó bi'áan t'ááta'í neeznadiin dóó bi'áan hastáadiin ashda díí mfil áats'í'ígíí (\$1,165,000). Díí k'ad 2005-2006 yihah ígíí dóó 2010-2011 yihahjí' ta binéidoodzo haninígíí éí t'ááta'í doot'ízh (10%) beehaz'áanii bik'ehgo bee ahoot'í'ígíí binahjí'.

Hoozdo Hahoodzoií Bee Haz'áanii bik'ehgo béeso ólta' bá ninadit'áahígíí (section 15-481(p)) bik'ehgo Inda 2011-2012 dóó 2012-2013 yihah bil' kójíí Hoozdo Hahoodzoií bee haz'áanii bik'ehgo béeso ólta' bá ninadit'áahígíí (section 15-481(p)) bik'ehgo, hastáá lichíí' dóó bi'áan lichíí' t'áá'góó alts'áádzoogíí naaki bfighahgo (6.23%), áádóó t'áá'lichíí' dóó bi'áan lichíí' t'áá'góó alts'áádzoogíí t'ááta'í (3.13%) bfighahgo bee ahoot'í'ígíí bik'ehgo béeso binéidzohgo ninadit'áah dooleel.

Béso la binéidoodzo hántigo biniyé i' l'isnilgo áádóó bee ba deet' áago díi ólta' bíl háhoodzoji béso bá shóót' eehígíí éí díí eehóloóníi bits' áádóó ináolta' i náhaasdláá' ígíí díí yihahígíí dóó hastáá náhájí' choo' j'idoo, inda Hoozdo Háhoodzoji doo bits' áádeé béso bóókóed da áádóó Nisaa Háhoodzoji Bee Há' áanii Bitsé Siláí (Article IX, section 18) beehaz' áanii yiszohígíí díí béso wókeedígíí doo yidinoólt' ah da. Eehóloóníi bááh da' lílíníi ahídeidzogo bits' áádóó ináolta' i náhádlááhígíí díí ólta' bíl háhoodzoji béso bee biyoowólgíí la' bá binéidzóóhgo ináolta' i bee náhádlááhgo bee deig kónéehígíí éí hastáá béso dóó bí' áan hastáá doot' izh dóó bí' áan tsebiti síndio dóó naa bí' áa (\$6,6894) díí r' áálá' i neezmdiin béso nazh' áa' ígíí bits' áádóó

inda eehóloóníi bááh da' lílíníi ahídeidzogo bits' áádóó ináolta' i náhádlááhdoó áádóó nahdeé ináolta' i ólta' niyil'éhée k' ad ináolta' i niyil'ée dooleedígíí bit bífooltsó' ákó díí binéidoodzohgo wókeedígíí éí díí eehóloóníi bááh da' lílíníi bits' áádóó ináolta' i náhaasdláá' ígíí ólta' j'íi bá hasht' e nii' nffí doo.

Béso Bá Binéidzóóh Aoo' _____

Béso Bá Binéidzóóh Doo da _____

**Window Rock Unified School District
Budget Override**

QUESTION 1

Shall the Window Rock Unified School District No. 8 Governing Board adopt a Maintenance and Operation Budget for 2005-06 which exceeds the budget limit specified by statute in the amount of \$1,473,237? The proposed increase will be based on a percentage of the school district's revenue control limit in future years, which shall not in any event exceed 10% of the revenue control limit.

Any budget increase authorized by this election shall be entirely funded by this school district with revenues from other than levy of taxes on the taxable property within the school district for the year for which adopted, and for six (6) subsequent years and shall not be realized from monies furnished by the state. In fiscal years 2011-2012 and 2012-2013 the amount of the proposed increase will be six and two-thirds percent and three and one-third percent, respectively, of the District's revenue control limit in each of such years, as provided in Section 15-481(P) of the Arizona Revised Statutes.

If the proposed budget is disapproved, the alternate budget shall be adopted by the school district governing board.

BUDGET INCREASE YES

BUDGET INCREASE NO

QUESTION 2

Shall the Window Rock Unified School District No. 8 Governing Board adopt a Kindergarten through Third Grade Program Budget for 2005-06 which exceeds the budget limit specified by statute in the amount of \$514,819? The proposed increase will be based on a percentage of the school district's revenue control limit in future years, which shall not in any event exceed 5% of the revenue control limit.

Any budget increase authorized by this election shall be entirely funded by this school district with revenues from other than levy of taxes on the taxable property within the school district for the year for which adopted, and for six (6) subsequent years and shall not be realized from monies furnished by the state. In fiscal years 2011-2012 and 2012-2013 the amount of the proposed increase will be six and two-thirds percent and three and one-third percent, respectively, of the District's revenue control limit in each of such years, as provided in Section 15-481(P) of the Arizona Revised Statutes.

If the proposed budget is disapproved, the alternate budget shall be adopted by the school district governing board.

BUDGET INCREASE YES

BUDGET INCREASE NO

Navajo Language Window Rock School Budget Override Ballot Translation

NA'IDIKID LAA'II

Bini'dii daats'i Tségháhoodzáni Ólta' Bil Hahoodzooji Ólta' Binan' a'í A Dahnidinibijigiti be'e ba' deet' aahgo ólta' jii béeso be'e onítáígíí díí 2005 dóó 2006 yíhah bit' ólta' yá béeso shóná'yooit' eeh éí Hoozdo Hahoodzoojé' go béeso nínásh' áshígíí t' ásh'á'ndí mii nitsa'ígíí dóó bi' a'án díí 'dii neeznásh' dóó bi' a'án tsoos' ásh'ín dóó bi' a'án t'á' díí mii ásh' ásh'ígíí dóó bi' a'án naaki' di neeznásh' dóó bi' a'án t'á' tsoos' id (\$1,473,237) béeso bá binéidzóóh? Díí béeso bá binéidzoojígíí ólta' jii bá be'e ahóót' í'ígíí binahjii' nínásh'áshgo neezná' doot' ízh (10%) bi'ghahgo binéidzooó.

Díí t'íishíigo áádóó be'e ba' deet' áago béeso ólta' jii bá binéidzogo díí béeso bík'á chohoo' íngíí éí eehóóníi bits' áádóó ínfólta' í násh'ásh'ígíí ólta' jii bá shóót' eeh áádóó béeso shóót' e'ígíí éí has'táá násh'ásh'ígíí choo' j'ídoe inda Hoozdo Hahoodzooji doo bits' áádóó béeso wókeed da. 2011-2012 yíhah dóó 2012-2013 yíhah bit' béeso ha' bá binéidzoojígíí éí has'táá fíhíí' dóó bi' a'án fíhíí' t'á' g'óó ásh' ásh'oojígíí naaki' bi'ghahgo (6-2/3 %), áádóó t'á' fíhíí' dóó bi' a'án fíhíí' t'á' g'óó ásh' ásh'oojígíí t'á' t'á' (3 1/3%), ásh'ééé síshíigo, Hoozdo Hahoodzoo Hahoodzoo' áanii (section 15-481, P) yisdzoojígíí binahjii' díí ólta' jii béeso bá binéidzooo díí de'ísh'ásh' g'one' be'e ba' deet' ángíí.

Béeso la' binéidzóóh haníngíí doo be'e bá lá' azíj' góó éí be'e haz' áanii bík' ehgo béesao bá nídeet' ánee éí ólta' binant' a'í shóyooit' eehdoo.

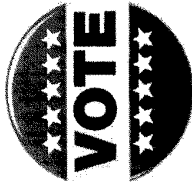
Béeso Bá Binéidzóóh Aoo' _____

Béeso Bá Binéidzóóh Doo da _____

NA'IDIKID NAAKI

Bini'dii daats'i Tségháhoodzáni Ólta' Bil Hahoodzooji Ólta' Binan' a'í A Dahnidinibijigiti be'e ba' deet' aahgo ásh'íní hada' ísh'ásh'ígíí dóó t'á' yófta' jii' béeso yá shóyooit' eehdo díí 2005 dóó 2006 yíhah bit', Hoozdo Hahoodzoojé' go béeso bá nínásh'ásh'ígíí ash'la' di neeznásh' dóó bi' a'án díí' tsada' di mii ásh' ásh'ígíí dóó a'án tsoos' di neeznásh' dóó bi' a'án násh'ásh'ééé tsánda (\$514,819) béeso bá binéidzóóh? Díí béeso bá binéidzoojígíí ólta' jii bá be'e ahóót' í'ígíí binahjii' nínásh'áshgo ásh'la' doot' ízh (5%) bi'ghahgo binéidzooó.

APACHE COUNTY GENERAL ELECTION
TRAINING MANUAL



PENNY L. PEW
ELECTIONS DIRECTOR

MATTHEW NOBLE
OUTREACH COORDINATOR

VIRGIL ATTSON
OUTREACH TECHNICIAN

<p>_____ ELECTION CERTIFICATE OF QUALIFICATION _____ DATE</p>
<p>I, PENNY L. PEW, Elections Director for Apache County, Arizona, do hereby certify that:</p>
<p>_____ (Print Board Worker's Name)</p>
<p>was provided with a course of instruction in the applicable election laws pertaining to polling place procedures and in the operating procedures for the Accu-Vote Optical Scan Voting System and is therefore fully qualified to serve as an election board official.</p>
<p>Penny L. Pew, Elections Director</p>

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USE OF A RED PEN IS LIMITED TO:



- > PLACING AN EV IN THE SIGNATURE ROSTER FOR THOSE VOTERS THAT REQUESTED AN EARLY BALLOT.

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INTRODUCTION

This training manual has been prepared, printed and delivered to you by the Apache County Elections Department. Through this training manual, your attendance in a training class and the help of your fellow Polling Place Workers on Election Day, we are sure that you will be successful in assisting us in carrying out our mission, a successful election. If at anytime you feel the need to ask questions, feel free to contact the Elections Office at 337-7537 or the Hotline (800) 361-4402 on Election Day.

DUTIES OF BOARD MEMBERS

You will find the various positions that you might be assigned to here in the next few paragraphs, be sure to familiarize yourself with all of them - You never know which job you will end up doing on Election Day.

INSPECTOR

1. Arranges with custodian or chapter official for access to polling place for the Monday meeting and Election Day. Be sure to ask for alternate phone numbers! At 5:30 in the morning on Election Day a phone number to the secretary's desk will not do anybody any good, make sure you get a pager/call phone number or a home phone number.
2. Calls the rest of your Board to let them know when the set-up meeting will take place.
3. Conducts the Monday pre-election meeting.
4. Is responsible for instructing the Clerks, Marshalls and Judges in their duties.
5. Fills any vacancy on the board which exists at the opening of the polls at 6:00 a.m., or which may occur during the day. In filling vacancies, the Inspector shall appoint a qualified elector.
6. Is Chairman of the election board and must be consulted regarding procedures.
7. Assigns duties to board members.
8. Along with 2 Judges, makes up the official voting election board and votes on challenges.
9. Oversees the Accu-Vote procedures. Never leave the Accu-Vote unattended!
10. Completes and signs the certification on the cover of the Signature Roster after the polls close.
11. Shall deliver the ballots and materials to the designated receiving site along with one of the Judges of the opposite party affiliation (if applicable).
12. Responsible for duties of the Marshal, if a Marshal is not appointed.
13. Oversees Provisional Ballot procedure.

TRANSLATOR

Verbally read the ballot in the Navajo language so that the voter understands the ballot information.

DO NOT TELL THEM HOW TO VOTE ON THE ISSUES

TROUBLESHOOTER IS THE LIAISON BETWEEN THE POLLING PLACE AND ELECTION CENTRAL. PLEASE UTILIZE THEIR HELP AS NEEDED.

PRE-ELECTION WEEK

TROUBLESHOOTERS:

There will be a Troubleshooter assigned to your Polling Place; he/she acts as a liaison between Election Central and the Polling Places on Election Day. The troubleshooter carries extra supplies and is in direct contact with the Elections Office, should any question arise.

THE INSPECTOR:

- You will receive a Board Worker Roster at the training class; this has the name and phone number of the contact person at your Polling Place. You are to call the contact person and arrange a Set-Up meeting to take place the Monday before the Election (unless otherwise specified).
- Once the set-up meeting has been arranged, you are to call all of your Board Workers to let them know when and where they need to be for the meeting. Do this as soon as possible. **DO NOT SET-UP THE POLLING PLACE PRIOR TO NOON ON MONDAY.**

14. May transmit results over a phone line to a Central Computer site.
15. Is responsible for completion and accountability of the Precinct Ballot Report.
16. Is responsible for official ballot security.
17. Shall make sure the Troubleshooter takes the Accu-Vote Memory Pack to Election Central in St. Johns.

JUDGE

1. Verify voter's name on Signature Roster.
2. Issue ballots and demonstrates marking the ballot.
3. Monitors Accu-Vote.
4. Is a voting member of the Election Board.
5. May accompany the Inspector when delivering the ballots to the designated receiving site.
6. Is assigned to do Provisional Ballots.
7. Any other duty assigned by the Inspector.

CLERK

1. Enters names on the Poll List and checks for accuracy.
2. Any other duty assigned by the Inspector.

MARSHAL

1. Preserves order; acts as constable during the time the polls are open.
2. Performs as relief person for other board members.
3. Announces the opening of the polls, and, at 5 different times, the closing of the polls.
4. Post signs before the polls open.
5. Ensures all voters in line at 7:00 P.M. are allowed to vote.
6. May assist in the delivery of Accu-Vote to regional computer site after polls have closed.
7. Directs voters in line with "voted" Early Ballots to step out of the line and deposit their ballots into the side slot of the Black Ballot Box.
8. Any other duty assigned by the Inspector.

MONITOR

1. Help voters find their address in the alpha-listing to determine residence. Assist the voter in any questions he/she may have regarding elections. Keeps a log of questions.

MONDAY SET-UP MEETING



Many election boards will have *new members* who have never served before. For their benefit, the Inspector *should*:

- > Discuss, *in detail*, the duties of each board position
- > Assign each board member his/her duties
- > Discuss the voting procedures to be followed on Election Day
- > Review the Accu-Vote unit procedures

*** Survey the areas to make certain all outlets are in working order.

*** Double-check with the facility **PRIOR** to Election Day to make certain the phone line is accessible on Election Night for the transmitting of the results.

*** Discuss with poll workers the importance of staying at the polling place from 5:30 a.m. until the polling place paperwork is completed and results are transmitted.

MONDAY SET-UP MEETING - ENDING PROCEDURE

- Before leaving the polling place, put the Official Ballots in a secure place. (locked)



BRING FOOD, BEVERAGES AND REQUIRED MEDICATIONS ON TUESDAY, ELECTION DAY.



DON'T FORGET TO BRING THE KEYS BACK ON ELECTION DAY!!!





CHECKING SUPPLIES

- o Using the keys located in the side pocket of the Accu-Vote unit, unlock all compartments on the Black Ballot Box to make sure they are empty. (Key with black key guard)
- o Using the small silver key, unlock the supply box and use the Inspector Checklist to make sure all supplies are there. If any supplies are missing, please let the Election Director know at the training meeting. Lock the supply box back up.
- o Count all ballots. If they are sealed, they DO NOT have to be re-opened; they are in packages of 50.
- o DO NOT CALL THE HOTLINE IF SUPPLY QUANTITIES DO NOT MATCH. INDICATE ON THE INSPECTOR'S CHECKLIST THE CORRECT QUANTITIES AND USE THOSE FIGURES TO CLOSE OUT AFTER THE ELECTION.

SETTING UP THE ACCU-VOTE

- ◆ Make sure that the precinct name on the Accu-Vote is the correct precinct.
- ◆ Move the entire unit to the electrical outlet nearest the polling place exit.
- ◆ Unlock the door on the front of the Black Ballot Box. Slide the Accu-Vote unit in place. Attach the power cord and plug it into the Accu-Vote.
- ◆ Unlock the door on the top of the Accu-Vote machine in preparation of printing the "Zero Report".
- ◆ Print the "Zero Report". After printing DO NOT TEAR OFF. Fold it up and re-lock the door.
- ◆ Make sure that there are zeros on the tape.
- ◆ The unit is now ready to receive ballots.

INSPECTIONS

CHECK YOUR BALLOTS

- ✓ Count the packages of official ballots. They are pre-wrapped in packages of 50. DO NOT OPEN THE PACKAGES TO COUNT THE BALLOTS.
- ✓ Write the total number of ballots on the Inspector Checklist and also on the Precinct Ballot Report (located in the Poll List).
- ✓ The Inspector initials the Inspector Checklist & Ballot Report.
- ✓ Check the top ballot in each package to make sure you have received all the correct ballots.

MAKE SURE YOU HAVE THE CORRECT BALLOTS AND THAT YOU GET A GOOD COUNT OF THE BALLOTS THAT YOU RECEIVED. YOU MAY HAVE MORE THAN ONE BALLOT STYLE TO ISSUE THE VOTER...MAKE SURE IT IS THE CORRECT BALLOT!!!



EARLY (ABSENTEE) VOTERS

- Using the list of Early Voters, make an EV in the box next to the voter's name on the Signature Roster for each voter whose name appears on the list. Use a RED PEN. Leave room for the voter to sign.
- If the Early Voter's name does not appear alphabetically in the Signature Roster in the list of active voters or the list of inactive voters, check the Add-On list in the back of the roster.

POSTING SIGNS

- Post the **WRITE-IN CANDIDATES SIGN** found in the election supplies in **PLAIN VIEW** in the polling place. **ONLY IF THERE ARE QUALIFIED WRITE-IN CANDIDATES.**
- Tape the list of authorized write-in candidates on the **WRITE-IN CANDIDATES SIGN.** (if applicable)
 - Post in **PLAIN VIEW** in the room where the ballots are cast:
 - 2 SAMPLE BALLOTS (OF EACH BALLOT STYLE)**
 - The sample ballots are in the Supply Box.
 - 2 INSTRUCTIONS TO VOTERS AND ELECTIONS OFFICERS SIGNS/RIGHT TO VOTE A PROVISIONAL BALLOT COMBO SIGNS**
 - Post the **NO SMOKING** signs
 - Post the **INSTRUCTIONS ON MARKING THE BALLOTS** in each voting booth - **ENGLISH and SPANISH** and the Ballot Issues (if applicable).

SET-UP BOOTHS

- All booths assigned to your precinct shall be set up and used, including the booth for the disabled. An instructional diagram is on each booth.
- Arrange the voting booths so they are in plain view of the board and the voters.



INSPECTION OF VOTING BOOTHS

- Election officials should periodically check the voting booths and remove any miscellaneous items such as notes, campaign literature, etc.
- Make sure the appropriate signs are hanging in each booth - **ENGLISH AND SPANISH:**
 - How to mark the ballot
 - Ballot Issues (if applicable)
- Remove any ball point pens or pencils found in the booths.
- Make sure each booth has a Black Ballot Marking Pen.

ELECTION DAY



The law requires members of the election board to be present at the polling place by 5:30 a.m. on Election Day. A.R.S. §16-566(A)



BEFORE THE POLLS OPEN

Election Board members must take the Oath found on the inside cover of the Blue Poll List or at the end of this manual. The Blue Poll List can be found in the supply box with the other election supplies.

WRITE THE NAME OF THE PRECINCT ON THE FRONT OF BOTH POLL LISTS.

Any elector of the precinct may administer and certify the oath; however, it is traditionally administered by the Inspector to the Board Members. Afterward, one board member administers the oath to the Inspector. You may also read this aloud together.

After the oath has been administered, election board members shall not leave the polling place



until the polls are closed.

\$ \$ ONCE THE BOARD HAS BEEN SWORN IN,

MAKE SURE THAT EVERYONE SIGNS THE PAYROLL VOUCHER AND IF CLAIMING MILEAGE,

LICENSE PLATE #!



FINAL COMPLETION OF THE POLLING PLACE SET-UP

1. Plug in the Accu-Vote. A zero tape will print. ALL RESULTS ON THE TAPE MUST BE ZERO. DO NOT TEAR OFF THE TAPE! It must remain attached to the Accu-Vote. The readout must also register zeros.
2. While the tape is printing, check the arrangement of the polling place to be sure the voting booths and Accu-Vote are in plain view.
3. The Marshal places the three 75 FOOT LIMIT signs in 3 different directions 75 feet from the MAIN ENTRANCE to the polling place. ALL OTHER SIGNS MUST BE PLACED APPROPRIATELY TO ENSURE EASY IDENTIFICATION OF AND ACCESS TO THE POLLING PLACE.
4. No person shall be allowed to remain inside the 75 foot limit while the polls are open except for the purpose of voting and except for the election board and any officially appointed representatives. A.R.S. §16-515
5. It is unlawful for any person to electioneer on Election Day within a polling place or in a public manner within 75 feet of the main entrance of a polling place. Electioneering is any action or publication displayed for or against a candidate on a proposition on the ballot. A.R.S. §16-1018.1
6. Petition circulators, campaign workers, candidates, the news media, and any other person who is not voting must remain outside the 75 foot limit while the polls are open.
7. PLACE ALL HANDICAPPED PARKING SIGNS NEAR CURB CUTS SO THAT THE VOTERS WITH DISABILITIES HAVE EASY ACCESS TO THE CURB CUTS.



CLEARLY MARK THE PATH FROM THE HANDICAPPED PARKING TO THE POLLING PLACE.

USING THE SIGNS YOU HAVE POSTED AS A GUIDE, CAN A VOTER WITH DISABILITIES FIND THEIR WAY INTO THE POLLING PLACE THROUGH THE ENTRANCE FOR DISABLED PERSONS?

- Open only 1 package of each ballot style to begin the election. Set-up the tables with the Signature Roster, Poll Lists and pens.

TABLE #1			
BALLOTS	POLL LIST	POLL LIST	SIGNATURE ROSTER
JUDGE	CLERK	CLERK	JUDGE
			◀ START

TABLE #2		
PROVISIONAL FORMS/ ENVELOPES	PENS	POLLING PLACE LIST
		MAGNETIC SHEET

- The Inspector should remain near the Accu-Vote during the day, monitoring the count of voters.
- Place all Provisional Envelopes/Ballets and Early Ballots that are dropped off at the polling place during the day in the side slot of the Ballot Box.
- The Marshal announces the opening of the polls at 6:00 a.m. SHARP!!!



COMMON KNOWLEDGE

NO SMOKING PLEASE

No smoking by any person is allowed within the polling place. Be sure to post the NO SMOKING signs and enforce this rule very firmly.

BOARD WORKER COURTESY

Board Workers should always maintain a peaceful and quiet atmosphere in the polling place. Remember, talking and other noises such as radios, televisions, etc. make it difficult for voters to concentrate. Do not accept food from outside the polling place.

PLEASE EAT YOUR FOOD DISCREETLY.



CELLULAR PHONES

CELLULAR PHONES ARE PERMITTED IN THE POLLING PLACE FOR LIMITED USE ONLY BY VOTERS AND POLL WORKERS.



CAMERAS

THE PUBLIC, MEDIA OR POLL WORKERS CANNOT BRING CAMERAS (VIDEO OR OTHERWISE) WITHIN THE 75 FOOT LIMIT WHILE THE POLLS ARE OPEN AND VOTERS ARE IN THE POLLING PLACE. (PURSUANT TO A.R.S. §16-515)



*****CHALLENGING A VOTER PROCEDURES*****

Please call Hotline for assistance, immediately upon Challenge.

The grounds for challenging voters are found in the Inspector's Bag, on the back side of the *Challenge List* form. Don't make any entries unless a challenge is made. See A.R.S. §16-593 for rules determining the residence of a voter upon a challenge.

NOTE: A voter who has moved from one DISTRICT to another and who has NOT notified the County Recorder may vote a NEW RESIDENCE PROVISIONAL BALLOT in the District where his/her new address is located.

A majority of the voting members of the election board determines the validity of a challenge. The 2 Judges, together with the Inspector, make up the voting members of the election board. The oath is printed on the front side of the *Challenge List Form*.

No other affidavit is necessary. If a challenge is made, it's suggested the Inspector have the person challenged step aside and permit the other voters in line to continue to vote.

REMEMBER, CITIZENSHIP CANNOT BE CHALLENGED AT THE POLLS.

QUALIFIED ELECTORS DEFINED

Persons who may vote are:

1. Those electors whose names appear in the Signature Roster, either as Active or Inactive and have not moved from the address as listed. These electors vote by the standard voting procedures.

A list of INACTIVE VOTERS for each precinct has been compiled and placed in the back of the Signature Roster and each of the Precinct Registers. The list of INACTIVE VOTERS can be identified by the separator sheet & title at the top of the page.

If it is determined that the elector has moved from the address that is listed on the Signature Roster/Precinct Register, the elector will be directed to the Apache County Precinct Map to locate the precinct for the new address. The poll worker will find the appropriate polling place for the elector's new precinct and DIRECT the elector to the new polling place.

2. Those electors who surrender a County Recorder's Certificate authorizing the addition of their name to the Precinct Signature Roster. The elector's names are added to the Signature Roster and they vote by the standard voting procedure. The register numbers for these voters will be the consecutive number after the last name listed in the active portion of the Signature Roster.

3. Those electors who qualify to vote a Provisional. If an elector's name is NOT found on the Signature Roster, either in the Active or Inactive sections, check the Add-On List in the back of the Signature Roster. Be sure to check for possible misspellings or keying errors. **Check the Alpha Listing to see if they are in Apache County but in another precinct.

If the person's name is NOT found and they have not moved or modified their voter registration record, then they shall be allowed to cast a Provisional Ballot.

If the person's name is NOT found and they do NOT have the VOTER RECEIPT copy of their registration and they are NOT currently registered in Apache County, then the poll worker will give the person a blank registration form to complete. Have the person complete the form and return it to the poll worker to be forwarded to the Elections Department in the envelope provided. *That person must vote a provisional ballot in the current election.*

4. Electors whose names were reported to the Inspector on the Early Ballot List, but who state to the election board that they did not vote, will not vote or are unable to vote their Early Ballot. Such electors will be allowed to vote by Provisional Ballot Procedure.

INACTIVE VOTERS

"If the notice sent by the recorder is not returned, the registrant may be required to provide affirmation or confirmation of the registrant's address in order to vote."

A.R.S. § 16-166(E)

If a voter is listed on the INACTIVE LIST, that voter MUST re-register.

VOTING PROCEDURES

This section will lay out step by step instructions for the Board Workers, telling you exactly what needs to be done from the time the voter walks in the door to the time he/she inserts their ballot into the Accu-Vote.

STANDARD VOTING PROCEDURE

Electors whose names appear on the Signature Roster or who submit a County Recorder's Certificate to the board will vote by the following procedure:

- 1) The voter reports to the Election Official assigned to the Signature Roster and announces their full name and address. Be sure to check address as well, if the voter

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lives at a different address they will need to report to the Provisional Ballot (PTBV) Tables for processing.

- a. The election official locates the voter's name in the Signature Roster, either in the list of regular (Active) voters, the list of Inactive Voters or Add-ons and verifies that the address is correct by asking the voter their address.

- b. The election official asks the voter to sign the signature block next to their name. The election official tells the Poll List Clerk the voter's Register Number.

2) The Poll List Clerk locates the voter's name in the Precinct Register and enters the voter's name and Register Number on the next available line of the Poll List. USE A BALL POINT PEN. Call out the voter's Register Number to the Judge issuing ballots.

- a. Please PRESS HARD. The Register Number for an Inactive Voter is preceded with the letter "I".
- b. USE ONLY ONE (1) POLL LIST AT A TIME.

3) The Judge looks up the voter by Register Number in the Precinct Register.

- a. The Judge selects the proper ballot and gives it to the voter. Secrecy folders should be used for all voters.

- b. Explain that a special black ballot marking pen must be used. Reminding the voter that they must fill in the oval entirely.

- c. Explain that ballots that are damaged or mis-marked must be spoiled and a replacement ballot will be issued. LIMIT 3.

- d. Explain how the ballot is inserted into the Accu-Vote, by the Voter.

- e. Explain how to do a write-in, remember that the voter must write the candidate's name AND fill in the oval.

- f. Be sure to remind the voter to vote BOTH sides of the ballot, if applicable.

4) The voter enters a voting booth and marks the ballot with the special black ballot marking pen. The pen is left in the booth. Periodically, check the booths and make sure that each has a special black ballot marking pen.

- a. After voting, the voter puts the official ballot in the secrecy folder and goes to the Accu-Vote.

- b. The voter REMOVES the official ballot from the secrecy folder and inserts the ballot into the Accu-Vote. The ballot can be inserted in the Accu-Vote in any direction. The voter gives the secrecy folder to the election official.

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- c. THE ELECTION OFFICIAL SHOULD STAND TO THE SIDE OR BACK OF THE ACCU-VOTE. THE BALLOT IS SECRET.
- d. DO NOT INSERT THE BALLOT IN THE ACCU-VOTE FOR THE VOTER unless the voter asks you for assistance.

A VOTER DOES NOT HAVE TO VOTE FOR EACH AND EVERY CANDIDATE OR ISSUE ON THE BALLOT. THIS IS CALLED UNDER VOTING. THE ACCU-VOTE DOES NOT REJECT A BALLOT BECAUSE OF AN UNDER VOTE. EVEN IF A VOTER HAS BEEN GRANTED POWER OF ATTORNEY, THEY CANNOT VOTE ON BEHALF OF THAT VOTER.

SPOILED

SPOILED BALLOTS

1. If a voter makes a mistake on the ballot, it may be exchanged for another. No more than 3 ballots may be issued to one voter. Remember, an Early Ballot counts for 1!
2. The word "SPOILED" is written across both sides of the ballot by the voter. The Inspector, Judge & Voter MUST SIGN the Spoiled ballot. If the voter wishes, the election official may write the word "SPOILED" across both sides of the ballot.
3. The Spoiled ballot must be placed in the Official Envelope Immediately. You may want to put a secrecy folder in the Official Envelope to protect the secrecy of any ballots. Remove the folder after the polls have closed.
4. The election official shall look up the voter's name in the Precinct Register, select the proper ballot and issue it to the voter.

DO NOT PUT SPOILED BALLOTS INTO THE BLACK BALLOT BOX. THEY MUST GO INTO THE OFFICIAL ENVELOPE IMMEDIATELY.

THE VOTER MAY HAVE ONLY ONE BALLOT IN THEIR POSSESSION AT A TIME.

NEVER PRESS "YES" TO OVERTIDE AND ACCEPT A VOTER'S BALLOT WITHOUT THE VOTER'S PERMISSION.

A JAMMED BALLOT MUST BE REMOVED FROM THE ACCU-VOTE UNIT BUT NOT IF IT HAS FALLEN INTO THE BLACK BOX. DO NOT GET OUT OF THE BLACK BOX. JUST MAKE A NOTE ON THE TAPE THAT THIS HAPPENED. INDICATED IF IT WAS COUNTED OR NOT.

OVERVOTED BALLOT

If a voter has voted for more candidates than are to be elected to an office, the Accu-Vote will reject the ballot and return it to the voter. The message "OVERVOTED BALLOT" and the office that was overvoted will print on the tape. THE ELECTION OFFICIAL MUST READ THE MESSAGE ON THE TAPE. The voter can do the following:

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1. The ballot can be spoiled. If the voter wants to spoil the ballot, the words "SPOILED" must be written on both sides of the ballot & signed by Inspector, Judge & Voter.
2. The ballot will be spoiled and a replacement ballot issued to the voter. The voter should go back into the voting booth to vote the replacement ballot. During this time, let other voters continue to vote. KEEP THE LINE AT THE ACCU-VOTE MOVING!
3. If the voter refused to vote a replacement ballot and at the request of the voter, the election official can press "YES" button and the ballot will be accepted.

THE ACCU-VOTE WILL ACCEPT THE BALLOT AND EVERYTHING ON THE BALLOT WILL BE COUNTED EXCEPT THE OFFICE OR ISSUE THAT IS OVERVOTED.

UNVOTED BLANK BALLOT

If a voter has inserted an "unvoted" blank ballot into the Accu-Vote, the Accu-Vote will return the ballot. The message, "UNVOTED BLANK BALLOT" will print on the tape. The voter can do the following:

1. If the ballot was simply mis-marked the voter can vote that ballot. The ballot can be given to the voter with instructions to return to the voting booth to mark the ballot. During this time, other voters continue to insert their ballots into the Accu-Vote.
2. At the request of the voter, if the voter intentionally voted a blank ballot, the election official can press the "YES" button and the Accu-Vote will accept the ballot.
3. A voter cannot use white-out, cross out, or erase on a ballot.
4. IF THE VOTER MARKS THE BALLOT OUTSIDE THE OVAL, THE BALLOT MUST BE RE-MARKED CORRECTLY, STAYING WITHIN THE OVAL, AS SHOWN ON THE INSTRUCTIONS IN THE VOTING BOOTH.

MISREAD BALLOTS

If a ballot is misread, meaning that for some reason the Accu-Vote is not able to process the ballot, the Accu-Vote will return the ballot. A message will print on the tape. A misread ballot can be one of the following:

1. A damaged ballot.
 2. Misprinted ballot.
 3. Voter marked ballot in the heading.
 4. Incorrect ballot—ballot from another precinct.
 5. Voter inserts ballot into wrong Accu-Vote in a co-located polling place.
- > A misread ballot should be spoiled and a replacement ballot issued.
> If the voter will not vote a replacement ballot, have the voter drop the ballot in the side slot of the Black Ballot Box.

- > DO NOT USE THE "YES" TO OVERRIDE". The Accu-Vote will not accept a misread ballot.
> BE SURE TO INSTRUCT THE VOTER THAT THE MISREAD BALLOT WILL BE TABULATED AT ELECTION CENTRAL LATER THAT NIGHT.

PROVISIONAL BALLOT (BALLOT TO BE VERIFIED) PROCEDURE

There are 4 different situations for issuing a Provisional Ballot (formerly known as Ballot To Be Verified):

- a. The voter's name does not appear on the Signature Roster.
- b. The voter has moved within the precinct. (New Residence Ballot)
- c. The voter has moved outside of the precinct. (New Residence ballot)
- d. The voter must go to their new polling place to vote. ****
The voter has requested or received an early Ballot and did not bring the Early Ballot to the polling place for voting.

THE POLL OFFICIAL MUST TEAR OFF THE 1ST SHEET OF THE PROVISIONAL BALLOT FORM AND GIVE IT TO THE VOTER. THIS IS THE VOTER'S RECEIPT.

(IF THE VOTER IS WILLING TO ATTEST TO THE FACT THAT THEY HAVE LIVED WITHIN A JURISDICTION FOR MORE THAN 29 DAYS, THEY WILL BE ALLOWED TO VOTE A PROVISIONAL BALLOT IN THAT JURISDICTIONS ELECTION.)

3.) VOTERS NAME DOES NOT APPEAR IN SIGNATURE ROSTER

- a. If the voter's name is not on the regular (active) list of voters, the inactive list of voters or the Add-On List, the voter should produce the Voters Receipt copy from their registration form on a Voter I.D. Card.
- b. The election official shall find the voter's address on the precinct map. Make sure the voter lives within the boundaries of this precinct.
- c. The election official shall complete the Provisional Ballot form. Two election officials and the voter must sign the form.
- d. If the voter has a Voter I.D. Card or Voter's Receipt, clip it to the outside of the envelope. **DO NOT PUT IT INSIDE THE ENVELOPE.**
- e. Give the envelope to the voter and ask the voter to return to the Signature Roster.

- f. On the PROVISIONAL BALLOTS page at the back of the Signature Roster, the election official enters the voter's name and other identifying data as shown in the Signature Roster. These voters are assigned register numbers beginning with V-1, V-2, etc. A voter's name is added to the Signature Roster ONLY if the voter's name is NOT on the Signature Roster.
- g. The voter signs the signature block next to their name. The election official tells the Poll List Clerk the voter's Register Number.
- h. The Clerk fills out the Poll List. USE ONLY A BLACK PEN.
- i. The Judge looks up the voter in the Precinct Register and selects the proper ballot.
- j. The Judge puts the ballot in a Secrecy Folder and gives it to the voter.
- k. The voter enters a voting booth and marks the ballot with the special black ballot marking pen. DO NOT USE FELT PENS!!!!
- l. After voting the voter puts the ballot in the Provisional Envelope and closes and seals the envelope.

THE VOTER SHALL INSERT THE PROVISIONAL BALLOT INTO THE SIDE SLOT OF THE BLACK BALLOT BOX. DO NOT PUT INTO ACOU-VOTE.

2) VOTER HAS MOVED WITHIN YOUR VOTING PRECINCT

- a. If the voter's name is on the Signature Roster, but the voter has moved,
- b. Verify the location of the new residence address on the precinct map.
- c. The election official shall find the voter's address on the precinct map. Make sure the voter lives within the boundaries of this voting precinct.
- d. The election official shall complete the Provisional Form. Two election officials and the voter must sign the Form.
- e. Attach the form to the manila envelope provided. Give the envelope to the voter and ask the voter to return to the Signature Roster.
- f. The voter signs the signature block next to the voter's name. The election official tells the Poll List Clerk the voters Register Number. **DO NOT ADD THE VOTER'S NAME TO THE ROSTER. IT IS ALREADY THERE!**
- g. The Clerk fills out the Poll List using a black ball point pen.
- h. The Judge looks up the voter in the Precinct Register and selects the proper ballot.
- i. The Judge puts the ballot in a Secrecy Folder and gives it to the voter.
- j. The voter enters a voting booth and marks the ballot with the special black ballot marking pen.

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- k. The voter puts the ballot in the manila envelope and closes and **SEALS** the envelope.

1. THE VOTER SHALL INSERT THE PROVISIONAL BALLOT IN THE SIDE SLOT OF THE BLACK BALLOT BOX.

3) THE VOTER HAS MOVED TO A NEW VOTING PRECINCT

- a. If the voter's name is in the Signature Roster, but the voter has moved to a residence address located in another voting precinct, direct the voter to the precinct map.
- b. The election official, in cooperation with the voter, will locate the voter's new residence address on the Precinct Map.
- c. The election official shall look up the address of the polling place on the Alpha List and direct the voter to go to the new polling place to vote a Provisional Ballot.

IF THE VOTER IS ALLOWED TO VOTE A PROVISIONAL BALLOT IN THE WRONG PRECINCT, THE BALLOT WILL NOT COUNT.

4) THE VOTER REQUESTED AN EARLY BALLOT

These voters will be indicated in the Signature Roster with a RED EV in the box next to their name.

- a. The election official shall complete the Provisional Ballot Form. Two election officials and the voter must sign the form.
- b. Attach the form to the manila envelope provided. Give the envelope to the voter and ask the voter to return to the Signature Roster.
- c. The voter signs the signature block next to the voter's name. The election official tells the Poll List Clerk the voters Register Number. **DO NOT ADD THE VOTER'S NAME TO THE ROSTER. IT IS ALREADY THERE!**
- d. The Clerk fills out the Poll List in Red Ink.
 - i. USE A RED BALL POINT PEN.
- e. The Judge looks up the voter in the Precinct Register and selects the proper ballot.
- f. The Judge puts the ballot in a Secrecy Folder and gives it to the voter.
- g. The voter enters the voting booth and marks the ballot with the special black ballot marking pen.

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00
02

h) The voter folds the ballot in half and puts it in the envelope and closes and **SEALS** the envelope.

i) **THE VOTER SHALL INSERT THE BALLOT ENVELOPE INTO THE SIDE SLOT OF THE BLACK BALLOT BOX.**



EARLY BALLOTS DELIVERED TO YOUR POLLING PLACE

VOTED EARLY BALLOTS CAN BE DROPPED OFF AT ANY POLLING PLACE BY 7:00 P.M. ON ELECTION DAY.

IF A VOTER SHOWS UP WITH AN EARLY BALLOT TO "SURRENDER", UNLESS THERE IS SOMETHING WRONG WITH THE BALLOT THE VOTER SHALL DO THE FOLLOWING:

- ✓ GO TO A BOOTH AND VOTE THE BALLOT WITH THE SPECTRAL MARKING PEN.
- ✓ SIGN AND DATE THE BALLOT AFFIDAVIT ENVELOPE.
- ✓ FOLD AND PLACE THE VOTED BALLOT INTO THE ENVELOPE.
- ✓ SEAL THE ENVELOPE.
- ✓ INSERT THE ENVELOPE INTO THE SIDE SLOT OF THE BLACK BALLOT BOX.

IF THE VOTER HAS SPOILED THEIR EARLY BALLOT, THEY MUST VOTE A PROVISIONAL BALLOT AT THEIR ASSIGNED POLLING PLACE!

NEVER ISSUE A REPLACEMENT BALLOT TO BE USED WITH AN EARLY BALLOT PACKET!!!

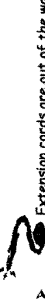
THEIR EARLY BALLOT AFFIDAVIT MUST BE SIGNED AND SEALED, AS IF THEY WERE DROPPING IT IN A MAIL BOX. IF NOT, THEY HAVE TO VOTE A PROVISIONAL BALLOT AT THEIR ASSIGNED POLLING PLACE!!

SAFETY IN THE POLLING PLACE

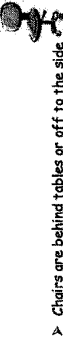
It is up to the Marshal or designee to see that reasonable safety precautions are taken in a polling place during Election Day. Reasonable precautions should include, but are not limited to the following:



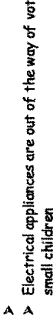
> Voter traffic ways are clear of debris!



> Extension cords are out of the way



> Chairs are behind tables or off to the side



> Electrical appliances are out of the way of voter traffic flow and out of the reach of small children



Electrical appliances, such as coffee pot, will be allowed in the polling place for the use of board workers **ONLY WITH PRIOR APPROVAL OF THE FACILITY'S OWNER/MANAGER.**

ANY ACCIDENT OR INJURY IN A POLLING PLACE REQUIRING EMERGENCY TREATMENT SHALL BE REPORTED IMMEDIATELY TO THE 9-1-1 EMERGENCY NUMBER. ALSO, REPORT ANY ACCIDENT OR INJURY BY CALLING THE HOTLINE #.



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COMMON COURTESIES AND GUIDELINES FOR VOTERS WITH SPECIAL



NEEDS

- Be considerate of the extra time it might take for a person who is disabled or elderly to get things done.
- Speak directly to the person who has a disability rather than to a companion who may come along.
- Speak calmly, slowly and directly to a person with a hearing problem. Don't shout.
- Before pushing someone in a wheelchair, ask if you may do so and how you should proceed.
- Greet a person who is visually impaired by letting the person know who and where you are.
- Be aware that dogs which assist people with disabilities should be admitted into the polling place. **These dogs are highly trained and need no special care.**
- Remember that *all* voters deserve courteous attention in exercising their rights as citizens to vote.

USE PLENTY OF SIGNS TO INDICATE THE WAY TO THE DISABLED VOTERS ENTRANCE INTO THE POLLING PLACE.

(DATE 10/23)

ASSISTANCE TO VOTERS

- Any voter may, at their option, be accompanied and assisted by a person of their choice or shall be assisted by 2 election officials (DEM & REP).
- If the election officials assist the voter, they shall distinctly state to the voter the names of all candidates for each office or the written description of the ballot measures and shall ask the voter how they wish to vote in each instance.
- The election officials shall then mark the ballot indicating the voter's choices.

- Neither of the election officers who assist you with your vote are allowed to influence your vote by recommending or suggesting any candidate or political party for any office.

VOTERS WITH DISABILITIES (CURBSIDE VOTING)

The Americans with Disabilities Act of 1990 establishes guidelines for the accessibility of facilities to the disabled community. Where accessibility for voters with disabilities is not achievable, the Secretary of State has established an alternate voting procedure.

For precincts determined to be less accessible, a sign notifying any disabled voters of the alternative method for voting is included in the precinct supplies. Post sign near the disabled parking signs in the parking lot. **THIS IS A CURBSIDE VOTING AVAILABLE SIGN.**

- o The disabled voter should relay a message through a companion, or other nearby person, to the precinct election board that he/she wishes to vote.
- o The Marshal verifies the voter's registration on The Signature Roster and enters the voter's registration information from the roster onto a Disabled Voter Signature Affidavit found in the precinct supplies on a clipboard.
- o The Inspector directs 2 board workers (DEM & REP) to proceed to the voter's vehicle with an official ballot, special black ballot marking pen and secrecy folder. The voter signs the affidavit, votes the ballot and places it in the secrecy folder.
- o The 2 board workers return to the voting area and present the ballot to the election official at the Accu-Vote. The election official removes the ballot from the Secrecy Folder and puts the ballot into the Accu-Vote. The board workers give the Disabled Voter Affidavit to the election official at the Signature Roster, who puts it in the back of the roster, and enters "DISABLED VOTER" in the signature block next to the voter's name. The Clerk enters the voter's name into the Poll List.

CLOSING THE POLLS

The closing of the polls is announced by the Marshal at 1 hour, at 30 minutes, at 15 minutes, at 1 minute before, and at the moment of closing, which is 7:00 p.m. ALL ELIGIBLE VOTERS IN THE LINE AT 7:00 P.M. WILL BE ALLOWED TO VOTE.

AFTER THE LAST PERSON HAS VOTED, ANYONE CAN OBSERVE THE CLOSING OF THE POLLS. PICTURES CAN BE TAKEN AS LONG AS THERE AREN'T ANY CLOSE-UFS. THE PUBLIC CANNOT INTERFERE WITH THE CLOSING PROCESS.

After the last person has voted:

- Open the door on the top of the Accu-Vote with the gold key. While pressing the "YES" and "NO" buttons, insert the Yellow Ender Card. This officially ends the election and a results tape will print.
- Print 2 copies of the results tape. The Inspector and the Judge sign the bottom of the tape.
- While the results tape is printing, remove the ballots from the Black Ballot Box.
- Using the Ballot Map, begin to sort the various ballots and complete the Ballot Report (found in the Poll List)
- All of the voted ballots, including the Provisional and Early ballots are placed in the Black Ballot Bag and secured with the Blue Seal. (DO NOT SEAL UNTIL ALL ITEMS ON THE BALLOT BAG CHECKLIST ARE INSIDE THE BAG)
- ONLY THE ITEMS LISTED ON THE OFFICIAL AND UNOFFICIAL ENVELOPE CHECKLIST SHOULD GO INSIDE THEM.



- PUT THE OFFICIAL SEAL ON THE OFFICIAL ENVELOPE ONLY.
- Put the unused ballots in a box (if they were sent in a separate box, if not they go into the Blue Supply Box.
- All other supplies should be returned to the Blue Supply Box and locked.
- Unlock the front door of the Black Ballot Box holding the Accu-Vote machine.
- Plug in the phone cord to the back of the Accu-Vote in preparation for the transmitting of the results.

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- Take to the phone to the designated transmitting location. Plug jack in.
- The message on the digital readout will ask if you want to transmit results. Press "YES".
- It will sound like an Internet connection.
- It should send within 2-3 tries.
- When the results are sent, you may turn off the Accu-Vote.
- The Accu-Vote and Black Ballot Bag will be transferred to the St. Johns Election Office by the Troubleshooter.
- All other equipment will be picked up by another truck.
- PLACE THE KEYS IN THE SIDE POCKET OF THE BLACK ACCU-VOTE BAG. DO NOT PUT THEM IN THE UNOFFICIAL OR OFFICIAL ENVELOPE.
- ✓ Make sure that everyone has signed the Payroll Voucher!
- ✓ Leave the polling place in better condition than you found it. Remove all trash and loose papers.
- ✓ Turn out the lights, turn off the a/c or heating and lock the door before you leave the polling place.

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TIME TO GO HOME!!!

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POLL WORKER PAYMENT SCHEDULE

>	INSPECTOR	\$85.00
>	MARSHAL	\$65.00
>	JUDGE	\$65.00
>	CLERK	\$65.00
>	MONITOR	\$65.00
>	TRANSLATOR	\$80.00



TRAINING CLASSES

EACH POLL WORKER WILL RECEIVE \$40.00 TO ATTEND A TRAINING CLASS. INSPECTORS & TRANSLATORS WILL RECEIVE \$40.00 PER TRANSLATOR TRAINING CLASSES, IN ADDITION TO THE POLL WORKER CLASS. YOU MUST ATTEND THE CLASS IN YOUR AREA, IF AT ALL POSSIBLE. IF YOU DO NOT WORK ELECTION DAY YOU WILL NOT BE PAID FOR THE TRAINING CLASSES.

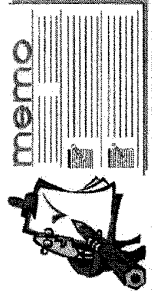


MILEAGE

MILEAGE WILL BE PAID AT \$.345 PER MILE WHEN THE POLL WORKER TRAVELS MORE THAN 5 MILES ONE-WAY/10 MILES ROUND-TRIP. WHEN POSSIBLE, POLL WORKERS SHOULD WORK IN THE PRECINCT IN WHICH THEY ARE REGISTERED, UNLESS PRE-APPROVED BY THE ELECTIONS DIRECTOR PRIOR TO ELECTION DAY.

Revised 10/03

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SAMPLE FORMS

SAMPLE

Disabled Voter Signature Statement

PRECINCT NAME

REGISTER NUMBER

NAME

BALLOT CODE

VR#

ADDRESS

PARTY

REGISTRATION DATE

I am the person listed above and I reside at the address listed above.

SIGNATURE OF QUALIFIED ELECTOR

SIGNATURE OF ELECTION OFFICIAL

PARTY AUTHORIZATION LETTER

Elections Director
Apache County
P.O. Box 423
St. Johns, AZ 85936

Dear _____:

This letter will authorize _____ as the party representative assigned
at the _____ Precinct for the _____ Election to be
held on _____, 2004.

Respectfully,

Chairman of _____ Party (Democrat or Republican)

NOTARIZED ORIGINAL MUST BE SHOWN

PARTY PICK UP LOG
FOR THE POLL LIST SHEETS

This sheet is to be completed by the Marshal each time a Party Representative picks up the copies of the Poll List entries. Take the names from the County Chairman's letter. Keep these on a clip board throughout the day.

NAME	TIME PICKED UP	PAGES TAKEN
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		

COMMON PROBLEMS/SOLUTIONS

COMMON PROBLEMS	SOLUTIONS
Early Ballot	Can be turned in at the polls, with Affidavit on the Envelope signed and dated.
Early Ballot issued, but person does not bring it to the polls	Voter votes an Early Provisional Ballot using the Provisional Procedure, give voter top copy of Provisional Ballot form. Call HOTLINE: (800) 361-4402
Before Election Day, if supplies are missing, Secrecy Booths not working, Ballots missing, Ballots don't match the Sample Ballot.	Call HOTLINE
Board Member Vacancy	Marshal maintains order. Inspector call HOTLINE if necessary. If it is serious, call the law enforcement agency closest to the polling place.
Disturbance at the Polling Place	Call HOTLINE. Follow Challenge procedure on Challenge List.
Challenge	Use Reading Aid, Disabled Secrecy Booth and Curbside Voting, if necessary
Disabled Voter Assistance	Voter signs Disabled Voter Affidavit and votes using Curbside Voting procedure
Disabled Voter cannot enter Polling Place	A registered voter who has moved with Apache County can vote a Provisional Ballot at the new Polling Place.
New Resident	Marshal verifies written authorization and logs in names, time and page numbers taken on sheet kept on clip board.
Party Rep comes for Poll List copies	Call HOTLINE for anything not in the Manual. Don't attempt to guess.
Procedure: Problems or Questions	Write SPOILED on Ballot. Inspector and Judge sign and put in Official Returns Envelope.
Spoiled Ballot - Voter makes a mistake	Direct to Special Clerk to verify proper ID. Provisional Ballot procedure, give voter top copy of Provisional Ballot form.
Voter not in Signature Roster and has no Certificate of Registration	Direct to Special Clerk and follow Provisional Ballot procedure, give voter top copy of Provisional Ballot form.
Voter in Inactive List has new address	

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BALLOT DUFFLE BAG CHECKLIST

FOR THE: _____ ELECTION _____ ELECTION DATE: _____

DO NOT SEAL THIS BAG UNTIL ALL OF THE ITEMS LISTED BELOW ARE VERIFIED AND ENCLOSED.

ITEM	YES	NO	REASON ITEM IS NOT IN BALLOT BAG
Official Returns Envelope			
Unofficial Returns Envelope			
Payroll Voucher Envelope			
Regular Ballots			
Write-In Ballots in plastic Write-In Bag			
Provisional Ballots			
Early Ballots dropped off at the polls on Election Day			
Original ballot report completed from poll list(s)			
Tape from Accu-Vote printer listing the zero report and the precinct totals			
Duffle ballot bag checklist (this form)			

We affirm that the above listed items have been placed in the black ballot duffie bag and sealed with the numbered BLUE seal. If an item is not contained within the bag the reason is stated above.

INSPECTOR

JUDGE

POLL LISTS
THERE MUST BE 2 BLUE POLL LISTS USED DURING THE ENTIRE DAY. THEY MUST LOOK IDENTICAL.

You MUST sign the front of the poll list book

THE PARTY OF A PERSON IS NOT NECESSARY IN THIS GENERAL ELECTION BECAUSE IT IS NON-PARTISAN. (THAT MEANS IT DOESN'T MATTER WHAT PARTY YOU ARE, YOU CAN VOTE FOR ANYONE.)

DO NOT ASK THE VOTER FOR THEIR PARTY. TRANSFER SLIPS DO NOT HAVE A PLACE TO ENTER PARTY INFORMATION.

SAMPLE ▲

VOTER TRANSFER SLIP
ELECTION DATE: _____
VOTER REG #: _____
BALLOT TYPE: _____
JUDGE'S INITIALS: _____

BALLOT SPLITS	WHAT IS ON THIS BALLOT?
12 CORONADO-1	FEDERAL OFFICES, LEGISLATIVE DISTRICT 5 STATE OFFICES, COUNTY OFFICES, JUSTICE RETENTIONS, SUPERIOR COURT JUDGE & ST. JOHN'S UNIFIED SCHOOL BOARD, NAVIT
12 CORONADO-3	FEDERAL OFFICES, LEGISLATIVE DISTRICT 2 STATE OFFICES, COUNTY OFFICES, JUSTICE RETENTIONS, SUPERIOR COURT JUDGE & SANDERS UNIFIED SCHOOL BOARD, SANDERS NATIVE BOARD
25 GREER-1	FEDERAL OFFICES, LEGISLATIVE DISTRICT 5 STATE OFFICES, COUNTY OFFICES, JUSTICE RETENTIONS, SUPERIOR COURT JUDGE & ROUND VALLEY SCHOOLS NAVIT BOARD
25 GREER-2	FEDERAL OFFICES, LEGISLATIVE DISTRICT 5 STATE OFFICES, COUNTY OFFICES, JUSTICE RETENTIONS, SUPERIOR COURT JUDGE & ROUND VALLEY UNIFIED SCHOOL NAVIT, LITTLE COLORADO SANITARY BOARD
29 KINLICHEE-1	FEDERAL OFFICES, LEGISLATIVE DISTRICT 2 STATE OFFICES, COUNTY OFFICES, JUSTICE RETENTIONS, SUPERIOR COURT JUDGE & WINDOW ROCK SCHOOL BOARD, WINDOW ROCK SCHOOL BOND
29 KINLICHEE-2	FEDERAL OFFICES, LEGISLATIVE DISTRICT 2 STATE OFFICES, COUNTY OFFICES, JUSTICE RETENTIONS, SUPERIOR COURT JUDGE & GANADO UNIFIED SCHOOL BOARD

Contest No.	Name of Contestant	Name of Elector (if voter is opponent)	Ballot No. of Contestant	Ballot No. of Elector
1	JAMES N. CLARK	480	70	70
2	HAROLD BROWN	455	91	91
3	DYER GAIL EDWARD	455	452	452
4	ARMOUR A. DE SPETH	455	55	55
5	COOPER, BETSY	177	56	56
6	GRASSELLI, ED	178	57	57
7	PAZ, JAMES THOMAS	77	58	58
8	ALTA, TONY	77	59	59
9	ALBERTA, MARY ANN	636	60	60
10	HARRIS, JAMES GERALD	467	61	61
11	BEARDS, LAY DONALD	166	62	62
12	LEUNGATE, ALAN DONALD	592	63	63
13	STRONG, STACE FRENCH	949	64	64
14	MURPHY, JASIE AUNE	712	65	65
15	MURPHY, PATRICK HENRY	713	66	66
16	WALKER, ROBERTA ANN	326	67	67
17	ANTHONY, CHARLES JACOB	26	68	68
18	SMITH, JERRY DEAN	936	69	69
19	SMITH, PATSY J	937	70	70
20	SMITH, FRANK SYLVIA	336	71	71
21	FIGHTMAN, FORTUNE	309	72	72
22	FIGHTMAN, WILLIAM	312	73	73
23	THOMPSON, LARRY DEAN	989	74	74
24	THOMPSON, MERLIN	788	75	75
25	ARMOUR, MARGARET	71	76	76

CLERK: When this page is filled, tear out yellow. Duplicate sheet and give to your party representative.

**APACHE COUNTY TRAINING
MANUAL -Primary**

AMERICA
Home of the brave.

PENNY L. PEW
ELECTIONS DIRECTOR
MATTHEW NOBLE
OUTREACH COORDINATOR
VIRGIL AYTONSON
OUTREACH TECHNICIAN

ELECTION


- CERTIFICATE OF QUALIFICATION
- DATE

• I, PENNY L. PEW, Elections Director for Apache County, Arizona, do hereby certify that:

• (Print Board Worker's Name)

• was provided with a course of instruction in the applicable election laws pertaining to polling place procedures and in the operating procedures for the Accu-Vote Optical Scan Voting System and is therefore fully qualified to serve as an election board official.

• Penny L. Pew, Elections Director



- USE OF A RED PEN IS LIMITED TO:
- PLACING AN EV IN THE SIGNATURE ROSTER FOR THOSE VOTERS THAT REQUESTED AN EARLY BALLOT.

INTRODUCTION

- This training manual has been prepared by the Apache County Elections Department.
- **Helpful Tips**
- If at anytime you feel the need to ask questions, please feel free!

DUTIES OF BOARD MEMBERS

- **INSPECTOR**
- Arranges for access to polling place for the Monday meeting and Election Day. Be sure to ask for alternate phone numbers! Who has the key?
- At 5:30 in the morning on Election Day a phone number to the secretary's desk will not do anybody any good, make sure you get a pagericell phone number or a home phone number.
- Call your Board to let them know when the set-up meeting will take place.
- Conducts the Monday pre-election meeting.
- Is responsible for instructing the Clerks, Marshals and Judges in their duties.

More Inspector Duties...

- Fills any vacancy on the board which exists at the opening of the polls at 6:00 a.m., or which may occur during the day. In filling vacancies, the Inspector shall appoint a qualified elector.
- Is Chairman of the election board and must be consulted regarding procedures.
- Assigns duties to board members.
- Along with 2 Judges, makes up the official voting election board and votes on challenges.

- Oversees the Accu-Vote procedures. Never leave the Accu-Vote unattended!
- Completes and signs the certification on the cover of the Signature Roster after the polls close.
- Shall deliver the ballots and materials to the designated receiving site along with one of the judges of the opposite party affiliation (if applicable).
- Responsible for duties of the Marshal, if a Marshal is not appointed.
- Oversees Provisional Ballot procedure.
- May transmit results over a phone line to a Central Computer site.
- Is responsible for completion and accountability of the Precinct Ballot Report.
- Is responsible for official ballot security.

- ### JUDGE
- Verify voter's name on Signature Roster.
 - Issue ballots and demonstrates marking the ballot.
 - Monitors Accu-Vote.
 - Is a voting member of the Election Board.
 - May accompany the Inspector when delivering the ballots to the designated receiving site.
 - Is assigned to do Provisional Ballots.
 - Any other duty assigned by the Inspector.

- ### CLERK
- Enters names on the Poll List and CHECKS FOR ACCURACY.
 - Remember, there MUST be 2 poll lists that match.
 - Any other duty assigned by the Inspector.


- ### MARSHAL
- Preserves order; acts as constable during the time the polls are open.
 - Performs as relief person for other board members.
 - Announces the opening of the polls, and, at 5 different times, the closing of the polls.
 - Line starts before the polls open.
 - Forcibly, all voters in line at 7:00 P.M. are allowed to vote.
 - May assist in the delivery of Accu-Vote to regional computer site after polls have closed.
 - Directs voters in how early voters' ballots to step out of the line and deposit their ballots into the slot of the Black Ballot Box.
 - Any other duty assigned by the Inspector.

- ### MONITOR
- Help voters find their address in the alpha-listing to determine residence.
 - Assist the voter in any questions he/she may have regarding elections.

- ### TRANSLATOR
- Verbally read the ballot in the Navajo language so that the voter understands the ballot information.
 - **DO NOT TELL THEM HOW TO VOTE ON THE ISSUES**

TROUBLESHOOTER

.....IS THE LIAISON
BETWEEN THE POLLING
PLACE AND ELECTION
CENTRAL.
PLEASE UTILIZE THEIR
HELP AS NEEDED.



PRE-ELECTION WEEK

- THE INSPECTOR:
- You will receive the name and phone number of the contact person at your Polling Place. You are to arrange a Set-Up meeting to take place the Monday before the Election.
- DO NOT SET-UP THE POLLING PLACE PRIOR TO NOON ON MONDAY.

MONDAY SET-UP MEETING

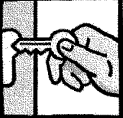
- Election boards will have *new members*, the Inspector should:
- Discuss, *in detail*, the duties of each board position
- Assign each board member his/her duties
- Discuss the voting procedures to be followed on Election Day
- Review the Accu-Vote unit procedures
- *** Survey the areas to make certain outlets are in working order.
- *** Double-check with the facility PRIOR to Election Day to make certain the phone line is accessible on Election Night for the transmitting of the results.
- *** Discuss with poli workers the importance of staying at the polling place from 5:30 a.m. until the polling place paperwork is completed and results are transmitted.

Early Ballot List

- Write a red EV next to their name if they requested an Early Ballot.
- THIS IS A REQUIREMENT TO PREVENT A PERSON FROM VOTING MORE THAN ONE TIME.

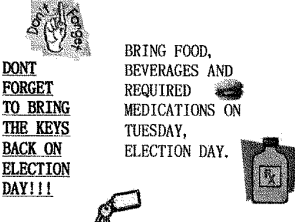
**MONDAY SET-UP MEETING –
ENDING PROCEDURE**

- Before leaving the polling place, put the Official Ballots in a secure place. (locked)



DONT FORGET TO BRING THE KEYS BACK ON ELECTION DAY!!!

BRING FOOD, BEVERAGES AND REQUIRED MEDICATIONS ON TUESDAY, ELECTION DAY.



ANNOUNCING A NEW HANDBOOK!

- **THIS HANDBOOK HAS A GREEN FRONT AND A RED COVER.**
- **PLEASE USE THIS BOOK TO HELP OPEN AND CLOSE THE ELECTION.**

SETTING UP THE ACCU-VOTE


Make sure that the precinct name on the Accu-Vote is the correct precinct.

- Move the entire unit to the electrical outlet nearest the polling place exit. **DO NOT PLUG IT IN YET.**
- Unlock the door on the front of the Black Ballot Box. Slide the Accu-Vote unit in place. Attach the power cord and plug it into the Accu-Vote.
- Unlock the door on the top of the Accu-Vote machine in preparation of printing the "Zero Report".
- Print the "Zero Report". After printing **DO NOT TEAR OFF.** Fold it up and re-lock the door.
- Make sure that there are zeros on the tape.

SET-UP BOOTHS

- **All booths assigned to your precinct shall be set up and used, including the NEW booth for the disabled. THIS BOOTH IS DESIGNED TO SIT ON A TABLE.**
- An instructional diagram is on each booth. You may use a table to set the booth up instead of the legs.
- Arrange the voting booths so they are in plain view of the board and the voters.

INSPECTION OF VOTING BOOTHS



- Election officials should periodically check the voting booths and remove any miscellaneous items such as notes, campaign literature, etc.
- Make sure the appropriate signs are hanging in each booth – ENGLISH AND SPANISH:
 - How to mark the ballot
 - Ballot Issues (if applicable)
- Remove any ball point pens or pencils found in the booths.
- Make sure each booth has a Black Ballot Marking Pen.

EARLY (ABSENTEE) VOTERS


EV

- Using the list of Early Voters, make an EV in the box next to the voter's name on the Signature Roster for each voter whose name appears on the list. Use a RED PEN. Leave room for the voter to sign.
- If the Early Voter's name does not appear alphabetically in the Signature Roster in the list of active voters or the list of inactive voters, check the Add-On list in the back of the roster.

POSTING SIGNS


- Post in **PLAIN VIEW** in the room where the ballots are cast:
 - **2 SAMPLE BALLOTS (OF EACH BALLOT STYLE)**
 - The sample ballots are in the Supply Box.
 - **2 INSTRUCTIONS TO VOTERS AND ELECTIONS OFFICERS SIGNS/RIGHT TO VOTE A PROVISIONAL BALLOT COMBO SIGNS**
 - Post the **NO SMOKING** signs
 - Post the **INSTRUCTIONS ON MARKING THE BALLOTS** in each voting booth – ENGLISH and SPANISH and the Ballot Issues (if applicable).

ELECTION DAY



- The law requires members of the election board to be present at the polling place by 5:30 a.m. on Election Day.
- A.R.S. §16-566(A)


BEFORE THE POLLS OPEN



- Election Board members must take the Oath found on the inside cover of the Blue Poll List. The Blue Poll List can be found in the supply box with the other election supplies.


- Any elector of the precinct may administer and certify the oath; however, it is traditionally administered by the Inspector to the Board Members. Afterward, one board member administers the oath to the Inspector.
- WRITE THE NAME OF THE PRECINCT ON THE FRONT OF BOTH POLL LISTS

- After the oath has been administered, election board members shall not leave the polling place until the polls are closed.



ONCE THE BOARD HAS BEEN SWORN IN,

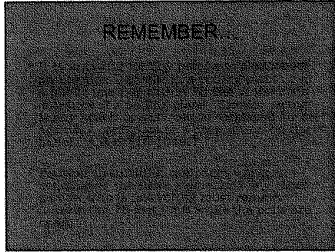
MAKE SURE THAT EVERYONE SIGNS THE PAYROLL VOUCHER!!



FINAL COMPLETION OF THE POLLING PLACE SET-UP

- Plug in the Accu-Vote. A zero tape will print. ALL RESULTS ON THE TAPE MUST BE ZERO. DO NOT TEAR OFF THE TAPE! It must remain attached to the Accu-Vote. The readout must also register zeros.
- While the tape is printing, check the arrangement of the polling place to be sure the voting booths and Accu-Vote are in plain view.

- The Marshal places the three **75 FOOT LIMIT** signs in 3 different directions **75 feet** from the **MAIN ENTRANCE** to the polling place. **ALL OTHER SIGNS MUST BE PLACED APPROPRIATELY TO ENSURE EASY IDENTIFICATION OF AND ACCESS TO THE POLLING PLACE.**
- No person shall be allowed to remain inside the 75 foot limit while the polls are open except for the purpose of voting and except for the election board and any officially appointed representatives. A.R.S. §16-815



PLACE ALL HANDICAPPED PARKING SIGNS NEAR CURB CUTS SO THAT THE VOTERS WITH DISABILITIES HAVE EASY ACCESS TO THE CURB CUTS.

CLEARLY MARK THE PATH FROM THE HANDICAPPED PARKING TO THE POLLING PLACE.

USING THE SIGNS YOU HAVE POSTED AS A GUIDE, ASK YOURSELVES THIS QUESTION...

CAN A VOTER WITH DISABILITIES FIND THEIR WAY INTO THE POLLING PLACE THROUGH THE ENTRANCE FOR DISABLED PERSONS?

- The Inspector should remain near the Accu-Vote during the day, monitoring the count of voters.
- Place all Provisional Envelopes/Ballots and Early Ballots that are dropped off at the polling place during the day in the side slot of the Black Ballot Box.
- The Marshal announces the opening of the polls at 6:00 a.m. SHARP!!!!

THINGS WE ALL KNOW...

- DO NOT ACCEPT FOOD FROM OUTSIDE THE POLL PLACE.
- BOARD WORKER COURTESY
- Be a Diter
- CAMERAS - not within 75 foot limit while polls are open
- NO SMOKING PLEASE
- CELLULAR PHONES

CHALLENGING A VOTER PROCEDURES

- Please call Hotline for assistance, immediately upon Challenge.
- The grounds for challenging voters are found in the back side of the Challenge List Form. Don't make any entries unless a challenge is made. See A.R.S. §16-593 for rules determining the residence of a voter upon a challenge.
- NOTE: A voter who has moved from one DISTRICT to another and who has NOT notified the County Recorder may vote a NEW RESIDENCE PROVISIONAL BALLOT (BALLOT TO BE VERIFIED) in the District where his/her new address is located.
- A majority of the voting members of the election board determines the validity of a challenge. The 2 Judges, together with the Inspector, make up the voting members of the election board. The oath is printed on the front side of the Challenge List Form.
- No other affidavit is necessary. If a challenge is made, it's suggested the Inspector have the person challenged step aside and permit the other voters in line to continue to vote.

QUALIFIED ELECTORS DEFINED

- Persons who may vote are:
 1. Those electors whose names appear in the Signature Roster, either as Active or Inactive and have not moved from the address as listed. These electors vote by the standard voting procedures.
- A list of **INACTIVE VOTERS** for each precinct has been compiled and placed in the back of the Signature Roster and each of the Precinct Registers. The list of **INACTIVE VOTERS** can be identified by the separator sheet & title at the top of the page.

- If it is determined that the elector has moved from the address that is listed on the Signature Roster/Precinct Register, the elector will be directed to the Apache County Precinct Map to locate the precinct for the new address. The poll worker will find the appropriate polling place for the elector's new precinct and **DIRECT** the elector to the new polling place.

- Those electors who surrender a County recorder's Certificate authorizing the addition of their name to the Precinct Signature Roster. The elector's names are added to the Signature Roster and they vote by the standard voting procedure. The register numbers for these voters will be the consecutive number after the last name listed in the active portion of the Signature Roster.



- Those electors who qualify to vote a Provisional (Ballot To Be Verified).
 - If an elector's name is **NOT** found on the Signature Roster, either in the Active or Inactive sections, check the Add-On List in the back of the Signature Roster.
 - **Be sure to check for possible misspellings or keying errors.**
- Check the Alpha Listing to see if they are in Apache County but in another precinct.

- If the person's name is **NOT** found and they have not moved or modified their voter registration record, then they shall be allowed to cast a Provisional Ballot (Ballot To Be Verified).
- If the person's name is **NOT** found and they do **NOT** have the "VOTER RECEIPT" copy of their registration and they are **NOT** currently registered in Apache County, then the poll worker will give the person a blank registration form to complete. Have the person complete the form and return it to the poll worker to be forwarded to the Elections Department in the envelope provided. *That person must vote a provisional ballot in the current election.*


- **Electors whose names were reported to the Inspector on the Early Ballot List, but who state to the election board that they:**
 - **did not vote,**
 - **will not vote or,**
 - **are unable to vote their Early Ballot.**
- **SUCH ELECTORS MUST BE ALLOWED TO VOTE BY PROVISIONAL BALLOT PROCEDURE.**

INACTIVE VOTERS

- "If the notice sent by the recorder is not returned, the registrant may be required to provide affirmation or confirmation of the registrant's address in order to vote." If a voter is listed on the **INACTIVE LIST**, that voter **must re-register**.
A.R.S. § 16-166(E)

If a voter is listed on the **INACTIVE LIST**, that voter **must re-register**.

VOTING PROCEDURES



Step by step instructions


STANDARD VOTING

Eligible voters names appear on the Signature Roster or who submit a County Recorder's Certificate to the board will vote by the following procedure:

1. The voter reports to the Election Official assigned to the Signature Roster and announces their full name and address. Be sure to check address as well. If the voter lives at a different address they will need to report to the Provisional Ballot (PBV) Table for processing.


The election official locates the voter's name in the Signature Roster, either in the list of regular (Active) voters, the list of Inactive Voters or Add-ons and verifies that the address is correct by seeing the voter their address. The election official asks the voter to sign the signature book next to their name. The election official tells the Poll List Clerk the voter's Register Number.

Next step...



- The Poll List Clerk locates the voter's name in the Precinct Register and enters the voter's name and Register Number on the next available line of the Poll List. **USE A BALL POINT PEN.** Call out the voter's Register Number to the Judge issuing ballots.
 - Please **PRESS HARD.** The Register Number for an Inactive Voter is preceded with the letter "I".
 - **USE ONLY ONE (1) POLL LIST AT A TIME.**

Next step...




- The Judge looks up the voter by Register Number in the Precinct Register, then selects the proper ballot and gives it to the voter.
 - Secrecy folders should be used for all voters.
 - Explain: a special black ballot marking pen must be used. Reminding the voter that they must fill in the oval entirely.
 - Ballots that are damaged or mis-marked must be spoiled and a replacement ballot will be issued. **LIMIT 3.**
 - Now the ballot is inserted into the **Accu-Vote by the Voter.**

WRITE INS


Explain how to do a write-in: reference that the voter **must** write the candidate's name **AND** fill in the oval.

Be sure to remind the voter to vote **BOTH** sides if applicable.

Next step...



- The voter enters a voting booth, marks the ballot with the special black ballot marking pen. The pen is left in the booth. Check the booth and make sure that each has a special black ballot marking pen.
 - After voting, the voter puts the official ballot in the secrecy folder and goes to the Accu-Vote.
 - The voter **REMOVES** his official ballot from the secrecy folder and inserts the ballot into the Accu-Vote. **The ballot can be inserted in the Accu-Vote in any direction.** The voter gives the secrecy folder to the election official.
 - **THE ELECTION OFFICIAL SHOULD STAND TO THE SIDE FOR BACK OF THE ACCU-VOTE. THE BALLOT IS SECRET.**
 - **DO NOT INSERT THE BALLOT IN THE ACCU-VOTE FOR THE VOTER unless the voter asks you for assistance.**




URGENT

- A VOTER DOES NOT HAVE TO VOTE FOR EACH AND EVERY CANDIDATE OR ISSUE ON THE BALLOT. THIS IS CALLED **UNDER VOTING**. THE ACCU-VOTE DOES NOT REJECT A BALLOT BECAUSE OF AN UNDER VOTE.
- EVEN IF A VOTER HAS BEEN GRANTED POWER OF ATTORNEY, THEY CANNOT VOTE ON BEHALF OF THAT VOTER.

SPOILED

- If a voter makes a mistake on the ballot, it may be exchanged for another. No more than 3 ballots may be issued to one voter. Remember, an Early Ballot counts for 1!
- The word "SPOILED" is written across both sides of the ballot by the voter. The Inspector, Judge & Voter **MUST SIGN** the Spoiled ballot. If the voter wishes, the election official may write the word "SPOILED" across both sides of the ballot.



- The Spoiled ballot must be placed in the Official Envelope Immediately. You may want to put a secrecy folder in the Official Envelope to protect the secrecy of any ballots. (Official Envelope is clear.) Removes the folder after the polls have closed.
- The election official shall look up the voter's name in the Precinct Register, select the proper ballot and issue it to the voter.


THE VOTER MAY HAVE ONLY ONE BALLOT IN THEIR POSSESSION AT A TIME.

CAUTION

- DO NOT PUT SPOILED BALLOTS INTO THE BLACK BALLOT BOX.
- THEY MUST GO INTO THE OFFICIAL ENVELOPE IMMEDIATELY.

JAMMED BALLOTS


A JAMMED BALLOT MUST BE REMOVED FROM THE ACCU-VOTE UNIT BUT NOT IF IT HAS FALLEN INTO THE BLACK BOX. DO NOT GET IT OUT OF THE BLACK BOX, JUST MAKE A NOTE ON THE TAPE THAT THIS HAPPENED. INDICATE IF IT WAS COUNTED OR NOT.



OVERVOTED BALLOT

- If a voter has voted for more candidates than are to be elected to an office, the Accu-Vote will reject the ballot and return it to the voter. The message "OVERVOTED BALLOT" and the office that was overvoted will print on the tape.
- THE ELECTION OFFICIAL MUST READ THE MESSAGE ON THE TAPE.

The voter can



- Spoil the ballot, the words 'SPOILED' must be written by the voter on both sides of the ballot & signed by Inspector, Judge & Voter.
- A replacement ballot is given to the voter. The voter should go back into the voting booth to vote the replacement ballot.
- During this time, let other voters continue to vote. **KEEP THE LINE AT THE ACCU-VOTE MOVING!**
- If the voter refused to vote a replacement ballot and at the request of the voter, the election official can press "YES" button and the ballot will be accepted.

UNVOTED BLANK BALLOT

If a voter has inserted an "invoted" blank ballot into the Accu-Vote, the Accu-Vote will return the ballot. The message "UNVOTED BLANK BALLOT" will print on the tape.

The voter can do the following:

- If the ballot was simply mis-marked the voter can vote that ballot. The ballot can be given to the voter with instructions to return to the voting booth to mark the ballot. During this time, other voters continue to insert their ballots into the Accu-Vote.
- At the request of the voter, if the voter intentionally voted a blank ballot, the election official can press the "YES" button and the Accu-Vote will accept the ballot.

Or...

A voter cannot use white-out, cross out or erase on a ballot. IF THE VOTER MARKS THE BALLOT OUTSIDE THE OVAL, THE BALLOT MUST BE RE-MARKED CORRECTLY, STAYING WITHIN THE OVAL, AS SHOWN ON THE INSTRUCTIONS IN THE VOTING BOOTH.

MISREAD BALLOTS

- If a ballot is misread, meaning that for some reason the Accu-Vote is not able to process the ballot, the Accu-Vote will return the ballot. A message will print on the tape. A misread ballot can be one of the following:
 - A damaged ballot.
 - Misprinted ballot.
 - Voter marked ballot in the heading.
 - Incorrect ballot--ballot from another precinct.
 - Voter inserts ballot into wrong Accu-Vote in a co-located polling place.

- **A misread ballot should be spoiled and a replacement ballot issued.** If the voter will **not** vote a replacement ballot, have the voter drop the ballot in the side slot of the Black Ballot Box. **DO NOT USE THE "YES" TO OVERRIDE". The Accu-Vote will not accept a misread ballot. BE SURE TO INSTRUCT THE VOTER THAT THE MISREAD BALLOT WILL BE TABULATED AT ELECTION CENTRAL LATER THAT NIGHT.**

PROVISIONAL BALLOT (BALLOT TO BE VERIFIED) PROCEDURE

- There are 4 different situations for issuing a Provisional Ballot (formerly known as Ballot To Be Verified):
 - The voter's name does not appear on the Signature Roster.
 - The voter has moved within the precinct. (New Residence Ballot)
 - The voter has moved outside of the precinct. (New Residence ballot)
- ****the voter *must* go to their new polling place to vote.****
 - The voter has requested or received an Early Ballot and did not bring the Early Ballot to the polling place for voting.

**VOTERS NAME DOES NOT
APPEAR IN SIGNATURE
ROSTER**

- If the voter's name is not on the regular (active) list of voters, the inactive list of voter's or the Add-On List, the voter should produce the Voters Receipt copy from their registration form or a Voter I.D. Card.
- If the voter does NOT have a Voter's Receipt, they must produce some other form of identification with the voter's name and residence address. **RETURN THE IDENTIFICATION TO THE VOTER. DO NOT KEEP ANY PERSONAL I.D.**

- The election official shall find the voter's address on the precinct map. Make sure the voter lives within the boundaries of this precinct.
- The election official shall complete the Provisional Ballot form. **Two election officials and the voter must sign the form.**
- If the voter has a Voter I.D. Card or Voter's Receipt, clip it to the outside of the envelope. **DO NOT PUT IT INSIDE THE ENVELOPE.**

- Give the envelope to the voter and ask the voter to return to the Signature Roster.
- On the PROVISIONAL BALLOTS page at the back of the Signature Roster, the election official enters the voter's name and other identifying data as shown in the Signature Roster. These voters are assigned register numbers beginning with V-1, V-2, etc. A voter's name is added to the Signature Roster **ONLY** if the voter's name is **NOT** on the Signature Roster.

- The voter signs the signature block next to their name. The election official tells the Poll List Clerk the voter's Register Number.
- The Clerk fills out the Poll List. **USE ONLY A BLACK PEN.**
- The Judge looks up the voter in the Precinct Register and selects the proper ballot.
- The Judge puts the ballot in a Secrecy Folder and gives it to the voter.

- The voter enters a voting booth and marks the ballot with the **special black ballot marking pen. DO NOT USE FELT PENS!!!!**
- After voting the voter puts the ballot in the Provisional Envelope and closes and **seals the envelope.**

•THE VOTER SHALL INSERT THE PROVISIONAL BALLOT INTO THE SIDE SLOT OF THE BLACK BALLOT BOX. DO NOT PUT INTO ACCU-VOTE

**VOTER HAS MOVED WITHIN
YOUR VOTING PRECINCT -
CLARIFY**

- If the voter's name is on the Signature Roster, but the voter has moved, the voter can produce some identification with the voter's name and new residence address.
- Verify the location of the new residence address on the precinct map.
- The election official shall find the voter's address on the precinct map. **Make sure the voter lives within the boundaries of this voting precinct.**

- The election official shall complete the Provisional Form. Two election officials and the voter must sign the form.
- Attach the form to the manila envelope provided. Give the envelope to the voter and ask the voter to return to the Signature Roster.
- The voter signs the signature block next to the voter's name. The election official tells the Poll List Clerk the voters Register Number. **DO NOT ADD THE VOTER'S NAME TO THE ROSTER. IT IS ALREADY THERE!**

- The Clerk fills out the Poll List using a black ball point pen.
- The Judge looks up the voter in the Precinct Register and selects the proper ballot.
- The Judge puts the ballot in a Secrecy Folder and gives it to the voter.
- The voter enters a voting booth and marks the ballot with the special black ballot marking pen.


The voter puts the ballot in the manila envelope, closes and **SEALS** the envelope.

THE VOTER SHALL INSERT THE PROVISIONAL BALLOT IN THE SIDE SLOT OF THE BLACK BALLOT BOX.

THE VOTER HAS MOVED TO A NEW VOTING PRECINCT

- If the voter's name is in the Signature Roster, but the voter has moved to a residence address located in another voting precinct, direct the voter to the precinct map.
- The election official, in cooperation with the voter, will locate the voter's new residence address on the Precinct Map.
- The election official shall look up the address of the polling place on the Alpha List and **direct the voter to go to the new polling place to vote a Provisional Ballot.**

IF THE VOTER IS ALLOWED TO VOTE A PROVISIONAL BALLOT IN THE WRONG PRECINCT, THE BALLOT WILL NOT COUNT.



THE VOTER REQUESTED AN EARLY BALLOT

- These voters will be indicated in the Signature Roster with a RED EV in the box next to their name.
- The election official shall complete the Provisional Ballot Form. Two election officials and the voter must sign the form.
- Attach the form to the manila envelope provided. Give the envelope to the voter and ask the voter to return to the Signature Roster.
- The voter signs the signature block next to the voter's name. The election official tells the Poll List Clerk the voters Register Number. **DO NOT ADD THE VOTER'S NAME TO THE ROSTER. IT IS ALREADY THERE!**

- The Clerk fills out the Poll List in Red Ink.
 - USE A RED BALL POINT PEN.
- The Judge looks up the voter in the Precinct Register and selects the proper ballot.
- The Judge puts the ballot in a Secrecy Folder and gives it to the voter.
- The voter enters the voting booth and marks the ballot with the special black ballot marking pen.
- The voter folds the ballot in half and puts it in the envelope and closes and **SEALS** the envelope.
- **THE VOTER SHALL INSERT THE BALLOT ENVELOPE INTO THE SIDE SLOT OF THE BLACK BALLOT BOX.**

EARLY BALLOTS DELIVERED TO YOUR POLLING PLACE

- VOTED EARLY BALLOTS CAN BE DROPPED OFF AT ANY POLLING PLACE BY 7:00 P.M. ON ELECTION DAY.

- IF A VOTER SHOWS UP WITH AN EARLY BALLOT TO "SURRENDER", UNLESS THERE IS SOMETHING WRONG WITH THE BALLOT THE VOTER SHALL DO THE FOLLOWING:
- GO TO A BOOTH AND VOTE THE BALLOT WITH THE SPECIAL MARKING PEN.
- SIGN AND DATE THE BALLOT AFFIDAVIT ENVELOPE.
- FOLD AND PLACE THE VOTED BALLOT INTO THE ENVELOPE.
- SEAL THE ENVELOPE.
- INSERT THE ENVELOPE INTO THE SIDE SLOT OF THE BLACK BALLOT BOX.

IF THE VOTER HAS SPOILED THEIR EARLY BALLOT, THEY MUST VOTE A PROVISIONAL BALLOT AT THEIR ASSIGNED POLLING PLACE!! NEVER ISSUE A REPLACEMENT BALLOT TO BE USED WITH AN

SAFETY IN THE POLLING PLACE

STREET LIGHT
Voter traffic ways are clear of debris

Extension cords are out of the way

Chairs are behind tables or off to the side

Electrical appliances, such as coffee pot, will be allowed in the polling places for the use of board workers **ONLY WITH PRIOR APPROVAL OF THE FACILITY'S OWNER/MANAGER.**


Electrical appliances are out of the way of voter traffic flow and out of the reach of small children

HELP


ANY ACCIDENT OR INJURY IN A POLLING PLACE REQUIRING EMERGENCY TREATMENT SHALL BE REPORTED IMMEDIATELY TO THE 9-1-1 EMERGENCY NUMBER. ALSO, REPORT ANY ACCIDENT OR INJURY BY CALLING THE HOTLINE #.

COMMON COURTESIES AND GUIDELINES FOR VOTERS WITH SPECIAL NEEDS

- Be considerate of the extra time it might take for a person who is disabled or elderly to get things done.
- Speak directly to the person who has a disability rather than to a companion who may come along.
- Speak calmly, slowly and directly to a person with a hearing problem. Don't shout.



- Before pushing someone in a wheelchair, ask if you may do so and how you should proceed.
- Greet a person who is visually impaired by letting the person know who and where you are.
- Be aware that dogs which assist people with disabilities should be admitted into the polling place. These dogs are highly trained and need no special care.
- Remember that all voters deserve courteous attention in exercising their rights as citizens to vote.



- USE PLENTY OF SIGNS TO INDICATE THE WAY TO THE DISABLED VOTERS ENTRANCE INTO THE POLLING PLACE.

ASSISTANCE TO VOTERS

- Any voter may, at their option, be accompanied and assisted by a person of their choice or shall be assisted by 2 election officials (DEM & REP).
- If the election officials assist the voter, they shall distinctly state to the voter the names of all candidates for each office or the written description of the ballot measures and shall ask the voter how they wish to vote in each instance. The election officials shall then mark the ballot indicating the voter's choices.
- Neither of the election officials who assists you with your vote are allowed to influence your vote by recommending or suggesting any candidate or political party for any office.

VOTERS WITH DISABILITIES (CURBSIDE VOTING)

The 2008-2011 Michigan Election Code (Act 116) includes guidelines for the accessibility of facilities to the disabled community. Where accessibility for voters with disabilities is not achievable, the Secretary of State has established an alternate voting procedure.

- Precincts determined to have difficult accessibility, a sign notifying any disabled voters of the alternative method for voting is included in the precinct supplies. Post sign near the disabled parking signs in the parking lot. Such as,

'CURBSIDE VOTING AVAILABLE'

- The disabled voter should relay a message through a companion, or other nearby person, to the precinct election board that he/she wishes to vote.
- The Marshal verifies the voter's registration on the Signature Roster and enters the voter's registration information from the roster onto a Disabled Voter Signature Affidavit found in the precinct supplies.

- The Inspector directs 2 board workers (DEM & REP) to proceed to the voter's vehicle with an official ballot, special black ballot marking pen and secrecy folder. The voter signs the affidavit, votes the ballot and places it in the secrecy folder.
- The 2 board workers return to the voting area and present the ballot to the election official at the Accu-Vote. The election official removes the ballot from the Secrecy Folder and puts the ballot into the Accu-Vote. The board workers give the Disabled Voter Affidavit to the election official at the Signature Roster, who puts it in the back of the roster and enters "DISABLED VOTER" in the signature block next to the voter's name. The Clerk enters the voter's name into the Poll List.

CLOSING THE POLLS

- The closing of the polls is announced by the Marshal at 1 hour, at 30 minutes, at 15 minutes, at 1 minute before, and at the moment of closing, which is 7:00 p.m. **ALL ELIGIBLE VOTERS IN THE LINE AT 7:00 P.M. WILL BE ALLOWED TO VOTE.**
- **AFTER THE LAST PERSON HAS VOTED, ANYONE CAN OBSERVE THE CLOSING OF THE POLLS. PICTURES CAN BE TAKEN AS LONG AS THERE AREN'T ANY CLOSE UPS. THE PUBLIC CANNOT INTERFERE WITH THE CLOSING PROCESS.**

After the last person has voted.

GET YOUR NEW HANDBOOK!

- Open the door on the top of the Accu-Vote with the gold key. While pressing the "YES" and "NO" buttons, insert the Yellow Ender Card. This officially ends the election and a results tape will print.
- Print 2 copies of the results tape. The Inspector and the Judge sign the bottom of the tapes.
- While the results tape is printing, remove the ballots from the Black Ballot Box.
- Using the Ballot Map, begin to sort the various ballots and complete the Ballot Report (found in the Poll List)



- All of the voted ballots, including the Provisional and Early ballots are placed in the Black Ballot Bag and secured with the Blue Seal. (DO NOT SEAL UNTIL ALL ITEMS ON THE BALLOT BAG CHECKLIST ARE INSIDE THE BAG).
- ONLY THE ITEMS LISTED ON THE OFFICIAL AND UNOFFICIAL ENVELOPE CHECKLIST SHOULD GO INSIDE THEM.


PUT THE OFFICIAL SEAL ON THE OFFICIAL ENVELOPE ONLY.

- Put the unused ballots in a box (if they were sent in a separate box, if not they go into the Blue Supply Box).
- All other supplies should be returned to the Blue Supply Box and locked.
- Unlock the front door of the Black Ballot Box holding the Accu-Vote machine.
- Plug in the phone cord to the back of the Accu-Vote in preparation for the transmitting of the results.

THEN...

- Take the Accu-vote to the designated jack and plug in.
- The message on the digital readout will ask if you want to transmit results. Press "YES". It will sound like an Internet connection.
- It should send within 2-3 tries. If not, the Inspector takes the Accu-Vote with the Troubleshooter to the nearest location to transmit results.
- When the results are sent, you may turn off the Accu-Vote.

- The Accu-Vote and Black Ballot Bag will be transferred to the St. Johns Election Office by the Troubleshooter.
- All other equipment will be picked up by another truck.
- **PLACE THE KEY RING WITH ALL KEYS IN THE SIDE POCKET OF THE BLACK ACCU-VOTE BAG. DO NOT PUT THEM IN THE UNOFFICIAL OR OFFICIAL ENVELOPE.**



- Make sure that everyone has signed the Payroll Voucher!
- Leave the polling place in better condition than you found it. Remove all trash and loose papers.
- Turn out the lights, turn off the a/c or heating and lock the door before you leave the polling place.


<ul style="list-style-type: none"> • POLL WORKER PAYMENT SCHEDULE • INSPECTOR \$85.00 • MARSHAL \$65.00 • JUDGE \$65.00 • CLERK \$65.00 • MONITOR \$65.00 • TRANSLATOR \$80.00 	<ul style="list-style-type: none"> • TRAINING CLASSES • EACH POLL WORKER WILL RECEIVE \$40.00 TO ATTEND A TRAINING CLASS. • INSPECTORS & TRANSLATORS WILL RECEIVE \$40.00 PER TRAINING CLASS. NOT TO EXCEED 2 TRANSLATOR CLASSES, IN ADDITION TO THE POLL WORKER CLASS.
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IF YOU DO NOT WORK 12 ELECTION DAY YOU WILL NOT BE PAID FOR THE TRAINING CLASSES.

PLEASE ATTEND THE CLASS IN YOUR AREA, IF AT ALL POSSIBLE.

MILEAGE WILL BE PAID AT \$.345 PER MILE WHEN THE POLL WORKER TRAVELS MORE THAN 5 MILES ONE-WAY/10 MILES ROUND-TRIP. WHEN POSSIBLE, POLL WORKERS SHOULD WORK IN THE PRECINCT IN WHICH THEY ARE REGISTERED, UNLESS PRE-APPROVED BY THE ELECTIONS DIRECTOR PRIOR TO ELECTION DAY.

Pay Schedule




- You will receive your check by September 30, 2004.
- Please don't call the County about your check until **AFTER** September 30, 2004.
- Checks take time to process and we thank you for your patience.

THANK YOU!

Thanks

SAMPLE FORMS



memo

TO: _____

FROM: _____

DATE: _____

SUBJECT: _____

- OFFICIAL RETURNS OF
- PRIMARY: GENERAL SPECIAL ELECTION
- PRECINCT _____
- DATE _____
- _____ COUNTY, ARIZONA
- Shall contain: 1 (one) of the poll lists
- Challenge List (if used)
- Spoiled Ballots
- Be securely sealed with a permanent pressure-sensitive label. (The Inspector and Judges must sign their names across the flap and the label. I.e. the signature should overlap the seal and extend onto the envelope [A.R.S. § 16-615])
- Be returned to the elections department on election night.
- **DO NOT PLACE ANYTHING IN THIS ENVELOPE EXCEPT THE LISTED ITEMS.**

• UNOFFICIAL RETURNS
 • OF
 • PRIMARY GENERAL SPECIAL
 • ELECTION : _____ DATE _____
 • PRECINCT _____ COUNTY, ARIZONA

• Shall contain:
 • 1 (one) of the poll lists
 • Signature roster(s) - to be returned to county recorder
 • Zero tape and voted tape from Accu-vote
 • Copy of ballot report
 • Copy of the write-in tally sheet (if used)

• DO NOT PLACE ANYTHING IN THIS ENVELOPE EXCEPT THE LISTED ITEMS

• SAMPLE
 • Disabled Voter Signature Statement

• _____
 • PRECINCT NAME _____
 • _____
 • REGISTER NUMBER _____
 • _____
 • NAME _____ BALLOT CODE _____ VRF _____
 • _____
 • ADDRESS _____ PARTY _____ REGISTRATION DATE _____

• I am the person listed above and I reside at the address listed above.

• SIGNATURE OF QUALIFIED ELECTOR _____
 • SIGNATURE OF ELECTION OFFICIAL _____

On clipboard:
SAMPLE PARTY AUTHORIZATION LETTER
 Elections Director
 Apache County
 P.O. Box 428
 St. Johns, AZ 85936

Dear _____:

This letter will authorize _____ as the party representative assigned at the _____ Precinct for the _____ Election to be held on _____, 2004.

Respectfully,
 Chairman of _____ Part (Democrat or Republican)

NOTARIZED ORIGINAL MUST BE SHOWN

ALSO ON CLIPBOARD

ANALY PICK UP LOG FOR THE PCLL LIST SHEETS

This sheet is to be completed by the Marshal each time a Party Representative picks up the copies of the PCLL list sheets. Take the names from the County Chairman's order. Keep these list sheets throughout the day.

NAME	TIME PICKED UP	PAGES TAKEN
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____
7. _____	_____	_____
8. _____	_____	_____
9. _____	_____	_____
10. _____	_____	_____
11. _____	_____	_____
12. _____	_____	_____
13. _____	_____	_____
14. _____	_____	_____
15. _____	_____	_____

COMMON PROBLEMS	SOLUTIONS
Event Date	Check correct list the poll, not Affidavit on the envelope signed and dated.
Early Ballot not in Envelope	Not voter on Early Provisional Ballot using the Provisional Procedures, also voter by copy of Provisional Ballot form.
Ballot Number Ours, I envelope containing	Call HOTLINE (800) 949-4402
Ballot Number not working, Double envelope	Call HOTLINE (800) 949-4402
Ballot not inside the Envelope	Call HOTLINE (800) 949-4402
Ballot Number Missing	Call HOTLINE (800) 949-4402
Ballot not in the Polling Place	Ballot supervisor order. If voter not HOTLINE if necessary. If it is not, not for his information agency attend to the polling place.
Challenge	Call HOTLINE (800) 949-4402
Challenge Voter Assistance	Use Reading Aid, Challenge Envelope Boxes and Corralle Voting, if necessary
Challenge Voter Assistance Printing Place	Use Sign Disabled Voter Affidavit and make sure Corralle Voting procedure
New Resident	A registered voter who has moved into Apache County can vote a Provisional Ballot at the Polling Place
Party Prep copies for PCLL Locations	Marshal order written and distributed and sign to receive, time and page envelope. When not used use the ballot.
Procedures Problems in Challenge	Call HOTLINE for anything not in the Manual. Don't interrupt to guess.
Signature Ballot - Voter makes a mistake	Print Ballot on Ballot. Inspector and Judge sign and put in OMBL Return Envelope
Ballot not in Envelope (Voter and has no Confirmation of Signature)	Print to Special Clerk to verify proper ID. Provisional Ballot procedure, give voter copy of Provisional Ballot form.
Voter in Envelope Call them over address	Direct to Special Clerk and follow Provisional Ballot procedure, give voter copy of Provisional Ballot form.

ANALY PICK UP LOG FOR THE PCLL LIST SHEETS

This sheet is to be completed by the Marshal each time a Party Representative picks up the copies of the PCLL list sheets. Take the names from the County Chairman's order. Keep these list sheets throughout the day.

NAME	TIME PICKED UP	PAGES TAKEN
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____
7. _____	_____	_____
8. _____	_____	_____
9. _____	_____	_____
10. _____	_____	_____
11. _____	_____	_____
12. _____	_____	_____
13. _____	_____	_____
14. _____	_____	_____
15. _____	_____	_____

**Public Meeting
Presentation**

Presidential Preference Election
Primary Election
General Election
2004

Presented by:
Apache County Elections


Looking Ahead to 2004!!!

• Presidential Preference Election.....	Feb. 3, 2004
• Voter Registration Deadline - Midnight on.....	Jan. 5, 2004
• Primary Election.....	Sept. 7, 2004
• Voter Registration Deadline - Midnight on.....	Aug. 9, 2004
• General Election.....	Nov. 2, 2004
• Voter Registration Deadline - Midnight on.....	Oct. 4, 2004

For questions, please call:

Margaret A. Cooke Recorder (909)361-4402	Penny L. Few Elections Director (920)337-7837
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What is the Presidential Preference Election?



• A.R.S. § 16-243
All candidates for the Office of President of the U.S. will appear on the ballot in February. There will be separate ballots for each recognized political party. The candidate who receives the greatest number of votes in the Presidential Preference Election will represent the party at the National Convention.

When is the Presidential Preference Election?

A.R.S. § 16-241(A)
This election is usually held on the 4th Tuesday in February, in the year in which the president of the United States is elected.



A.R.S. § 16-241 (B)
Governor Napolitano issued a proclamation (order) that the 2004 Presidential Preference Election shall be held on February 3, 2004.


What Other Elections Will Appear On The Ballot In February?

• A.R.S. § 16-241 (A)
No other election may appear on the same ballot as the Presidential Preference Election.

No Other Elections on this ballot


Will The Candidates Be Listed In Alphabetical Order?

• A.R.S. § 16-245 (B)
- The order of the names of certified candidates shall be determined by lot drawn at a public meeting called by the secretary of state for that purpose.




-Rotation of candidate names is prohibited.

Will I Receive A Sample Ballot?




- A.R.S. § 16-245 (D.E)
- The officer in charge of elections shall
- mail one sample ballot to each party represented on the Presidential Preference Election ballot to each household that contains a registered voter of that political party.
- The mailing face of each sample ballot shall be imprinted with the great seal of the State of Arizona with the words "official voting materials—presidential preference election."

Where Do I Vote?




- If you live on the Navajo Nation, you will vote where you usually vote in County and State elections.
- If you live off-reservation, there will be consolidation of some polling places. Bagar & Round Valley will vote at the Round Valley Auditorium. Springerville & Flat Top will vote at the Apache County Road Yard. St. Johns & Coronado will vote at the County Annex. All other polling places will remain the same.

Early Ballots



- A.R.S. § 16-246
- Beginning Oct. 31, 2003, you may request an Early Ballot be mailed to you for the Presidential Preference Election.
- Ballots will be mailed out on Jan. 19, 2004. Early Voting ends on Jan. 30, 2004.
- To request an Early Ballot, call (800) 361-4402, or visit the website at www.co.apache.az/recorder

 **Can I Vote?**

- You must be registered with one of the participating recognized political parties in Arizona who have a candidate on the ballot.
- Voters with no party preference will not be able to vote in this election.

Who Votes in the Presidential Preference Election on February 3, 2004?

- Democrats are the ONLY voters who will vote in this election.
- If you are registered in ANY OTHER PARTY YOU WILL NOT GO TO THE POLLS OR REQUEST AN EARLY BALLOT for the February 3, 2004 election.

IMPORTANT DATES


- Election Date Feb. 3, 2004
- Voter Registration Deadline Jan. 5, 2004
- First Day to Request Early Ballot by Mail Oct. 31, 2003
- First Day Early Ballots will be mailed Jan. 19, 2004
- Early Voting Ends Jan. 30, 2004

What's New for 2004?

- **PRECINCT COMMITTEEMEN ON BALLOT -**
- HB 2338 allows elections for precinct committeemen to be cancelled if there are an equal or fewer number of nominating petitions filed than positions available.
- The party responsible for cancelling the election is the County Board of Supervisors.
- Precinct Committeemen who are appointed to the position pursuant to this section will be deemed to have the same duties and privileges as if they had been elected.

Who Can Serve as a Precinct Committeemen?

- Any member of a recognized political party who is registered to vote in the precinct is eligible to seek office as a precinct committeeman.
- The duties of a precinct committeeman include assisting his political party in voter registration and assisting voters of his political party to vote on election days.

 **Apache County Supports Kids Voting!**

- **The Vision:** Kids Voting will be taught in the classrooms.
- **The Goal:** By the General Election on Nov. 2, 2004, our youth of Apache County will cast an educated vote for the President of the United States.
- **The Plan:** Volunteers to help in the education of our youth.

VOTER COUNT BY PARTY	
• Democrats	- 26,075
• Republicans	- 6,678
• Libertarians	- 107
• Other	- 6,186


Why Is This Important?

- A.R.S. § 16-533

'...If there is no qualified person in a given precinct, the appointment of an inspector may be made from names provided by the county party chairman. If not less than 90 days prior to the election the chairman of the county committee of either of the parties designates qualified voters of the precinct, or of another precinct if there are not sufficient members ...to provide necessary representation on the election board...'


Political Observer Protocol
A.R.S. § 16-590

- Statute allows for a political observer and an alternate to be appointed by the County Chairman of each party that has a candidate on the ballot for each polling place in the County.



*The Apache County Elections Department in their efforts to carry out this law, feel the importance of establishing *Polling Place Protocol* for Voters, Election Board Workers and Observers.


Guidelines



Political Appointment

- If you have been appointed as a Political Observer you **must** have in hand your signed appointment when entering the Polling Place to show to the Inspector, Marshal or other member of the Election Board.


Questions or Concerns




- If you have questions or concerns, please use the following procedure. If you are observing in a Reservation Precinct, your first point of contact needs to be the "Troubleshooter" for that precinct.

The Troubleshooter


- This person has been appointed by the Elections Department to oversee all processes in that precinct.
- The Troubleshooter has been instructed to contact our office with your concern(s).



Contact Us Direct:



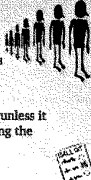
- If for some reason, you are unable to contact that person, please call the Elections Department directly at 1(800) 361-4402 or (928) 337-7537 and ask for Margaret A. Coalter, Recorder or Penny L. Pew, Elections Director.



We would ask that you do not contact the Precinct Inspector.


Polling Place Etiquette:

- A number of polling places will be very crowded, therefore we ask that you conduct your observing as quietly as possible.
- You may not enter a voting booth, unless it is your precinct and you are entering the voting booth to mark your ballot.



Please Don't Touch the Ballots:


- While you are allowed by law to observe many processes or areas where ballots are being handled, you are not allowed to touch any ballot(s) or voting equipment.




Legal Jargon....

"no person shall be allowed to remain inside these limits while the polls are open, except for the purpose of voting, and except the election officials, [and] representative (s)...who have been appointed by the county chairman...and the challengers allowed by law."
" [A.R.S. §§ 16-518(A), 16-1017(C), 16-1018(1)]

Apache County Elections are conducted pursuant to the guidelines set forth under the Federal Voting Rights Act of 1965.



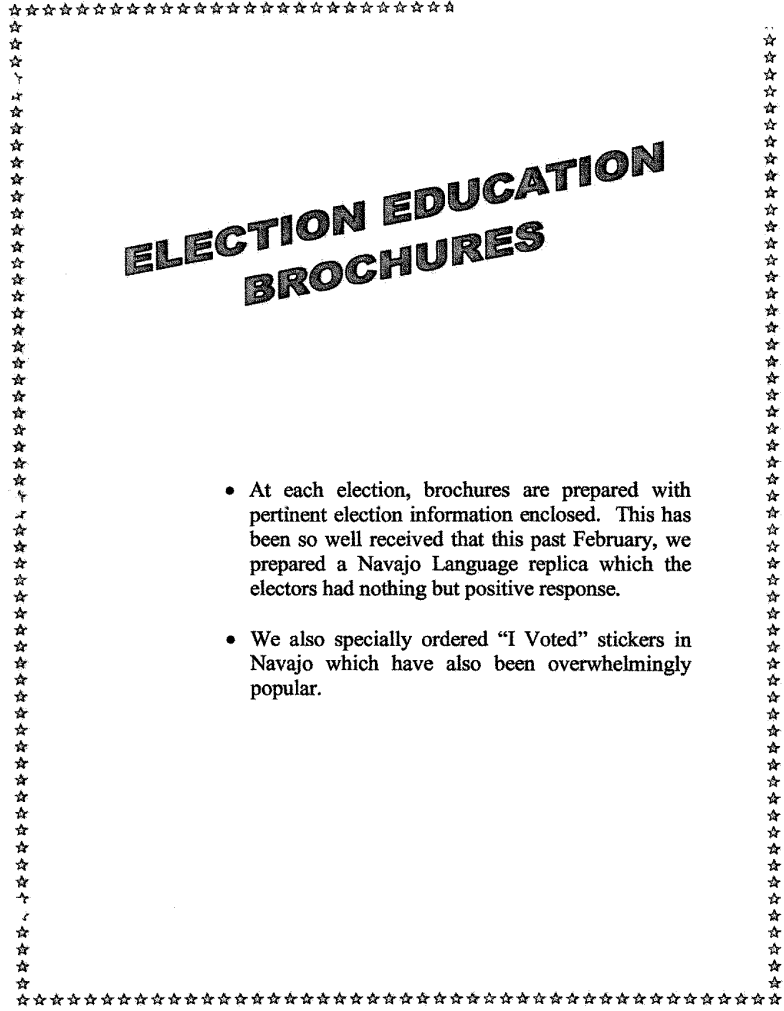
For more information, visit the Department of Justice, Civil Rights Division website at: www.usdoj.gov



What If These Laws Are Violated?

Any person violating any provision of this notice is guilty of a class 2 misdemeanor.

A.R.S. §16-515



ELECTION EDUCATION BROCHURES

- At each election, brochures are prepared with pertinent election information enclosed. This has been so well received that this past February, we prepared a Navajo Language replica which the electors had nothing but positive response.
- We also specially ordered “I Voted” stickers in Navajo which have also been overwhelmingly popular.

To vote in the Presidential Preference Election, you must be registered with the Political Party for whom you are casting a vote.
The deadline to register to vote in the Presidential Preference Election is Jan. 5, 2004.

Watch for the Newly Painted Voter Registration Trailers as it travels throughout Apache County and help you get ready for Early Voting!

IMPORTANT DATES

Election Date	Feb. 3, 2004
Voter Registration Deadline	Jan. 5, 2004
First Day to Request Early Ballot by Mail	Oct. 31, 2003
First Day Early Ballots will be mailed	Jan. 19, 2004
Early Voting Ends	Jan. 30, 2004

Apache County

Presidential Preference Election

Informational Guide

February 3, 2004

For further questions, call (1800) 361-4402 or (928) 337-7537
Or visit the website at: www.co.apachearizona.us

What is the Presidential Preference Election?

You must be registered with one of the recognized political parties in Arizona who have a candidate on the ballot. Voters with no party preference will not be able to vote in this election.

Can I Vote?

When is the Presidential Preference Election?

A.R.S. § 16-241 (B)

Governor Napolitano issued a proclamation (order) that the 2004 Presidential Preference Election shall be held on February 3, 2004.

What Other Elections Will Appear On The Ballot In February?

A.R.S. § 16-241 (A)

No other election may appear on the same ballot as the Presidential Preference Election.

Will The Candidates Be Listed In Alphabetical Order?

A.R.S. § 16-245 (B)

The order of the names of certified candidates shall be determined by lots drawn at a public meeting called by the secretary of state for that purpose.

Rotation of candidate names is prohibited.

What Is The Presidential Preference Election?

A.R.S. § 16-243

All candidates for the Office of President of the U.S. will appear on the ballot in February. There will be separate ballots for each recognized political party.

The candidate who receives the greatest number of votes in the Presidential Preference Election will represent the party at the National Convention.

Will I Receive A Sample Ballot?

A.R.S. § 16-245 (D,E)

The officer in charge of elections shall mail one sample ballot to each party represented on the Presidential Preference Election ballot to each household that contains a registered voter of that political party.

The mailing face of each sample ballot shall be imprinted with the great seal of the State of Arizona with the words "Official Voting materials-----Presidential preference election."

Where Do I Go To Vote?

If you live on the Navajo Nation, you will vote where you usually vote in County and State elections.

If you live off-reservation, there will be consolidation of some polling places. Eagar & Round Valley will vote at the Round Valley Gymnasium. Springerville & Flat Top will vote at the Apache County Road Yard. St. Johns & Coronado will vote at the County Annex. All other polling places will remain the same.

A.R.S. § 16-246 Early Ballots

Beginning Nov. 6, 2003, you may request an Early Ballot be mailed to you for the Presidential Preference Election. Ballots will be mailed out on Jan. 19, 2004. Early Voting ends on Jan. 30, 2004.

To request an Early Ballot, call (800) 361-4402.

DÍÍ ÁLKĪĒ' HONĪ' ANĪGĪÍ BĒĒ
DAALNIH

Díí í'í' nĭlġíí atah í' deesh' áł nĭnzingo éí nahat' á bee dah' goidahjí í' deesh' áł nĭnzingo atah ná ha' dt' éego í' ényá í' dtí' al.

Díí í'í' nĭl bĭnyé á hada' dĭne' íġíí Yas Nĭt' ees 5 yookkááí' , 2004 yĭhan bit' atch' í' ánálnééh.

3921
Í'í' nĭl bĭnyé á hada' dĭne' áádóó bĭséedí í'í' nĭl bĭnyé akóó nĭnĭahgóó bit' nĭdahoo' aah dooleet' ákqó bĭnyé nĭdaakai.

Díí í'í' nĭlġíí	Atsá Bĭyáázh 3, 2004
Á hada' dĭne' atch' í' ánálnééh	Yas Nĭt' ees 5, 2004
Bĭséedí í'í' nĭl bĭká áda' alne'	Chagají' 31, 2003
Bĭséedí í'í' nĭl hahazĭnĭsh	Yas Nĭt' ees 19, 2004
Bĭséedí í'í' nĭl atch' í' ánálnééh	Yas Nĭt' ees 30, 2004

TSÉZHIN DEEZ' AHÍ BĪL HAHOODZOJÍ

WÁASHINDOON AI'AAJĪ' DAIHĪNÓODAAĪ
BĪNĪYĒ BAA HODZÓDLĪGÓ
NĪDĪDOOLWOLĪGĪÍ BĪKĒĒ' NĪ'DOODDAH
BĪNĪYĒ TĪ'NĪĪ.

ATSÁ BĪYÁÁZH 3 YOOLKÁÁĪ. GÓNE', 2004
YĪHAH BĪ'

Díí baa hóóne' íġíí hazhó' ó bĭna' yáldéeshkĭí nĭnzingo béesh' bee hodĭlĭnh, 1 (800)361-4402, dooda léí' (928)337-7537

Béesh' hĭch' í' bĭy'í' dóó ééłóznĭjí éí,
www.oo.apache.az.us

“T' ÁĪĪ'Á'Í' T'ĪP' AHĪGĪÍ ÍĪ'Ī”

DÍÍ NAALTSOOS BĪYĪ' HAZHÓ'Ó BAA HANE'

Dii shiq' ha ar' fi i'ii'niif shii ar' e?

Dii i'ii'niif yinye dejiyeetiigii ha ba i'eesha ad huuuzingoo na'at a bee dah' coddahii yee aah saramigii ma'oké' kájjj a'ah ma'ia de' te'go r' e'iyaa i' d'ii'at. Dii dejiyeetiigii af' qqa' na'at a bee dah' coddahii bee ba niidahoo' aahgo d'ii Hoozdo Hahoodzooji ba ke'ed' d'ab'it'aa. A'ko t'aa shiniisigii ba ma' a'ah a' jiniigoo ha ha de' d'ah' g'igii e' d'ii i'ii'niif d'oo a'ah i'ah'oo' ad da.

A'ko shiq' d'ii hahgo i'ii'niif ?

A.R.S. 16-241(B)

Hoozdo Hahoodzooji Naar' a'ani Alaajji' Dabsidd'igii Nappoliamo yee hoof' a' go. A'isa B'ya'á'á'á' 3 yookk'á'á'go, 2004 y'ihah bi' i'iniif.

Ha ar' fi sha'aké' biniyé i'ii'niif ?

A.R.S. 16-241(A)

Wáshindoon Alaajji' Dahindoodaal biniyé Baa Hoodzódiliigo Niidoo'wo'oligii B'iké'e' ni' dood'ah biniyé i'ii'niif t' e'iyaa biniyé i'ii'niif.

Dejiyeetiigii dab'izhi' shiq' e' ha' te'go akké'e' sinii doolee' ?

A.R.S. 16-245(B)

16 Dejiyeetiigii naalisoos ni'aa'iyizniyyé'aké'e' dab'izhi' d'as'ez'ah dooleetiigii ba be'ed'ahó'z'ingoo áda'alyaa. Hoozdo Hahoodzooji Naalisoos If'ini Niisaaligii yee hoof' a' igii b'ik' e'ngoo. Ida' i'ii'niif g'ó' t'á'at'isso dab'izhi' t'á'at'heer' te'go akké'e' sinii doolee'.

Y'izhi' a'ha'á'á'oo' ni'igii e' d'oo beehaz' á'q' da.

Dii Wáshindoon Alaajji' Dahindoodaal Biniyé Baa Hoodzódiliigo B'iké'e' Ni' dood'ah biniyé i'ii'niif shiq' ha ar' fi ar' e' h ?

A.R.S. 16-243

Wáshindoon Alaajji' Dahindoodaal Yiniyé Dejiyeetiigii t'á'at'isso dab'izhi' naalisoos bee i'ii'niifigii dab'ik'á'á' doolee'. Af' qqa' na'at' a' bee dah'ada' i'ide'eh bee ba lá da' az'ligii b'ik' e'ngoo naalisoos bee i'ii'niifigii ba dah'ó'iq' doolee'.

Dii i'ii'niifigii bee ba aghá'niidee' igii e' Ash'iid'adiin Niisaan Hahala'wiis'oz'oz'ó'ó' á'ah da' a'lee'adii k'ood'ó' na'at' a' bee dah' c'ool'ah'igii á'ad' ba ni'ig'á'á' doolee'.

Da' naalisoos bee i'ii'niifigii be'e' á'iyaa'ig'ish ha' shiq' i' bi' i' dooniif ?

A.R.S. 16-245(D, E)

I'ii'niifii Báb'ó'ih'igii e' naalisoos bee i'ii'niif be'e' á'iyaa'igii na'at' a' bee dah' c'ool'ah'ii ba hada' di'ya'at'igii e' dah'oni'g'han b'ik' e' h ni'iso'oz'oo b'ich' i' bi' ida' dooniifii.

Naalisoos bee i'ii'niif be'e' á'iyaa'oo ni'ha'ni i' bi' á'ad' a'iyaa'oo bi'dah'á'á'oo' Hoozdo Hahoodzoo Bi' Bee i' á'id'id'id' b'ik' i' si' á'á'ago d'ii saad' b'ik'á'á' doolee' "wáshindoon Alaajji' Dahindoodaal Biniyé Baa Hoodzódiliigo Niidoo'wo'oligii B'iké'e' Ni' dood'ah Biniyé i'ii'niifii naalisoos chodoo' ni'igii"

Háadi shiq' ida' i'ii'niif doolee' ?

Dine' B'iké'ya'ni' ke'ed'ah'ot' ni'igii e' t' á'á' ni'ida' i'yo'ol' ni'ig'ó' ida' i'yo'ol'niif doolee' t' á'á' ni'ih' hadah'wiis'oz'oz'igii b'ik' h'go.

Á'ak'ó' t' á'á'á'ji' ke'ed'ah'at' ni'igii e' h'ang'ó'ó' ida' i'ii'niifigii da' a'ahr' i' i'ida' d'ir' yoo' ni'igoo ba á'ada'alyaa.

B'ise'edi i'ii'niifigii.

A.R.S. 16-246

G'haajji' 31 yookk'á'á'ni, 2003 y'ihah bi'ii' b'ise'edi naalisoos bee i'ii'niifigii w'oke'ed' biniyé q'a' á'iyaa.

Dii e' ni'ile' Yas' Ni' e'as' 19 yookk'á'á'ni, 2004 y'ihah bi'ii' naalisoos bee i' doot'af'igii bi' á'ada' a'ine' doolee'.

B'ise'edi i'ii'niif bi' na'az' á'á'ag'ó' e' Yas' Ni' e'as' 30 yookk'á'á'ni, 2004 y'ihah bi'ii' q'a' á'ada'at' e'e' doolee'.

Naalisoos bee i'ii'niifigii ha' shiq' i' bi' i' dooniif ni'uz'ingoo k'ad' b'és'eh bee hod'if'iniif 1(800)361-4402.

EARLY VOTING SITES

AUGUST 5	10AM-3PM	CHINLE BASHAS'
AUGUST 5	10AM-3PM	MEXICAN VALLEY TRADING POST
AUGUST 6	10AM-3PM	CHINLE FLEA MARKET
AUGUST 7	10AM-3PM	CHINLE BASHAS'
AUGUST 7	ALL DAY	EAGAR DAZE
AUGUST 9	11AM-1PM	GANADO SR. CENTER
AUGUST 9	2PM-4PM	GANADO NURSING CTR
AUGUST 11	10AM-3PM	TSABILE
AUGUST 12	10AM-3PM	GANADO POST OFFICE
AUGUST 12	10AM-3PM	LOW MTRJ. M.NE OF CR)
AUGUST 13	10AM-3PM	CHINLE BASHAS'
AUGUST 13	10AM-1PM	FT. DEFRANCE SR. CTR.
AUGUST 13	10AM-3PM	WILBERSST. JOHNS
AUGUST 14	10AM-3PM	WINDOW ROCK TEA
AUGUST 14	10AM-3PM	SAHEWAV/SRVLT.
AUGUST 16	10AM-3PM	LIPPTON CHAPTER LOT
AUGUST 19	11AM-1PM	TEBE NOS PDS SR. CTR
AUGUST 20	11AM-1PM	SANDERSBURHAM
AUGUST 20	10AM-3PM	RED VALLEY TRADING
AUGUST 20	10AM-3PM	CONCHO HIFY STORE
AUGUST 21	11AM-1PM	BURNSIDE GREENON
AUGUST 21	10AM-3PM	WILBERSST. JOHNS
AUGUST 21	11AM-1PM	CHINLE SR. CENTER
AUGUST 27	10AM-3PM	CHINLE BASHAS'
AUGUST 27	10AM-3PM	SAHEWAV/SRVLT.
AUGUST 28	10AM-3PM	WINDOW ROCK FLEA
AUGUST 28	10AM-3PM	BASHAS' /EAGAR

THIS INFORMATIONAL BROCHURE IS PROVIDED AS A COURTESY FROM THE APACHE COUNTY ELECTIONS OFFICE

PENNY L. PEW, ELECTIONS DIRECTOR

FOR MORE INFORMATION:

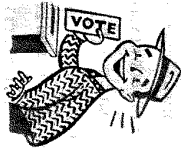
PHONE: (800)555-4368 Ext. 7537
OR (928)337-7537
FAX: (928)337-2003

OR VISIT OUR WEBSITE AT:
WWW.CO.APACHE.AZ.US

TOWN OF EAGAR AND TOWN OF SPRINGVILLE WILL CONDUCT EARLY VOTING MON-FRI. 8:30 AM - 3:30 PM AT THE TOWN HALLS.

Vote Early!

Apache County Elections
2004 Primary



"One Vote Counts"

APACHE COUNTY PRIMARY 2004
CANDIDATES

ASSESSOR	MELODY CAPPS	DEM	JUDGE OF THE SUPERIOR COURT	DONNA GRIMSLEY	DEM
ATTORNEY	CRISS CANDELARIA	DEM	CONSTABLE/PURCO DISTRICT	ANN MESSERER	DEM
ROS DISTRICT I	ERNEST HARRY BEGAY	DEM	RECORDER	MARGARET A. COALTER	DEM
	JIM (JIMMY) CLAW	DEM		LENORA Y. JOHNSON	DEM
	GEORGE GUY, JR.	DEM	SCHOOL SUPERINTENDENT	PAULINE M. BEGAY	DEM
ROS DISTRICT II	PAUL GUY, JR.	DEM		JAMES TOMCICHE	DEM
	ROGER SHIRLEY	DEM		JEFF UDALL	DEM
	WILLIE TRACEY, JR.	DEM	SHERIFF		
	ANDERSON TULLIE	DEM		BRIAN HOUNSHELL	DEM
	TOM M. WHITE, JR.	DEM		BILL KELLOGG	DEM
ROS DISTRICT III	DAVID A. BROWN	DEM	TREASURER	KATHERINE D. ARYISO	DEM
	NELSON DAVIS	REP		DONATA HEAP HOOE	DEM
	DAVID A. SILVA	DEM			

**IMPORTANT
INFORMATION**

Election date:
September 7, 2004
Last day to register to vote for
the Primary Election:

August 9, 2004 at midnight
First Day to Request an Early
Ballot by Mail:

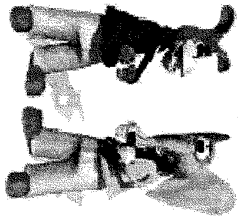
June 7, 2004
Early Voting begins:
August 5, 2004

Last Day to Request an Early
Ballot by Mail:
August 27, 2004

Early Voting ends:
September 3, 2004

**CALL (800) 361-4402 TO
REQUEST AN EARLY
BALLOT BY MAIL**

**"ONE
VOTE
COUNTS!"**



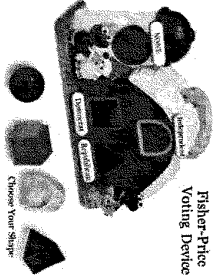
'Get Excited About Your Vote!!!'



For more information on making your vote count, contact Apache County Elections at (928) 337-7537 or access it on the Web at www.co.apache.az.us

**APACHE COUNTY
ELECTIONS**
*Penny L. Peav, Elections Director
Matthew Noble, Outreach Coordinator
Tygl Auson, Outreach Technician*

3925



Your vote is not a game!

One Vote Counts!

As a citizen of the United States of America, Arizona & Apache County, it is your right and obligation to exercise your rights.
Voting gives you a 'speaking part' in the events that surround an election.

But it's only one vote...

In 1868, Pres. Andrew Johnson escaped an impeachment conviction by one single vote.

In 1920, one vote from Tennessee ratified the 19th Amendment to the Constitution, giving women the right to vote.

In Munich, Germany, Hitler was elected as the Nazi Party leader on Nov. 8, 1923, by one vote.



In 1850, California was admitted to the union by a margin of one vote.

In 1649, one vote literally cost King Charles I of England his head. The vote to behead him was 67 against and 68 for -- the ax fell... thanks to one vote.

John Kennedy would have lost the presidency in 1960 to Nixon if just ONE

voter in each precinct in the State of Illinois, had voted differently.
In 1939, ONE vote passed the selective service act.

And in 1876, just ONE vote gave Rutherford Hayes the presidency of the United States

More recent examples...

Herbert Connolly probably won't wait till the last minute to vote next time. The Democratic candidate for the Massachusetts Governor's Council arrived too late at the polls last week (Sept. 1988), and lost the election by one vote. In the 1998 election of county commissioners in Galchist County, Florida, for lack of one additional vote in one district, the two candidates for county commissioner had the exact same number of votes. After a recount, the vote totals for both candidates still remained tied. The winner of the district's contest was determined by drawing lots. He lost!

Those who stay away from the election think that one vote will do no good. 'Tis but one step more to think one vote will do no harm.

* Ralph Waldo Emerson

After losing **twice** by one vote, this man empathizes with candidates. This man lost the mayoral bid and city council seat by one vote.

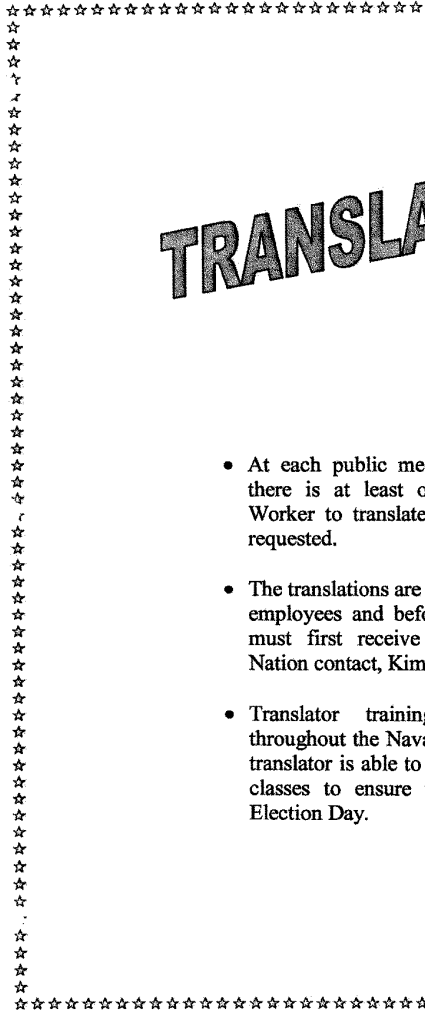


Why 'Vote'?

These are just a small sample of the many ways one person's vote has made a difference in our Nation's future. As Americans, it is not only our right, but our responsibility to keep our government in check. After all, it was our ancestors who fought in the Revolutionary War so that we may have governmental representation.

The One People

Each of us have the 'power of one', how would you use it?



TRANSLATIONS

- At each public meeting held on Native Lands, there is at least one trained county Outreach Worker to translate into the native language, if requested.
- The translations are completed by county outreach employees and before they are distributed, they must first receive approval from the Navajo Nation contact, Kimmeth Yazzie.
- Translator training classes are conducted throughout the Navajo Nation to ensure that each translator is able to attend the number of training classes to ensure uniformity in translation on Election Day.



CHINLE UNIFIED SCHOOL DISTRICT NO.24

GOVERNING BOARD MEMBER

VOTE FOR NOT MORE THAN 3

BROWN, JR. VIRGIL
MATHIS, JULIA M.
ZAMUDIO, ERNESTO
IBARRA, JACQUELINE
MAHNKE, SR., STEPHEN A.
TSINIJINNIE, EARLSEN

**NORTHEAST ARIZONA TECHNOLOGICAL INSTITUTE OF VOCATIONAL
EDUCATION- NATIVE**

VOTE FOR NOT MORE THAN 1

TSOSIE, ERNEST K.

GANADO UNIFIED SCHOOL DISTRICT NO. 20

GOVERNING BOARD MEMBER

VOTE FOR NOT MORE THAN 2

CADMAN, EDWARD C.
BLACKSHEEP, JR. ALLAN
YELLOWHAIR, BESSIE
SHIRLEY, LANORA

**NORTHEAST ARIZONA TECHNOLOGICAL INSTITUTE OF VOCATIONAL
EDUCATION- NATIVE**

VOTE FOR NOT MORE THAN 1

GOVERNING BOARD MEMBER

VOTE FOR NOT MORE THAN 1

TERM EXPIRES 12/31/06

CH'INÍLÍ ÓLTA' BIL HAHOODZOJÍ

Ólta' Binant'a'i Á Dahndinibijhígfí

Táá' Bá E'et'áád

BROWN, JR. VIRGIL
 MATHIS, JULIA M.
 ZAMUDIO, ERNESTO
 IBARRA, JACQUELINE
 MAHNKE, SR., STEPHEN A.
 TSINIINNIE, EARLSEN

Ch'iníli Ólta'iji Naanish Al'aa'áat' eel Bóhoo'aah Bil Hahoodzo Á Dahndinibijhígfí

TSOSIE, ERNEST K.

T'áá'á'í Bá E'et'áád

LÓK'AAHNITEEL ÓLTA' BIL HAHOODZOJÍ

Ólta' Binant'a'i Á Dahndinibijhígfí

Naaki Bá E'et'áád

CADMAN, EDWARD C.
 BLACKSHEEP, JR. ALLAN
 YELLOWHAIR, BESSIE
 SHIRLEY, LANORA

Lók'aahniteel Ólta'iji Naanish Al'aa'áat' eel Bóhoo'aah Bil Hahoodzo Á Dahndinibijhígfí

Doo Ła'Yilwołdah

T'áá'á'í Bá E'et'áád

Ólta' Binant'a'i Á Dahndinibijhígfí

Naaki Naahajji' Dah Asdahígfí

T'áá'á'í Bá E'et'áád

Doo Ła'Yilwołdah

TSÉLICHÍ' DAH'AZKÁNÍ ÓLTA' BIL HAHOODZOJÍ

Tselichí' Dah'azkání Ólta' Binant'a'i Á Dahndinibijhígfí

Táá' Bá E'et'áád

TUTT, LEWIS E.
 TOMCHEE, MARIE C.
 PAUL-STILLMAN, JACQUELINE
 ROESSEL, RUTH
 SAGG, CLIFFORD LAMEMAN



Updated

Primary 2004 Republican Party Candidates

U.S. Senator MCCAIN, JOHN	(Vote for not more than 1) (REP)
U.S. Representative in Congress – District No. 1 RENZI, RICK	(Vote for not more than 1) (REP)
Corporation Commission – Term Expiring January 1, 2007 MAYES, KRIS SEEL, CARL	(Vote for not more than 1) (REP) (REP)
Corporation Commission – Term Expiring January 5, 2009 (Three Seats) GLEASON, MIKE HATCH-MILLER, JEFF MUNDELL, BILL	(Vote for not more than 3) (REP) (REP) (REP)
State Senator – District No. 2 NO CANDIDATE	(Vote for not more than 1) (REP)
State Senator – District No. 5 FLAKE, JAKE	(Vote for not more than 1) (REP)
State Representative – District No. 2 NO CANDIDATE	(Vote for not more than 2) (REP)
State Representative – District No. 5 ALLEN, SYLVIA TENNEY KONOPNIČKI, BILL	(Vote for not more than 2) (REP) (REP)

PRIMARY 2004 REPUBLICAN PARTY CANDIDATES
 2004 Y'HAH BAAH HANILDEEH CHIIH YEE ADILOHII NAHAH'A
 BEE DAH'OOLDAH BA IDA'IINLIGII

Wáashindoondi Ádeii Hooghanji Naat'áanii McCain, John	Chijí Yee Adilohii	T'ááhá'í Bá e'e't'áád
Wáashindoondi Áyeii Hooghanji Naat'áanii Renzi, Rick	Chijí Yee Adilohii	T'ááhá'í Bá e'e't'áád
Nitsaa Hahoodzoi Naat'áanii Naanish Bit Dah Da'incéeh Yá Dah Naháaztánigii Naaki Naahajj' Dah Asdáhigii		
Mayes, Kris	Chijí Yee Adilohii	T'ááhá'í Bá e'e't'áád
Seel, Carl	Chijí Yee Adilohii	
Nitsaa Hahoodzoi Naat'áanii Naanish Bit Dah Da'incéeh Yá Dah Naháaztánigii Dij' Naahajj' Dah Asdáhigii		
Gleason, Mike	Chijí Yee Adilohii	Táá bá e'e't'áád
Hatch-Miller, Jeff	Chijí Yee Adilohii	
Mundell, Bill	Chijí Yee Adilohii	
Nitsaa Hahoodzoi Ádeii Hooghanji Naat'áanii Doo La' Yilwoidah	Chijí Yee Adilohii	Naaki Hahoodzoi T'áá há'í Bá e'e't'áád
Nitsaa Hahoodzoi Ádeii Hooghanji Naat'áanii Flake, Jake	Chijí Yee Adilohii	Ashdla' Hahoodzoi T'áá há'í Bá e'e't'áád
Nitsaa Hahoodzoi Áyeii Hooghanji Naat'áanii Doo La' Yilwoidah	Chijí Yee Adilohii	Naaki Hahoodzoi Naaki Bá e'e't'áád
Nitsaa Hahoodzoi Áyeii Hooghanji Naat'áanii Allen, Sylvia Tenney	Chijí Yee Adilohii	Ashdla' Hahoodzoi Naaki Bá e'e't'áád
Konopnick, Bill	Chijí Yee Adilohii	



Primary 2004 Democratic Party Candidates

U.S. Senator STARKY, STUART	(Vote for not more than 1) (DEM)
U.S. Representative in Congress – District No. 1 BABBITT, PAUL DONAHUE, BOB	(Vote for not more than 1) (DEM) (DEM)
Corporation Commission – Term Expiring January 1, 2007 NO CANDIDATE	(Vote for not more than 1)
Corporation Commission – Term Expiring January 5, 2009 (Three Seats) CLARK, SCOTT MANOIL, MARK TRASOFF, NINA	(Vote for not more than 3) (DEM) (DEM) (DEM)
State Senator – District No. 2 HALE, ALBERT	(Vote for not more than 1) (DEM)
State Senator – District No. 5 UDALL, CAMERON	(Vote for not more than 1) (DEM)
State Representative – District No. 2 BECENTI-PIGMAN, BEVERLY KIRKPATRICK, ANN TOM, ALBERT	(Vote for not more than 2) (DEM) (DEM) (DEM)
State Representative – District No. 5 BROWN, JACK A.	(Vote for not more than 2) (DEM)

**Primary 2004 Libertarian Party Candidates**

U.S. Senator HANCOCK, ERNEST	(Vote for not more than 1) (LBT)
U.S. Representative in Congress – District No. 1 CROCKETT, JOHN	(Vote for not more than 1) (LBT)
Corporation Commission – Term Expiring January 1, 2007 NO CANDIDATE	(Vote for not more than 1) (LBT)
Corporation Commission – Term Expiring January 5, 2009 (Three Seats) NO CANDIDATE	(Vote for not more than 3) (LBT)
State Senator – District No. 2 NO CANDIDATE	(Vote for not more than 1) (LBT)
State Senator – District No. 5 NO CANDIDATE	(Vote for not more than 1) (LBT)
State Representative – District No. 2 NO CANDIDATE	(Vote for not more than 2) (LBT)
State Representative – District No. 5 NO CANDIDATE	(Vote for not more than 2) (LBT)

**BROADCAST TAPES
2004 BALLOT MEASURES**

NAHAT'Á 100. Hoozdo Hahoodzoji Nitsaago Beehaz'áanii Kéyah bídeét'i'ígíí saad ta' biih nidoodzohgo Hoozdo Hahoodzoji Naat'áanii yee dahool'a'ígíí.

Aoo'jí bee i'oot'ahgo éí Hoozdo Hahoodzo bikéyah náánáta' kédaayahígíí, Waáshindoon bikéyah áádóó t'áá'ádtíghahigo kéyah danilíinii bit alháada'ii'niitgo bee ahóót'i'go ádoonííí, éí kéyahígíí ts'ídá aheett'égo bohónéédzánígíí, áádóó bikáá' yá'ádahoot'éhígíí, inda bikáagi chidí naat'a'i' anaa' k'ehgo chodáo'inígíí nidandaah áádóó náádadiit'ago aldó' bá haz'áá dooleefígíí, áko díí kéyah alháá't'ahígíí bits'áádóó chohoo'iinii bit alháada'ii'niitgo bohónéédzá.

Doodají bee i'oot'ahgo éí díí Hoozdo Hahoodzo Bikéyah Náánálahjí kéyahígíí bit alháada'iiniit dooleel ha'ninígíí doo ádoonííí da.

NAHAT'Á 101. Hoozdo Hahoodzoji Nitsaago Beehaz'áanii kééhat'iinii beehaz'áanii ádeile'ígíí áádóó i'ii'niit bee beehaz'áanii ádaalne'ígíí bá béeso choo'inígíí bi beehaz'áanii saad ta' biih nidoodzohgo Hoozdo Hahoodzoji Naat'áanii yee dahool'a'ígíí.

Aoo'jí bee i'oot'ahgo éí díí Hoozdo Hahoodzojí kééhat'iinii beehaz'áanii ádeile'ígíí, áádóó i'ii'niit bee beehaz'áanii ádaalne'ji béeso bee bina'anishí dooleefígíí t'áá sahdíí bá ninádit'áahgo ádoonííí áko éí náánálahjí béeso bee da'inishígíí doo neiniit'ada dooleel biníyé bik'eh áhoolyaa.

Doodají bee i'oot'ahgo éí díí haz'ánígíí t'áá sahdíí béeso bik'eh áhólzín dooleel ha'ninígíí doo ádoonííí da.

NAHAT'Á 102. Hoozdo Hahoodzoji Nitsaago Beehaz'áanii Hoozdo Hahoodzo áádóó náánálahjí naanish deit'éhígíí ha'át'íida bee bit baa ni'dílt'éego bit ats'áá alk'iiz dooleel bits'áá beehaz'áanii saad ta' biih nidoodzohgo Hoozdo Hahoodzojí Naat'áanii yee dahool'a'ígíí.

Aoo'jí bee i'oot'ahgo éí Hoozdo Hahoodzojí nitsaago ídahoo'aah bá tsihookosjí bee ída'ool'íjii díí Hoozdo Hahoodzojí béeso yéiisnilgo bidziilgo da'ólta'íjii ádaalyaaígíí inda shóáozt'e'ígíí bidziilgo da'ólta' yá'alaají' naaz'fínii inda bit alhaanida'iiznii'ii lahóó bit alts'áá alk'iizgo wóta' áádóó bik'i'adéest'íí dooleel.

Doodají bee i'oot'ahgo éí díí kót'ée dooleel ha'ninígíí doo ádoonííí da.

NAHAT'Á 103. Hoozdo Hahoodzoji Nitsaago Beehaz'áanii A'ohdi Aadahwiint'íjii Nidahwii'aahii (JP) bi beehaz'áanii saad ta' biih nidoodzohgo Hoozdo Hahoodzojí Naat'áanii yee dahool'a'ígíí.

Aoo'jí bee i'oot'ahgo éí díí A'ohdi Aadahwiint'íjii Nidahwii'aahii ta' kót'éegi naanish yiniit'ánígíí t'ookónghááíjii' a tsesk'ehgi bik'ihididooníingo bee á'adahazt'i'ígíí áádóó naanish yiniit'ánígíí azhá náánálahjí kééhat'íí nídi nihwiit'aah bee bá ahóót'i' dooleel.

Doodají bee i'oot'ahgo éi A'ohdi Aadahwiinit'íjji Nidahwii'ahii k'ad bee bá haz'ánigí éi t'áa ákót'égo bee oonish dooleet.

NAHAT'Á 104. Hoozdo Hahoodzoi Nitsaago Beehaz'áanii kééhat'inii bits'áádéé beehaz'áanii ádaalne'ígíi bi bee haz'áanii saad ta' biih nidoodzohgo Hoozdo Hahoodzoi Naat'áanii yee dahoot'a'ígíi.

Aoo'jíi bee i'oot'ahgo éi díi kééhat'inii bee haz'áanii adoolniif daaninigíi nitsaago i'ii'niit naadiin tsost'id nideezid hadziingo naaltsos bikáa' yizhi adaalne'ígíi bee yizhi náhádláahgo ch'ihodoolzhish áádóó i'ii'niit tsost'id nideezid hadziingo Hoozdo Hahoodzo i'ii'niit bil haz'áandi yizhi ánéelt'e'go wókeedigíi bil yah'anizhdoo'niigo biniyé idi'yooniigo bee ha'di'doolniif.

Doodají bee i'oot'ahgo éi t'áa k'ad beehaz'ánigí át'égo nitsaago i'ii'niit naadiin díí nideezid hadziin dóo naaltsos bee yizhi náhádláahigíi biniyé naajaahgo nitsaa i'ii'niit díí nideezid hadziingo Hoozdo Hahoodzo I'ii'niit bil haz'áadi díi yizhi ánéelt'e' wókeedigíi bil yah'anizhdoo'niigo bee hadi'doolniif.

NAHAT'Á 105. Hoozdo Hahoodzoi Nitsaago Beehaz'áanii Da'ólta' Bik' adéest'íjji Á Dahndinbiijigíi bi beehaz'áanii saad ta' biih nidoodzohgo Hoozdo Hahoodzoi Naat'áanii yee dahoot'a'ígíi.

Aoo'jíi bee i'oot'ahgo éi díi hahoodzoi da'ólta' bik'i adéest'íjji á dah naháaztánigíi lahgo át'égo ádoolniigo hahoodzoi naaki náabai ólta' yá dahndinbiijigíi bi tsésk'ehgi bidziilgo da'ólta' bil hadahwisdzoi alajji' naazimijigo bá ahóót'i'go á doolnif áádóó tseebí dah naháaztánigíi éi neeznáá dah nidinbiijigo ádoolniif, áádóó sahdii át'égo ólta' yiyoot'wotigíi doodaii' alajji' bóhólnihigíi áádóó kéédahat'inigíi áldó' ta' atah bá ahóót'i' dooleet.

Doodají bee i'oot'ahgo éi t'áa k'ad át'éhigi átégo díi hahoodzoi ólta' bik'i adéest'íjji dah naháaztánigíi doo lahgo ádoolniif da.

NAHAT'Á 200. Hoozdo Hahoodzoi i'ii'niit biniyé á hada'dilne'gi inda i'ii'niitgi naaltsos bee éédahózinigíi hwéehóhógo téniya há hadi' doolnif áádóó e'et'áadgi áldó' t'áa ákót'á, áádóó áká'anida awo'góo áldó' t'áa ákót'égo bee haz'áa dooleelgo Hoozdo Hahoodzoi kééhat'inii yee dahoot'a'ígíi.

Aoo'jíi bee i'oot'ahgo éi kót'ée dooleet, (1) e'et'áad biniyé bá ha'dilnéehii éi díi Waashindoonji iljigo kééhat'inii jilínigíi doo naaki niljigógo t'éiyá há hadi' doolnif, (2) iljigo kééhat'inii bee ééhózinii t'áágéed bá ha'dilyai éi átsisi hahoodzoi naaltsos yádashidáhigíi ha'dilyaayéé doo ilíi da hídoolnif, (3) I'ii'niitgi e'e áadigíi naaltsos bee hwééhózinigíi bikáa' dzizdáhigíi házhi' dóó bik'ehgo haniná'ijeehigíi bikáago dooda léii' naakigo naaltsos bee éédahózinigíi áldó' házhi' dóó bik'ehgo haniná'ijeehigíi bikáago éi naaltsos bee e'et'áadigíi haadooltsos, (4) nitsaa hahoodzoi áádóó lahgo t'áadoole' é bee áká'anida'awo' bil nahaz'áagóo áldó' t'áa ákót'égo naaltsos bee éédahózinii hazhó'ó bina'idikid dooleet nidi Wáashindoonji áká'anida awo'jíi éi dooda, (5) koji Wáashindoon yá nidaalnishigíi éi

Wáashindoonji la'náákéyahdóé' yah'adahint'íhígíí la'da bee áká'anida'awo'ígíí doo'ákót'éégóó yimiyé ha'diilaago baa hozhdoolnih, (6) naalmishii t'áádoo bahat'aadi la'da hanáát doo'ákót'éégóó bá ha'dilyai t'áádoo baa hojoolne'góó éí naaki góne' bee ádihodit'éhígíí hak'íjii' doozoh áádóó (7) bininaa la'da beehaz'áanii k'ehgo naaltsos hweeñi'dootsogso bee bá ahoot'i' dooleet áko áká'anida'awo'ji náásyit'ih dooleet.

Doodaji bee i'oot'ahgo éí t'áák'ad beehaz'ánigi át'éego i'ii'niilji á hada'dilne'gi áádóó e'et'áádgi inda áká'anida'awo'ji bee á adahaz'ígíí éí t'áá'ákódaat'ée dooleet.

NAHAT'Á 300. Hoozdo Hahoodzoi Naat'áanii danilnigíí bich'í' azlááji Yá Dahnahaztánigíí, Naat'áanii béeso bich'í' siláhígíí de kónáádoolnigíígo yik'eh ádahoolaaigíí.

Aoo'jii' bee i'oot'ahgo éí Hoozdo Hahoodzoi Naat'áanii Beehaz'áanii Ádeit'ínigíí tádiindóó bi'aa hastáadi miil áits'íisigíí (\$36,000) béeso nináháháhji' bich'í' siláago ádoolnít.

Doodaji bee i'oot'ahgo éí Hoozdo Hahoodzoi Naat'áanii Beehaz'áanii ádeit'ínigíí naadiin dii'di miil áits'íisigíí (\$24,000) béeso nináháháhji' ádeit'ínigíí éí t'áá'ákót'ée dooleet.



3939



APACHE COUNTY ELECTIONS
Penny L. Pew, Elections Director
P. O. Box 428
St. Johns, Arizona 85936

Phone: (928) 337-7537 Email: ppew@co.apache.az.us Fax: (928) 337-2008

To: General Election Candidate and Committee Members

From: Penny L. Pew
Elections Director *PP*

Date: October 24, 2004

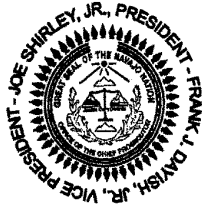
Subject: Election Observers

In preparation for the upcoming General Election on November 2nd, 2004, please review the enclosed information as it relates to Apache County polling places. This extra effort is made to avoid any disruptions on Election Day.

Your support and assistance in educating those who may be participating in political activity on November 2, 2004 would be greatly appreciated.

cc: Bruce Adelson, Department of Justice
Delwin Wengert, County Manager
Brad Carlyon, Chief Deputy County Attorney
Edison Wauneka, Navajo Nation Elections
Roger Shirley, Navajo Nation Chief Prosecutor

3940



THE NAVAJO NATION

OFFICE OF THE CHIEF PROSECUTOR

Roger Shirley, Acting Chief Prosecutor
Post Office Box 3779 Window Rock, Arizona 86515
Telephone (928) 871-6622 Fax (928) 871-6633

August 17, 2004

Mary Fontes, Chairperson
Democratic Party -- Apache County
PO Box 1401
Springerville, AZ 85938

RE: National Election Observers

Dear Madam:

During the 2002 National elections within the Navajo Nation, there were serious concerns reported to Apache County Election officials and this office. In particular, a Non-Indian Republican Party election observer was reported to have been disruptive and interrupted election workers at the election polls in Lupton and Fort Defiance Chapters, and got away with his behavior and maneuvers.

Please note this type of activity at any National and State election processes on the Navajo Nation is prohibited by provisions of the Federal/State Election laws and can be prosecuted in the respective courts. Also, the Navajo Nation has an exclusion provision in the Navajo Nation Code that allows us to exclude any Non-Indian individuals off the Navajo Nation, in cases involving danger to the public health or safety.

I am requesting your assistance in informing your respective party affiliates or observers to conduct themselves in an acceptable and professional manner at the upcoming national election polls within the Navajo Nation.

I can be contacted at (928) 871-6622 for any questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger Shirley", is written over a circular stamp.

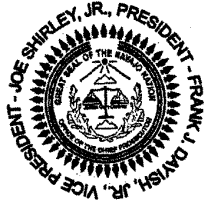
Roger Shirley
Acting Chief Prosecutor
THE NAVAJO NATION

cc: Edison Wauneka, Executive Director
Navajo Election Administration

Penny Pew, Director
Apache County Election
P.O. Box 428
St. Johns, AZ 85938

RECEIVED AUG 23 2004

3941



THE NAVAJO NATION

OFFICE OF THE CHIEF PROSECUTOR

Roger Shirley, Acting Chief Prosecutor
Post Office Box 3779 Window Rock, Arizona 86515
Telephone (928) 871-6622 Fax (928) 871-6633

August 17, 2004

Roy Jordan, Chairperson
Republican Party - Apache County
HC 65 Box 34457
Concho, AZ 85924

RE: National Election Observers

Dear Sir:

During the 2002 National elections within the Navajo Nation, there were serious concerns reported to Apache County Election officials and this office. In particular, a Non-Indian Republican Party election observer was reported to have been disruptive and interrupted election workers at the election polls in Lupton and Fort Defiance Chapters, and got away with his behavior and maneuvers.

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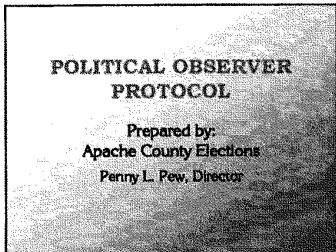
A handwritten signature in black ink, appearing to read "Roger Shirley", is written over a circular stamp.

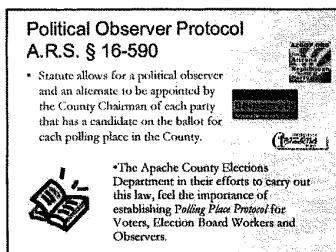
Roger Shirley
Acting Chief Prosecutor
THE NAVAJO NATION

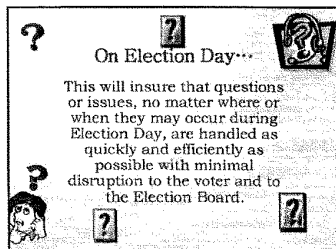
cc: Edison Wauneka, Executive Director
Navajo Election Administration

Penny Pew, Director
Apache County Election
P.O. Box 428
St. Johns, AZ 85936

RECEIVED AUG 23 2004









Protocol Guidelines


Political Appointment:
If you have been appointed as a Party Representative, to receive poll list copies, you **must** have in hand your signed appointment when entering the Polling Place to show to the Marshal.






Letters of Appointment

- Please have your letters of appointment to the Elections Office by the **Friday** before the set election date.
- The poll workers need to be notified that you will be at their polling place and will welcome you.



Questions or Concerns:

If you have questions or concerns, please use the following procedure:
If you are observing in a Precinct, your first point of contact needs to be the "troubleshooter" for that precinct.
If the Troubleshooter is not at that location, the Marshal is your point of contact. Do not enter the polling place!

 **The Troubleshooter:**


- This person has been appointed by the Elections Department to oversee all processes in that precinct.
- If you have any questions or are instructed to contact our office with your concern (s).


Contact Us Direct: 

- If for some reason, you are unable to contact that person, please call the Elections Department directly at (601) 361-4402 or (928) 337-7537, Regional Office or Penny L. Few, Elections Director.
- We would ask that you do not contact the Precinct Inspector.




Polling Place Etiquette:

- A number of polling places will be very crowded, therefore we ask that you conduct your observing as quietly as possible. 
- You may not enter a voting booth, unless it is your precinct and you are entering the voting booth to mark your ballot.


Can I hover over the voter to observe? 

Please Don't Touch the Ballots:


- While you are allowed by law to observe many processes or areas where ballots are being handled, you are not allowed to touch any ballot (s) or voting equipment.



Yavapai County Elections are conducted pursuant to the guidelines set forth under the Federal Voting Rights Act of 1965.



For more information, visit the Department of Justice Civil Rights Division website at: www.usdoj.gov



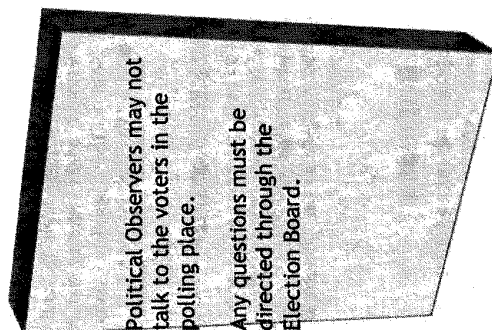
What If These Laws Are Violated?

Any person violating any provision of this notice is guilty of a class 2 misdemeanor.

A.R.S. §16-516

POLITICAL OBSERVER PROTOCOL

Apache
County



If you have further questions, please contact (800) 361-4402 or (928) 337-7537. We would be happy to assist you in any way.

You may also access this information by logging on to our Website at: www.co.apache.az.us

Any person violating any provision of this notice is guilty of a class 2 misdemeanor.

Protocol Guidelines:

Apache County Elections are conducted pursuant to the guidelines set forth under the Federal Voting Rights Act of 1965.

Political Observer Protocol:

A.R.S. § 16-590

Statute allows for a political observer and an alternate to be appointed by the County Chairman of each party that has a candidate on the ballot for each polling place in the County.

3947

The Apache County Elections Department in their efforts to carry out this law, feel the importance of establishing polling place protocol for Voters, Election Board Workers and Observers.

This will insure that questions or issues, no matter where or when they may occur during Election Day, are handled as quickly and efficiently as possible with minimal disruption to the voter and to the Election Board.

Political Appointment

If you have been appointed as a Political Observer you must have in hand your signed appointment when entering the Polling Place to show to the Inspector, Marshal or other member of the Election Board.

Questions or Concerns

If you have questions or concerns, please use the following procedure. If you are observing in a Reservation Precinct, your first point of contact needs to be the "Troubleshooter" for that precinct.

The Troubleshooter

This person has been appointed by the Elections Department to oversee all processes in that precinct.

The Troubleshooter has been instructed to contact our office with your concern(s).

Contact Us Direct

If for some reason, you are unable to contact that person, please call the Elections Department **directly** at 1(800)561-4402 or (928)337-7537 and ask for Margaret A. Coalter, Recorder or Penny L. Pew, Elections Director. We would ask that you not contact the Precinct Inspector.

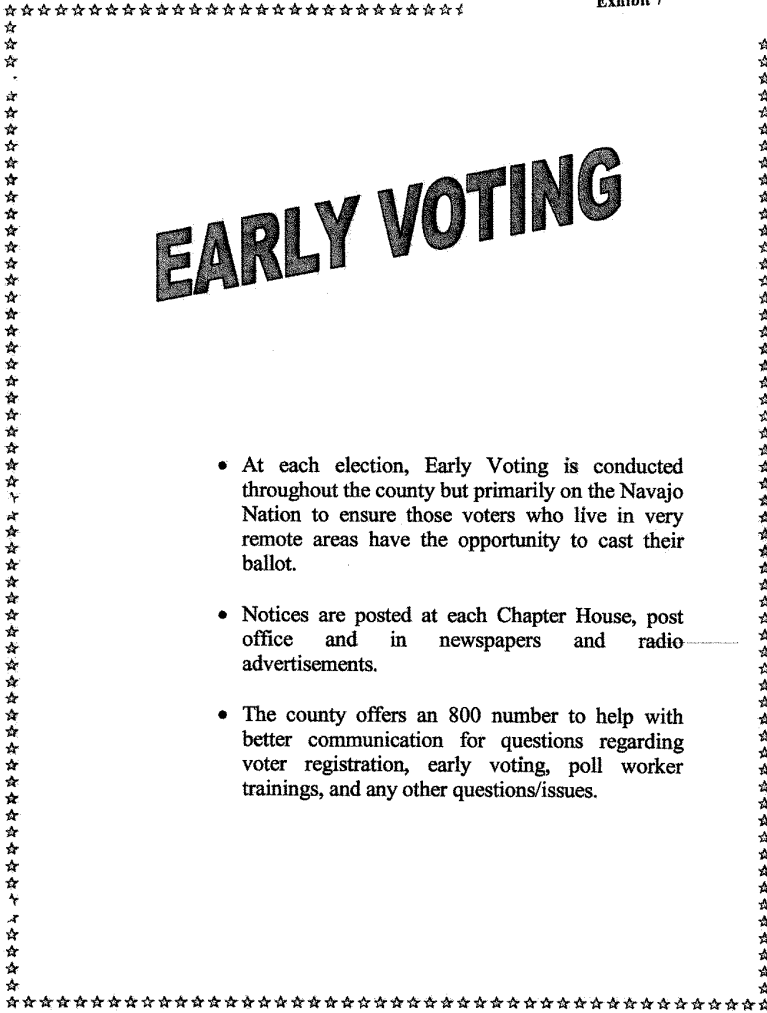
Polling Place Etiquette

A number of polling places will be very crowded, therefore we ask that you conduct your observing as quietly as possible. You may not enter a voting booth, unless it is your precinct and you are entering the voting booth to mark your ballot.

Please Don't Touch the Ballots

While you are allowed by law to observe many processes or areas where ballots are being handled, you are not allowed to touch any ballot(s) or voting equipment.

"no person shall be allowed to remain inside these limits while the polls are open, except for the purpose of voting, and except the election officials, [and] representatives(s), who have been appointed by the county chairman, and the challengers allowed by law." [A.R.S. §§ 16-515(A), 16-1017(I), 16-1018(I)]



EARLY VOTING

- At each election, Early Voting is conducted throughout the county but primarily on the Navajo Nation to ensure those voters who live in very remote areas have the opportunity to cast their ballot.
- Notices are posted at each Chapter House, post office and in newspapers and radio advertisements.
- The county offers an 800 number to help with better communication for questions regarding voter registration, early voting, poll worker trainings, and any other questions/issues.



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PRESIDENTIAL PREFERENCE ELECTION
EARLY VOTING DATES

JANUARY 20, 2004	10:00 AM - 3:00 PM (MST)	CHINLE BASHAS' PARKING LOT
JANUARY 21, 2004	10:00 AM - 3:00 PM (MST)	WINDOW ROCK BASHAS'
JANUARY 22, 2004	10:00 AM - 3:00 PM (MST)	GANADO POST OFFICE LOT
JANUARY 23, 2004	11:00 AM - 2:00 PM (MST)	FT. DEFIANCE SR. CENTER
JANUARY 23, 2004	11:00 AM - 3:00 PM (MST)	WILBUR'S IGA / ST. JOHNS
JANUARY 24, 2004	11:00 AM - 3:00 PM (MST)	EAGAR BASHAS'
JANUARY 24, 2004	10:00 AM - 3:00 PM (MST)	CHINLE BASHAS' PARKING LOT
JANUARY 30, 2004	11:00 AM - 3:00 PM (MST)	EAGAR BASHAS'

YOU MAY ALSO VOTE EARLY BY VISITING:

THE RECORDER'S OFFICE LOCATED AT 75 WEST CLEVELAND STREET, ST. JOHNS, AZ.

OR

THE GANADO ELECTIONS OFFICE LOCATED AT THE GANADO SCHOOL TECHNOLOGY BUILDING.

**FOR QUESTIONS ON YOUR EARLY BALLOT, CALL
1-800-361-4402 OR (928)337-7516.**

**EARLY VOTING AT THE FOLLOWING LOCATIONS
FOR SEPTEMBER 7, 2004 PRIMARY ELECTION:**

AUGUST 5, 2004	10:00 AM - 3:00 PM (DST)	CHINLE BASHAS' PARKING LOT
AUGUST 5, 2004	10:00 AM - 3:00 PM (DST)	MEXICAN WATER TRADING POST
AUGUST 6, 2004	10:00 AM - 3:00 PM (DST)	CHINLE FLEA MARKET
AUGUST 7, 2004	10:00 AM - 3:00 PM (DST)	CHINLE BASHAS' PARKING LOT
AUGUST 9, 2004	11:00 AM - 1:00 PM (DST)	GANADO SENIOR CENTER
AUGUST 9, 2004	2:00 PM - 4:00 PM (DST)	GANADO NURSING CENTER
AUGUST 11, 2004	10:00 AM - 3:00 PM (DST)	TSAILLE
AUGUST 12, 2004	10:00 AM - 3:00 PM (DST)	GANADO POST OFFICE
AUGUST 12, 2004	10:00 AM - 3:00 PM (DST)	LOW MOUNTAIN 3 MILE NE OF CHAPTER
AUGUST 13, 2004	10:00 AM - 3:00 PM (DST)	CHINLE BASHAS' PARKING LOT
AUGUST 13, 2004	10:00 AM - 1:00 PM (DST)	FT. DEFLANCE SENIOR CENTER
AUGUST 14, 2004	10:00 AM - 3:00 PM (DST)	WINDOW ROCK FLEA MARKET
AUGUST 16, 2004	10:00 AM - 3:00 PM (DST)	LUPTON CHAPTER HOUSE PARKING LOT
AUGUST 19, 2004	11:00 AM - 1:00 PM (DST)	TEEC NOS POS SENIOR CENTER
AUGUST 20, 2004	11:00 AM - 1:00 PM (DST)	SANDERS/BURNHAM'S STORE
AUGUST 20, 2004	10:00 AM - 3:00 PM (DST)	RED VALLEY TRADING POST
AUGUST 21, 2004	11:00 AM - 1:00 PM (DST)	BURNSIDE CHEVRON STATION PARKING LOT
AUGUST 23, 2004	11:00 AM - 1:00 PM (DST)	CHINLE SENIOR CENTER
AUGUST 23, 2004	2:00 PM - 4:00 PM (DST)	CHINLE NURSING CENTER
AUGUST 27, 2004	10:00 AM - 3:00 PM (DST)	CHINLE BASHAS' PARKING LOT
AUGUST 28, 2004	10:00 AM - 3:00 PM (DST)	WINDOW ROCK FLEA MARKET

**To request an Early Ballot, contact the Apache County Recorder's Office at:
1-800-361-4402 OR (928)337-7516**

**EARLY VOTING AT THE FOLLOWING LOCATIONS FOR THE
NOVEMBER 2, 2004 GENERAL ELECTION**

FRIDAY, OCTOBER 8, 2004	1:00AM - 3:00PM	CHINLE BASHAS LOT
SATURDAY, OCTOBER 9, 2004	10:00AM - 3:00PM	CHINLE BASHAS LOT
FRIDAY, OCTOBER 15, 2004	10:00AM - 3:00PM	WINDOW ROCK BASHAS
SATURDAY, OCTOBER 16, 2004	10:00AM - 3:00PM	WINDOW ROCK BASHAS
SATURDAY, OCTOBER 23, 2004	10:00AM - 3:00PM	BURNHAMS STORE/SANDERS

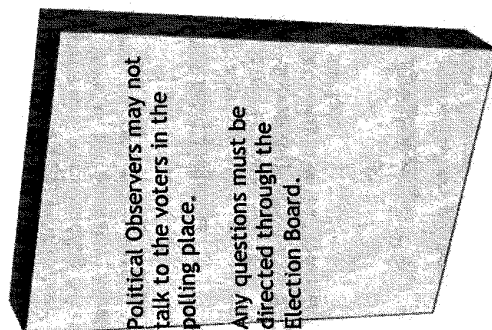
EARLY VOTING WILL BE AVAILABLE THROUGH OCTOBER 29, 2004 AT:

APACHE COUNTY RECORDER'S OFFICE M-F 8:00AM - 5:00PM ST. JOHNS

**TO REQUEST AN EARLY BALLOT TO BE MAILED TO YOU, CONTACT THE
APACHE COUNTY RECORDER'S OFFICE AT:
1-800-361-4402 OR 1-928-337-7516**

POLITICAL OBSERVER PROTOCOL

Apache
County



If you have further questions, please contact (800) 361-4402 or (928) 337-7537. We would be happy to assist you in any way.

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Protocol Guidelines:

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Political Observer Protocol:

A.R.S. §16-590

Statute allows for a political observer and an alternate to be appointed by the County Chairman of each party that has a candidate on the ballot for each polling place in the County.

3953

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The Troubleshooter has been instructed to contact our office with your concern(s).

Contact Us Direct

If for some reason, you are unable to contact that person, please call the Elections Department directly at 1(800)361-4402 or (928)337-7537 and ask for Margaret A. Collier, Recorder or Penny L. Pew, Elections Director. We would ask that you not contact the Precinct Inspector.

Polling Place Etiquette

A number of polling places will be very crowded, therefore we ask that you conduct your observing as quietly as possible. You may not enter a voting booth, unless it is your precinct and you are entering the voting booth to mark your ballot.

Please Don't Touch the Ballots

While you are allowed by law to observe many processes or areas where ballots are being handled, you are not allowed to touch any ballot(s) or voting equipment.

"no person shall be allowed to remain inside these limits while the polls are open, except for the purpose of voting, and except the election officials, [and] representatives(s)...who have been appointed by the county chairman...and the challengers allowed by law." [A.R.S. §§ 16-515(A), 16-1017(2), 16-1018(1)]

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**Report to Commissioners: Southwest
Regional Hearing**

**Southwest Report to the
National Commission on the
Voting Rights Act**

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3955

BINGHAM McCUTCHEN

ARIZONA REPORT
FOR
THE NATIONAL COMMISSION ON THE
VOTING RIGHTS ACT

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I. DEMOGRAPHICS**A. GENERAL POPULATION DEMOGRAPHICS**

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
Total population	5,130,632	100.0	3,763,685	100.0
Hispanic or Latino (of any race)	1,295,617	25.3	802,474	21.3
Not Hispanic or Latino	3,835,015	74.7	2,961,211	78.7
One race	3,758,643	73.3	2,918,766	77.6
White	3,274,258	63.8	2,595,584	69.0
Black or African American	149,941	2.9	103,257	2.7
American Indian and Alaska Native	233,370	4.5	142,940	3.8
Asian	89,315	1.7	69,331	1.8
Native Hawaiian and Other Pacific Islander	5,639	0.1	3,957	0.1
Some other race	6,120	0.1	3,697	0.1
Two or more races	76,372	1.5	42,445	1.1

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File.

B. MINORITY REPRESENTATION IN CONGRESS

There are 2 minority members in the United States House of Representatives and none in the United States Senate from Arizona.

Source: "House Press Gallery," available at <http://www.house.gov/daily/hpg.htm>; "Minorities in the Senate" available at http://www.senate.gov/artandhistory/history/common/briefing/minority_senators.htm.

Representative Raul M. Grijalva (D), Hispanic American, 2003

Source: <http://www.house.gov/grijalva>.

Representative Ed Pastor (D), Hispanic American, 1991

Source: <http://www.house.gov/pastor>.

C. MINORITY REPRESENTATION IN STATE LEGISLATURE

There are 12 minority members (10 Hispanic Americans, 1 African American, 1 Native American) in the Arizona House of Representatives and 5 (all Hispanic American) in the Arizona State Senate. For names of members, please see attached sources.

Sources: "Arizona State Legislature," *available at* <http://www.azleg.state.az.us>; "Numbers of African-American Legislators 2003," *available at* <http://www.ncsl.org/programs/legman/about/afrAmer.htm>; "Numbers of Latino Legislators," *available at* <http://www.ncsl.org/programs/legman/about/Latino.htm>.

II. LEGISLATIVE PROPOSALS

A. REDISTRICTING

Proposition 106: By way of this proposition, Arizona created the Arizona Independent Redistricting Commission ("AIRC") to oversee the mapping of fair and competitive congressional and legislative districts. In 2001, the Justice Department struck down the AIRC proposal because of an impermissible effect on the ability of Latinos to elect their desired candidate.

B. VOTER I.D. REQUIREMENTS

- HB 2246 Regular Session: **Failed**
Description: Requires that voter registration forms contain a statement that the applicant shall present evidence of U.S. citizenship with the application, and that the registrar shall reject the application if evidence is not attached. Satisfactory evidence includes: driver's license or ID number if the agency indicates on the license or ID that the bearer has provided satisfactory proof of U.S. citizenship; a photocopy of a birth certificate or U.S. passport; presentation to the county recorder of naturalization documents; other documents or methods of proof established under the Immigration Reform and Control Act of 1986; Bureau of Indian Affairs card number, tribal treaty card number, or tribal enrollment number. Proof of voter registration from another state is not satisfactory proof of U.S. citizenship.
- HB 2345 Regular Session: **Vetoed**
Description: 1. Requires voters to present to an election official either: (a) one form of identification with the voter's name, address and photograph; or (b) two forms of identification bearing the voter's name and address.
 2. Provides that if a voter does not have a verifiable identification the voter shall be permitted to vote a ballot to be verified.
 3. Defines "verifiable identification" as a current form of identification that bears a photograph of the person and the name of the person, or a current utility bill, bank statement, paycheck, government issued check or other government document that shows the name and registration address of the person.
- SB 1375 Regular Session: **Failed**
Description: SB 1375 requires qualified electors to provide a specific form of identification before receiving a ballot.
- HB 2658 Regular Session: **Failed**
Description: Defines "identification" to mean all of the following:
 1. Any item delivered through the U.S. mail with a postmark or cancellation and that shows the name and address of the person.
 2. Any bill or statement that shows the name and address of the person.

3. A paycheck or pay stub that shows the name and address of the person.
4. A government-issued check or other government document that shows the name and address of the person and that is issued by any branch, department, agency or entity of the United States government or of this state or by any county, municipality, board, authority or other political subdivision of this state.
5. An employee identification document that shows the name and address of the person and that is issued by a private employer or by any branch, department, agency or entity of the United States government or of this state or by any county, municipality, board, authority or other political subdivision of this state.
6. A tribal document that shows the name and address of the person and that is issued by a federally recognized Indian tribe.
7. A valid United States military identification card.
8. A valid United States passport.

These forms of identification are valid without regard to whether the address shown for the person is a mailing address, a residential street address, a location description or a post office box.

If the election officer determines that the identification presented by the elector to obtain a ballot is insufficient, the election officer shall inform the elector that the elector is entitled to appeal that determination and the matter shall be determined as a challenge to the voter. If the election board determines that the challenge is valid, the board shall inform the elector that the elector is eligible to vote a provisional ballot, and the elector shall be permitted to vote a provisional ballot.

SB 1118

Regular Session: **Vetoed**Description: Background

In 2004, voters passed Proposition 200 containing a provision requiring a voter at the polls wishing to obtain a ballot to present one form of identification with the voter's name, address and photograph or two different forms of identification with the voter's name and address.

Arizona does not require that drivers obtain new driver license cards when they move, only that they inform the Arizona Department of Transportation (ADOT) of the new address. If an individual moves, informs ADOT of the move and re-registers to vote with the county recorder, but elects to keep the individual's driver license with the previous address, presentation of that driver license at the polls would not be sufficient identification to obtain a ballot.

The federal Help America Vote Act (HAVA) requires that if an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot.

Section 16-579, A.R.S. requires specific identification to be shown at the polls by individuals who registered to vote by mail. As passed by the voters in 2004, Proposition 200 requires similar, but not identical, identification requirements of all

voters resulting in a dual enactment of A.R.S. § 16-579. S.B. 1118 corrects the dual enactment.

Provisions

1. Requires, in addition to current requirements, the precinct registers for use at the polling place to contain the mailing address from the registration forms.
2. Allows a qualified elector, whose name is on the precinct register but who does not present the proper forms of identification, to vote a provisional ballot if the elector presents one of the following:
 - a. A valid Arizona driver license or nonoperating license.
 - b. A legible photocopy of the voter's birth certificate.
 - c. A legible photocopy of pertinent pages of the applicant's United States passport.
 - d. A current and valid Arizona vehicle registration.
 - e. A current and valid certificate of Arizona automobile insurance.
 - f. A certificate of naturalization.
 - g. A utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter and is dated within 90 days of the election.
 - h. An Indian census card, tribal enrollment card or other form of tribal identification issued by an Indian tribe.
3. Requires the county recorder to verify a provisional ballot by comparing the voter's signature on the provisional ballot to the voter's signature on file within the following time frame:
 - a. Ten calendar days after a general election that includes an election for federal office.
 - b. Five business days after any other election.
 - c. Not later than the time at which challenged early voting ballots are resolved.
4. Removes dual enactment of statute relating to procedures for obtaining a ballot.

Governor's Veto Message

The Governor indicated in her veto message that S.B. 1118 conflicts with HAVA and could lead to unintended consequences. The Governor distinguished Proposition 200, which forbids only the furnishing of ballots to persons without valid identification, from S.B. 1118, which precludes persons without valid identification from obtaining a provisional ballot. The Governor also indicated that these consequences could lead to litigation against the state, for which the state could be liable for paying the plaintiffs' attorney fees.

SB 1118

Regular Session: **Vetoed**

Description:

1. Requires, in addition to current requirements, the precinct registers for use at the polling place to contain the mailing address from the registration forms.
2. Allows a qualified elector, whose name is on the precinct register but who does not present the proper forms of identification, to vote a provisional ballot if the elector presents one of the following:

- a. A valid Arizona driver license or nonoperating license.
 - b. A legible photocopy of the voter's birth certificate.
 - c. A legible photocopy of pertinent pages of the applicant's United States passport.
 - d. A current and valid Arizona vehicle registration.
 - e. A current and valid certificate of Arizona automobile insurance.
 - f. A certificate of naturalization.
 - g. A utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter and is dated within 90 days of the election.
 - h. An Indian census card, tribal enrollment card or other form of tribal identification issued by an Indian tribe.
3. Requires the county recorder to verify a provisional ballot by comparing the voter's signature on the provisional ballot to the voter's signature on file within the following time frame:
- a. Ten calendar days after a general election that includes an election for federal office.
 - b. Five business days after any other election.
 - c. Not later than the time at which challenged early voting ballots are resolved.
4. Removes dual enactment of statute relating to procedures for obtaining a ballot.

SB 1186

Regular Session: **Vetoed**

Description: 1. Requires satisfactory proof of United States citizenship in order to properly register to vote.

2. Prevents documents or information presented as satisfactory proof of United States citizenship from being accessible or reproduced by a person other than the voter or by an authorized government official in the scope of the official's duty.

3. Requires, in addition to current requirements, the precinct registers for use at the polling place to contain the mailing address from the registration forms.

4. Allows a qualified elector, whose name is on the precinct register but who does not present the proper forms of identification, to vote a provisional ballot if the elector presents one of the following:

- a. A valid Arizona driver license or nonoperating license.
- b. A legible photocopy of the voter's birth certificate.
- c. A legible photocopy of pertinent pages of the applicant's United States passport.
- d. A current and valid Arizona vehicle registration.
- e. A current and valid certificate of Arizona automobile insurance.
- f. A certificate of naturalization.
- g. A utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter and is dated within 90 days of the election.
- h. An Indian census card, tribal enrollment card or other form of tribal identification issued by an Indian tribe.

5. Requires the county recorder to verify a provisional ballot by comparing the voter's signature on the provisional ballot to the voter's signature on file within the following

time frame:

- a. Ten calendar days after a general election that includes an election for federal office.
- b. Five business days after any other election.
- c. Not later than the time at which challenged early voting ballots are resolved.

6. Removes dual enactment of statute relating to procedures for obtaining a ballot.

Proposition 200 Arizona Taxpayer and Citizen Protection Act

Election: General -- 2004

Type: Initiative

Status: Pass (Yes votes: 55.6%)

Summary: Requires registrants applying to vote in Arizona to submit evidence of their United States citizenship with the application. This Act also requires state and local governments and their agencies that administer state and local benefits that are not federally mandated to verify applicants' identity, immigration status, and eligibility of applicants; to accept only immigration-status-verified identification; cooperate with other state agencies to verify immigration status of applicants, and to report to federal immigration authorities any violation of federal immigration law by any applicant for benefits

(2289)

C. LANGUAGE REQUIREMENTS

HB 2345

Regular Session: **Failed**

Description: Requires the secretary of state, if allowed by law, to allow a portion of the monies that are received pursuant to the Help America Vote Act and that are designated for voter outreach to be used to reimburse counties for the cost of translating election materials into Native American languages.

D. OTHER LEGISLATIVE PROPOSALS

HCR 2011

1st Regular Session: **Failed**

Description: Changes the voting age to 16 for all elections other than those for US representative, senator, or presidential elector

SB 1379

1st Regular Session: **Failed**

Description: Increases purchase price of voter registration lists from ten cents per name to \$50 plus fifty cents per 1,000 names

HB 2367

Regular Session: **Failed**

Description: Provides for election-day registration

- HCR 2005** Regular Session: **Failed**
Description: Proposed an amendment to the Arizona Constitution to change the minimum voting age for nonfederal elections from 18 to 16 years of age
- SB 1422** Regular Session: **Failed**
Description: Revises statutes relating to conduct of elections; enacts punishments for employers who penalize employees for absence due to voting on election day; changes crime for violations from class 2 to class 3 misdemeanor
- SB 1075** Regular Session: **Passed;** **2003 Ariz. Sess. Laws, Chap. 260**
Description: SB 1075 makes several changes to current election law to conform to the requirements of the Help America Vote Act passed by Congress in 2002.

Voter Registration

- Requires a completed voter registration form to include the applicant's Arizona driver license number, the nonoperating license number, the last four digits of the person's social security number or the identifying number assigned by the Secretary of State.
- Requires the Secretary of State to develop and administer a statewide database of voter registration information of every registered voter in Arizona. The database shall:
 - Include an identifier that is unique to each individual.
 - Provide for access by voter registration officials.
 - Allow for expedited entry of voter registration information after it is received from county recorders.
- Provides for the confidentiality of the driver license number, nonoperating identification license number and the unique identifying number as provided by the act.
- Directs the Secretary of State to maintain the database, including removing ineligible voters and duplicate registrations, in a manner consistent with HAVA.
- Requires the Secretary of State to receive and respond to requests regarding voter registration information for statewide and federal elections. The county recorder is directed to handle requests for all other elections.

Election Administration

- Prohibits the use or certification of machines or devices that do not comply with HAVA for federal, state or county elections after completion of acquisition of machines or devices that do comply with HAVA.
- Directs the Secretary of State to consult with a committee provided for in existing statute to investigate and test election equipment, to adopt standards for revoking certification for equipment that was previously used for elections and prohibit the use of machines that have lost certification.
- Requires each Board of Supervisors to provide at least one device per precinct that complies with HAVA for voters with disabilities by January 1, 2006.
- Adds biennial primary and general elections to those that require the officer in charge to determine the number of voting devices needed.

- Mandates that each electronic ballot tabulating system shall be tested for logic and accuracy within seven days before their use for early balloting purposes.
- Requires the Secretary of State to establish a toll-free fraud reporting hotline.

Voting Procedures

- Removes statutory language that prescribes conduct for voters, election officials and provisional ballots on election day and instead places the authority for prescribing instructions for voters and election officials with the Secretary of State.
- Requires a voter who has not voted in Arizona before or who has moved to a new county in this state, if the statewide voter registration database has not been established, to be provided with notice that the voter must provide either of the following forms of identification or vote a provisional ballot:
 - A photocopy of a current form of identification that bears a photograph of the person and the name of the person.
 - A current utility bill, bank statement, paycheck, government issued check or other government document that shows the name and registration address of the voter.
- Allows a person who signs an affirmation that the person is a registered voter in the jurisdiction to vote a provisional ballot in that jurisdiction if the person's name is not on the precinct register and the person has no identification, or if the person has a new residence address.
- Requires the county officer in charge of elections to notify the provisional ballot voter whether the voter's ballot was counted, and if not, provide a reason.

Uniformed Services and Overseas Voters

- Requires the Secretary of State or the Secretary's designee to provide information on registration and absentee or early ballot procedures to absent uniformed voters and overseas voters.
- Directs the Secretary of State to submit a report to the Election Assistance Commission within 90 days of each regularly scheduled general election for federal office including:
 - Information on the number of ballots transmitted to uniformed services voter and overseas voters.
 - The number of ballots cast.
- Mandates that early ballots requested by overseas voters and uniformed services be provided for the time period covered by the next two regularly scheduled general elections.
- Requires a centralized system for receiving federal postcard applications by way of internet or fax.

Other Provisions

- Removes the terms new residence ballots and ballots to be verified and replaces them with the term provisional ballot.
- Requires provisional ballots to be compared to the signature roster within ten days after a general election that includes an election for a federal officer.
- Amends the Election Systems Improvement Fund (Fund) as added by Laws

2003, chapter 95, to prevent the lapsing of funds received in fiscal years 2003 and 2004. Monies deposited in subsequent fiscal year are subject to legislative appropriation and lapsing provisions.

- Session law directs the Secretary of State to develop a plan for the implementation and compliance with the provisions of HAVA, including:
 - Use of federal monies
 - Voter education and poll worker training
 - Ongoing management of the plan
- Mandates that the Secretary of State file the plan with the Election Assistance Commission.
- Clarifies the kinds of elections that are governed by the new election provisions.
- Specifies that the use of monies received from the federal government to be used by the Secretary of State are not subject to technology procurement and requires the Department of Administration to consider the January 1, 2004 deadline for compliance with HAVA in completing the procurement

HB 2408

Regular Session: **Failed**

Description: Creates a voters' bill of rights; requires posting it in polling places and on the secretary of state's web site.

III. PUBLISHED VOTING RIGHTS ACT CASES

1. *Goddard v. Babbitt*, 536 F. Supp. 538 (D. Ariz. 1982)

- **Decision by:** Wallace, Circuit Judge, Muecke, Chief Judge, and Cordova, District Judge.
- **Facts:** The Arizona state legislature redistricted both the congressional districts (House Bill 2002) and the state legislative districts (House Bill 2001). 536 F.Supp. at 539-40. The legislature passed both bills over the Governor's veto. *Id.* at 541. Plaintiffs were the minority leaders of the state House and Senate and intervenor plaintiffs were the San Carlos Apache tribe (the "Tribe"), a dependent sovereign Indian nation. *Id.* at 539. The San Carlos Apache tribe was previously within one legislative and congressional district and the proposed plan split the Tribe into three different legislative and congressional districts. *Id.* at 539-40.
- **VRA Claim(s):** The congressional redistricting plan was precleared by the Attorney General pursuant to section 5 of the Voting Rights Act. *Id.* at 541. However, the Department of Justice ("DOJ") did not preclear the state legislative redistricting plan on the ground that splitting the Tribe violated the Voting Rights Act ("VRA"). *Id.* at 541.
- **Issue(s):** (a) Whether the population variations in the congressional plan violate U.S. Constitution Article 1, Section 2 and the Fifteenth Amendment. (b) Whether the division of the Tribe into three districts violates the Fourteenth and the Fifteenth Amendments under the U.S. Constitution. *Id.* at 541-42.
- **Holding:** Legislators of both parties testified that the Tribe should not be split into different districts. *Id.* at 542. Both parties stipulated to revisions of both redistricting plans, which placed the Tribe back into one district. *Id.* The court approved the placement of the San Carlos Apache Tribe into one congressional district. *Id.* at 543. (a) The court held that the congressional redistricting plan, as originally adopted, violated U.S. Constitution Art. 1 § 2 by failing to achieve numerical equality as nearly as practicable. *Id.* at 543. However, the court held that the *modified* congressional plan was constitutional. *Id.* (b) The court held that the state legislative redistricting plan, as originally adopted, was unenforceable because it failed preclearance under § 5 of the VRA. *Id.* However, similar to the congressional plan, the court held that the *modified* legislative plan was constitutional. *Id.*

2. *Clark v. Holbrook Unified School Dist.*, 703 F. Supp. 56 (D. Ariz. 1989)

- **Decision by:** Hon. Roger G. Strand, District Judge
- **Facts:** The Holbrook Public School District is located in Navajo County, Arizona. Navajo County is less than 50% Native American. Plaintiff is suing to obtain a preliminary injunction against at-large voting for the election of the school board of the Holbrook Public School District. He alleges that due to at-large voting Native Americans have been disenfranchised because of racially polarized voting. 703 F.Supp. at 57.

- **VRA Claim(s):** Plaintiff sued under Section 2 of the Voting Rights Act against at-large voting for the election of school board members. *Id.* at 57-58.
 - **Issue(s):** The larger issue of the case is whether the at-large voting system is unconstitutional. *Id.* at 57. At this preliminary hearing, the court examined a ruling on the Defendants' Motions in Limine and their Motions to Dismiss. *Id.* at 58. One Motion in Limine asked the court to decide the appropriate analytical framework (i.e., whether the 3-prong or totality of the circumstances test applies) that Plaintiff must follow to bring a claim under Section 2 of the VRA. *Id.* The other Motion in Limine asked the court to determine which election results the plaintiff can present as evidence of discriminatory voting. *Id.* at 59.
 - **Holding:** The court denied the Motion to Dismiss due to insufficient evidence. *Id.* at 58. The court granted one of the defendants' Motions in Limine by ruling that the plaintiff must follow the *Thornburg v. Gingles*, 478 U.S. 30 (1986), three-prong test, *before* examining the totality of the circumstances test, to bring a claim under Section 2 of the VRA. *Id.* at 58-59. On the other Motion in Limine regarding evidence of election results, the court ruled that the most probative evidence of discriminatory voting would be evidence of the voting patterns of residents of the school district, though evidence of election results not involving school district voters may be admissible in the future. *Id.* at 59.
3. *Arizonans For Fair Representation v. Symington*, 828 F. Supp. 684 (D. Ariz. 1992)
- **Decision by:** McNamee, Marquez, District Judges, and Wiggins, Circuit Judge.
 - **Facts:** Due to the increased population in Arizona, as evidenced by the 1990 Census, the state legislature was supposed to create a redistricting plan for both the state legislative districts and the congressional districts. The Arizonans for Fair Representation filed suit when the legislature became deadlocked on the redistricting of the congressional districts. 828 F.Supp. at 686.
 - **VRA Claim(s):** The plaintiffs filed a claim of vote dilution under Section 2 of the Voting Rights Act to guarantee that the redistricting plan does not deny "minorities an equal opportunity to elect representative of their choice." *Id.* at 688.
 - **Issue(s):** Because of the legislative deadlock, the court must adopt a congressional districting plan. *Id.* at 687. One of the major issues at trial was what percentage of Hispanics should make up district two. *Id.* at 689.
 - **Holding:** The court held that "there [was] insufficient evidence of polarized voting in Arizona to warrant remedial action under the Voting Rights Act," because the third prong of the *Gingles* test was not established (i.e., it was not proven that the white majority voted sufficiently as a block to defeat the minority's preferred candidate). *Id.* at 693, 689. The court concluded that the Indian Compromise Plan, which included all Hopi Reservation into one district, was superior over the four other proposed plans. *Id.* at 692. In the end, the court adopted its own congressional redistricting plan, which included changes to the Indian Compromise Plan, that was to remain effective until 2000. *Id.* at 692-94.

4. *[NOT PUBLISHED] U.S. v. State of Arizona*, No. CIV-94-1845-PHX-EHC, 1994 U.S. Dist. LEXIS 17606 (D. Ariz. Oct. 17, 1994)
- **Decision by:** Carroll, District Judge, Browning, Circuit Judge, Roll, District Judge.
Majority: Carroll and Browning; Minority: Roll.
 - **Facts:** In both Conconino County and Navajo County two new Superior Court divisions were created and at large elections were held filling the judgeships. 1994 U.S. Dist LEXIS 17606 at *2-3. These changes were not submitted for preclearance pursuant to Section 5 of the Voting Rights Act. *Id.*
 - **VRA Claim(s):** In creating new Superior Court divisions, the federal government claimed that the two state counties made changes that are subject to Section 5 preclearance and therefore, must be precleared before adoption. *Id.* at *8. Both counties are “covered” jurisdictions under the VRA. *Id.* at *10.
 - **Issue(s):** (1) Whether the creation of new judgeships qualifies as a change of voting practices subject to Section 5 preclearance requirements. And if so, (2) whether preclearance is necessary in this case. *Id.* at *10.
 - **Holding:** Section 5 applies to the creation of new judgeships because they directly affect voting standards and practices. *Id.* at *12. The court further held that the creation of the new judgeships “does have the potential of causing discrimination or retrogression”¹ and therefore should be subject to preclearance. *Id.* at *18.
 - **Remedy:** The challenged elections were preliminarily enjoined pending resolution of the defendants’ declaratory action. *Id.* at *25.
5. *Smith v. Salt River Project Agric. Improvement and Power Dist.*, 109 F.3d 586 (9th Cir. 1997)
- **Decision by:** Fletcher, Farris, and Hall, Circuit Judges.
 - **VRA Claim(s):** Appellants challenge the Salt River Project Agricultural Improvement and Power District (“District”) criterion that requires an individual to be a landowner in order to be eligible to vote in district elections. 109 F.3d at 588. The Appellants allege that the landowning requirement disproportionately affects African-Americans. *Id.*
 - **Issue(s):** (1) Whether the District is a political subdivision within the scope of Section 2 of the Voting Rights Act; and if so, (2) does the landowning requirement violate Section 2 of the VRA? *Id.* at 591, 594.
 - **Expert Testimony:** Both parties presented statistical experts who testified “regarding the relationship, or lack thereof, between race and home ownership in the District.”² *Id.* at 590.

¹ “‘Retrogression’ has been defined as the reduction or diminution of minority voting rights or strength.” *United States v. State of Arizona*, 1994 U.S. Dist. LEXIS 17606 at *13.

² “The bench trial that ensued consisted primarily of expert testimony...” *Smith*, 109 F.3d at 590. The Appellant’s statistical expert used the chi-square method to analyze the demographic data. He testified that the result was, “‘extraordinary . . . the chances of finding a relationship like this between white ownership and black rentership were less than one in a million.’” *Id.* He also testified that the chi-square method does not reveal how variables will

- **Holding:** (1) The court held that the District was a political subdivision under Section 2 for several reasons. First, there is a broad interpretation of “political subdivision” in the legislative history. *Id.* at 593. Second, the District is considered a limited public entity under state law. *Id.* at 593-94. Finally, the District is subject to Section 5 of the Voting Rights Act. *Id.* at 594. (2) The Ninth Circuit further held that “a bare statistical showing of disproportionate *impact* on a racial minority does not satisfy the § 2 ‘results’ inquiry.” *Id.* at 595. There must be a showing of a causal connection between the challenged practice and the discrimination. *Id.* Therefore, there was insufficient evidence presented to show a violation of Section 2. *Id.* at 596.
6. *McComb v. Superior Court*, 943 P.2d 878 (Ariz. Ct. App. 1997)
- **Decision by:** Lankford, Judge, Kleinschmidt, J (concurring in part), Fidel, J (concurring in part and dissented in part). **Majority:** Lankford and Kleinschmidt. **Minority:** Fidel.
 - **Facts:** In June 1996, the Dysart Unified School District board voted to change the voting system from at-large to ward voting pursuant to Ariz. Rev. Stat. § 15-431. 943 P.2d at 881. Section 15-431 is a race-based statute that was enacted in response to past litigation involving other school districts. *Id.* at 883. In November 1996, the board held elections to fill three vacant seats using the ward system of voting. *Id.* at 881. Electors in the school district then sued challenging the validity of the ward system of voting. The superior court invalidated both the Arizona statute and the November election. *Id.* at 881-82.
 - **VRA Claim(s):** Defendants claimed that the race-based portion of Section 15-431 was compelled pursuant to Sections 2 and 5 of the Voting Rights Act. *Id.* at 882.
 - **Issue(s):** Whether Sections 2 and 5 of the Voting Rights Act are compelling interests that satisfy strict scrutiny review in order to justify racial discrimination. *Id.*
 - **Holding:** The court held that compliance with Section 5 of the Voting Rights Act is not a sufficient compelling interest. *Id.* at *883 (citing *Miller v. Johnson*, 515 U.S. 900, 919-23 (1995)). The court further held that compliance with Section 2 is only a compelling interest when the State is remedying “identified discrimination” and there is “a strong basis in evidence” that remedial action is necessary. *Id.* (citing *Bush v. Vera*, 517 U.S. 952, 982 (1996)). The court found that there was no “strong evidence” of discrimination because there was “no evidence of historic racial discrimination” and past litigation was insufficient; therefore compliance with Section 2 did not amount to a compelling interest and the State’s interest in avoiding litigation was not compelling. *Id.* at 883-84. The court ultimately found that Ariz. Rev. Stat. § 15-431 was unconstitutional because 1) there was no compelling interest to justify its racial discrimination; and 2) the statute was not narrowly tailored. *Id.* at 884.

vary in relation to one another or that there could be other variables that were not examined. *Id.* The District’s expert criticized the chi-square method as “simplistic and misleading.” *Id.* The district’s expert used a multivariate model that found that there was not a strong correlation between race and home ownership. *Id.* The district court found the testimony of the District’s expert credible and concluded that “‘others factors independent of race’” explained the difference in home ownership rates between whites and African Americans. *Id.* at 591.

7. *Navajo Nation v. Arizona Indep. Redistricting Comm’n*, 230 F. Supp. 2d 998 (D. Ariz. 2002)

- **Decision by:** Roslyn Silver and Susan Bolton, District Judges, and Marsha Berzon, U.S. Circuit Judge
- **Facts:** In November 2000, Arizona passed Proposition 106 which created an Independent Redistricting Commission (“IRC”). 230 F.Supp 2d at 1001. The IRC was supposed to start with a “clean slate” and redistrict the entire state. *Id.* The IRC came up with a redistricting plan for new Congressional and legislative districts in 2001 (“IRC 2001”) and submitted it to the DOJ for preclearance pursuant to Section 5 of the Voting Rights Act. *Id.* at 1002. That redistricting plan was at issue in this case. The DOJ denied preclearance for the IRC 2001 plan because it objected to five legislative districts primarily in the Phoenix and Tucson areas (though it did not object to the Congressional districts). *Id.* at 1003, 1004. The Navajo Nation and the San Carlos Apache tribe then moved to dismiss their claims without prejudice, which the court granted. *Id.* at 1004-1005. The IRC then adopted an interim plan to which the remaining parties agreed. *Id.* at 1005.
- **VRA Claim(s):** The Navajo Nation and the San Carlos Apache tribe alleged that the IRC 2001 plan would violate Section 2 of the VRA by diminishing the voting strength of Native Americans. *Id.* at 1003.³ Instead, plaintiffs requested that their proposed redistricting plan be implemented. *Id.* In a separate action, the IRC filed suit to enjoin the Secretary of State from using the 1994 legislative districts for the 2002 legislative elections. *Id.*
- **Issue(s):** Whether the proposed plan causes retrogression in minority voting strength.
- **Expert Testimony:** The IRC presented its consultant to testify about how the specific changes made in the IRC’s interim plan addressed the DOJ’s earlier objections to the five legislative districts. *Id.* at 1011-12. The Minority Coalition called an expert in geodemographic research.⁴ *Id.* at 1012-13.
- **Holding:** Instead of creating its own redistricting plan, the court deferred to the state’s (through the IRC) interim redistricting plan given the exigent circumstances of the upcoming election. *Id.* at 1008. 1) The court held that the IRC’s interim plan “substantially complied with the Fourteenth Amendment’s requirement for equal population among districts.” *Id.* at 1009. 2) Under Section 5 of the VRA, courts determine whether redistricting plans “causes a retrogression in minority voting strength.” *Id.* at 1015. The court concluded on state constitutional grounds, which required that the IRC draw districts from a “clean slate,” that the proposed plan was not adopted with retrogressive intent. *Id.* at 1015-16. The court further held that the proposed plan does not have the effect of retrogression because “Hispanics have a fair

³ The Native American Plaintiffs’ complaint was dismissed without prejudice. 230 F.Supp. 2d at 1003 n.5.

⁴ “Geodemographic” research “includes the analysis of maps and data relating to such topics as ... political redistricting.” *Navajo Nation*, 230 F.Supp.2d at 1013 n.17. The Minority Coalition expert prepared a table comparing the percentage of Hispanics of voting age before the proposed redistricting plan and if the plan were to go into effect. 230 F.Supp 2d at 1013. Certain districts would have an increased Hispanic population and others would be depleted of their Hispanic population. *Id.*

opportunity to be elected” in the three districts chosen to address the DOJ’s objections. *Id.* at 1016.

- **Subsequent Litigation:** *Navajo Nation v. Arizona Indep. Redistricting Comm’n*, 286 F.Supp. 2d 1087 (D. Ariz. 2003): The issue in this case was regarding attorney fee awards after *Navajo Nation*, 230 F.Supp. 2d 998.

8. *Arizona Minority Coalition for Fair Redistricting v. Arizona Indep. Redistricting Comm’n*, 366 F. Supp. 2d 887 (D. Ariz. 2005)

- **Decision by:** Silver, District Judge
- **Facts:** The Arizona Independent Redistricting Commission (“IRC”) submitted a legislative redistricting plan to the DOJ for preclearance and requested expedited review. 366 F.Supp. 2d at 891. The DOJ has 60 days to preclear or object to the redistricting plan. *Id.* If the DOJ decided that they needed additional information then the 60 day review period would begin again. *Id.* If that were to happen, then the plan would not be precleared before the scheduled election day. *Id.* In this action, the Minority Coalition sought a preliminary and permanent injunction from the court to require the IRC and Secretary of State to conduct the 2004 legislative elections under a redistricting plan that had not been precleared by the DOJ on an emergency interim basis. *Id.* at 892. The plaintiffs also challenged the IRC’s 2002 Legislative Plan as a violation of the VRA. *Id.* at 893 n.6, 902.
- **VRA Claim(s):** The Minority Coalition claimed that the proposed 2002 redistricting plan violated Section 2 of the Voting Rights Act by diluting the Hispanic voting age population in particular districts. *Id.* at 893 n.6.
- **Issue(s):** 1) The Plaintiffs wanted the court to order that elections occur under the proposed redistricting plan even if it was not precleared so that they could have early balloting on the scheduled day. *Id.* at 892. 2) Whether the 2002 redistricting plan violated Section 2 of the VRA by vote dilution.
- **Holding:** 1) The court held that it did not have the power to and would not adopt a redistricting plan that had not yet been precleared by the DOJ or order an election to proceed under such a redistricting plan because federal courts can create redistricting plans “only in the face of threatened violations of the federal law” and there was no federal claim raised. *Id.* at 894, 896-99 (citing Supreme Court precedent in *Clark v. Roemer* and *Lopez v. Monterey County*). The court held that the delay of state legislative elections “did not constitute grounds for this Court to circumvent the preclearance procedures” of Section 5, rejecting what the court saw as an attempt by the state to circumvent Section 5’s preclearance requirements. *Id.* at 894, 899. 2) The court held that Section 2 of the VRA “does not provide a remedy for influence dilution,”⁵ meaning that the size of the minority group is too small to even have the potential to elect representatives of their choice. *Id.* at 906. 3) The court also held that the Plaintiffs’ Section 2 claims would otherwise fail due to laches. *Id.* at 907.

⁵ The court described coalition, crossover, and influence districts. 366 F.Supp.2d at 904. The court noted that while some courts found that the first prong of *Gingles* was met in coalition and crossover districts, the majority of courts have “rejected pure influence-dilution claims.” *Id.* at 905.

IV. DEPARTMENT OF JUSTICE ENFORCEMENT

A. DOJ ENFORCEMENT LITIGATION [since and including 1982]

1. [NOT PUBLISHED] *United States v. State of Arizona*, No. CIV-94-1845, 1994 U.S. Dist. LEXIS 17606 (D. Ariz. 1994)⁶

- **Complaint:** Coconino County created two new superior court divisions in 1980 and 1990 and held elections to fill the judgeships. Navajo County established two divisions in 1975 and 1988. Neither county sought preclearance under the Voting Rights Act. Despite warnings from the U.S. Attorney General that further activity would violate the Act, the counties proceeded to qualify candidates for the 1994 election.
- **Settlement/ Consent Decree/ Order:** The court held that the establishment of judgeships constituted a "covered change" under the Act that had the potential of causing discrimination or retrogression with respect to minorities within those jurisdictions. 1994 U.S. Dist. LEXIS 17606 at *12, 18.

B. FEDERAL OBSERVERS/ MONITORS [since and including 1982]

City/Town	Date	Election Type	# of Observers/Monitors	Press Release/ Newspaper/ Comments and Notes
Apache	11/4/1986	Federal	24 obs.	Lawyers' Committee list
Apache	9/13/1988	Primary	43 obs.	Lawyers' Committee list
Apache	9/8/1988	Federal	41 obs.	Lawyers' Committee list
Apache	9/11/1990	Primary	26 obs.	Lawyers' Committee list
Apache	11/6/1990	Federal	43 obs.	Lawyers' Committee list
Apache	9/8/1992	Primary	45 obs.	Lawyers' Committee list
Apache	11/3/1992	Federal	45 obs.	Lawyers' Committee list
Apache	9/13/1994	Primary	25 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/Pre_96/September94/516.txt.html
Apache	11/8/1994	Federal	35 obs.	Lawyers' Committee list
Apache	9/10/1996	Primary	25 obs.	Lawyers' Committee list
Apache	11/5/1996	Federal	36 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/1996/Nov96/538cr.htm
Apache	9/8/1998	Primary	41 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/1998/September/408cr.htm
Apache	11/3/1998	Federal	24 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/1998/November/516cr.htm
Apache	9/12/2000	Primary	16 obs.	Lawyers' Committee list
Apache	11/7/2000	Federal	37 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2000/November/650.htm
Apache	9/10/2002	Primary	52 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2002/September/02_crm_517.htm
Apache	11/5/2002	Federal	? obs.	http://www.usdoj.gov/opa/pr/2002/November/02_crt_640.htm

⁶ For more information and analysis on this case, see *supra* discussion at Section III.4 Published VRA Cases.

IV. DOJ Enforcement – Arizona

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Apache	9/7/2004	Primary	? mon.	http://www.usdoj.gov/opa/pr/2004/September/04_crt_598.htm
Apache	11/2/2004	Federal	26 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2004/October/04_crt_725.htm
Cochise	9/7/2004	Primary	? mon.	http://www.usdoj.gov/opa/pr/2004/September/04_crt_598.htm
Cochise	11/2/2004	Federal	? Mon.	http://www.usdoj.gov/opa/pr/2004/October/04_crt_725.htm
Cochise	5/17/2005	Local	? Mon.	http://www.usdoj.gov/opa/pr/2005/May/05_crt_267.htm
Gila	9/7/2004	Primary	? mon.	http://www.usdoj.gov/opa/pr/2004/September/04_crt_598.htm
Gila	11/2/2004	Federal	? Mon.	http://www.usdoj.gov/opa/pr/2004/October/04_crt_725.htm
Graham	9/7/2004	Primary	? mon.	http://www.usdoj.gov/opa/pr/2004/September/04_crt_598.htm
Graham	11/2/2004	Federal	? Mon.	http://www.usdoj.gov/opa/pr/2004/October/04_crt_725.htm
Maricopa	9/7/2004	Primary	? mon.	http://www.usdoj.gov/opa/pr/2004/September/04_crt_598.htm
Maricopa	11/2/2004	Federal	? Mon.	http://www.usdoj.gov/opa/pr/2004/October/04_crt_725.htm
Navajo	11/4/1988	Federal	16 obs.	Lawyers' Committee list
Navajo	9/13/1988	Primary	29 obs.	Lawyers' Committee list
Navajo	11/8/1988	Federal	34 obs.	Lawyers' Committee list
Navajo	9/11/1990	Primary	34 obs.	Lawyers' Committee list
Navajo	11/6/1990	Federal	39 obs.	Lawyers' Committee list
Navajo	9/8/1992	Primary	42 obs.	Lawyers' Committee list
Navajo	11/3/1992	Federal	34 obs.	Lawyers' Committee list
Navajo	9/13/1994	Primary	21 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/Pre_96/September94/516.txt.html
Navajo	11/8/1994	Federal	28 obs.	Lawyers' Committee list
Navajo	9/10/1996	Primary	19 obs.	Lawyers' Committee list
Navajo	11/5/1996	Federal	28 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/1996/Nov96/538er.htm
Navajo	9/8/1998	Primary	23 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/1998/September/408er.htm
Navajo	11/3/1998	Federal	16 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/1998/November/516er.htm
Navajo	9/12/2000	Primary	17 obs.	Lawyers' Committee list
Navajo	11/7/2000	Federal	35 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2000/November/650.htm
Navajo	9/10/2002	Primary	28 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2002/September/02_crm_517.htm
Navajo	11/5/2002	Federal	40 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2002/November/02_crt_640.htm
Navajo	9/7/2004	Primary	38 obs.	Lawyers' Committee list
Navajo	11/2/2004	Federal	28 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2004/October/04_crt_725.htm
Pima	11/2/2004	Federal	? Mon.	http://www.usdoj.gov/opa/pr/2004/October/04_crt_725.htm
Santa Cruz	9/7/2004	Primary	? mon.	http://www.usdoj.gov/opa/pr/2004/September/04_crt_598.htm
Santa Cruz	11/2/2004	Federal	? Mon.	http://www.usdoj.gov/opa/pr/2004/October/04_crt_725.htm
Yuma	9/8/1998	Primary	5 obs.	http://www.usdoj.gov/opa/pr/1998/September/408er.htm
Yuma	9/7/2004	Primary	29 obs.	Lawyers' Committee list
Yuma	11/2/2004	Federal	41 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2004/October/04_crt_725.htm

V. VOTER SUPPRESSION

A. SUMMARY

The majority of election related voter suppression and intimidation occurred in two counties: Maricopa and Pima.⁷ Incidents, however, were also reported in Navajo, Phoenix, Tucson, and Yavapai counties.⁸ These incidents ranged from subtle voter suppression techniques to verbal abuse to threat of physical harm with fire arms and explosive devises.⁹

It appears that suspected, though often incorrectly and without basis, voting by undocumented immigrants was the primary concern of the individuals who intimidated and harassed minority voters.¹⁰ Despite the lack of proof of voting fraud, many poll workers and non-poll workers acted to ensure that minority voters were not undocumented immigrants. For example, in Pima county, men wearing black t-shirts that said "U.S. Constitutional Enforcement" and military or tool belts and carrying a variety of equipment harassed Latinos waiting in line to vote.¹¹ These men would approach potential voters with video and photo cameras and harass them for proof of citizenship.¹² Others would stand outside of polling places and videotape or photograph voters as they would enter and leave.¹³

Media agencies were also responsible for misinforming the public with regards to voting fraud. The most significant of these incidents occurred when a Fox Television News reporter confronted two females who had set up a voter registration drive on the University of Arizona, Tucson, campus.¹⁴ The reporter incorrectly accused them of setting up students to commit

⁷ *Election Incident Reporting System: Arizona*, available at <https://voterprotect.org> (last visited July 7, 2005).

⁸ *Id.*

⁹ *Id.*

¹⁰ *See id.*

¹¹ *Id.*; People For The American Way Foundation, *Run-Up To Election Exposes Widespread Barriers To Voting*, available at <http://interactive.pfaw.org/pdi/BarriersToVoting.pdf> (last visited July 29, 2005); C.J. Karamargin, *Activist's poll visit draws complaint*, Arizona Daily Star, Sept. 9, 2004; Anne-Marie Cusac, *Bullies at the Voting Booth*, The Progressive, Oct. 2004; Anne-Marie Cusac, *Counted Out*, The Progressive, Sept. 20, 2004, available at <http://www.alternet.org/story/19917> (last visited July 29, 2005); People For The American Way Foundation, *Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement In the 2004 Elections*, available at <http://www.lawyerscomm.org/preliminaryreport.pdf> (last visited July 29, 2005).

¹² C.J. Karamargin, *Activist's Poll Visit Draws Complaint*, Arizona Daily Star, Sept. 9, 2004; Anne-Marie Cusac, *Bullies at the Voting Booth*, The Progressive, Oct. 2004.

¹³ *See Election Incident Reporting System: Arizona*, available at <https://voterprotect.org> (last visited July 7, 2005).

¹⁴ Katha Pollitt, *Fox Hunting Student Voters*, The Nation, Oct. 5, 2004, available at <http://www.thenation.com/docprint.mhtml?i=20041011&s=pollitt> (last visited July 29, 2005); People For The American Way Foundation, *Run-Up To Election Exposes Widespread Barriers To Voting*, available at <http://interactive.pfaw.org/pdi/BarriersToVoting.pdf> (last visited July 12, 2005); Vote Watch 2004, "Older News: Fox News Reporter Intimidates Students Registering New Voters In Arizona, Suggesting That They Were Potentially Signing Up Students to Commit Felonies," available at <http://vote2004.eriposte.com/swingstates/arizona.htm> (last visited July 29, 2005); ElectionProtection2004.org, "The Nation: Fox Hunts Student Voters," available at http://www.electionprotection2004.org/archives/cat_arizona.html (last visited July 29, 2005).

felonies by registering out-of-state students to vote in Arizona when they were not eligible to do so.¹⁵ The reporter did not know that the law only required students to live in Arizona for more than 29 days to be eligible to vote.¹⁶ She refused to accept this correct interpretation of the law when the volunteers attempted to correct her.¹⁷ The unjustified harassment engineered by the reporter was broadcasted throughout the state and was never corrected by Fox affiliates.¹⁸

Most recently, Proposition 200 has presented a substantial threat to minority voters' rights. Proposition 200 requires every voter to show proof of *citizenship*, not just *identification*, to vote during state and national elections.¹⁹ Many voting rights activists report that this requirement would have a disparate effect on voting minorities who are less likely to possess the documents necessary to prove citizenship.²⁰ Though there have been no instances of voter fraud in Pima County and only ten instances in the last ten years in all of Maricopa County, proponents of the proposition contend that Proposition 200 is essential to prevent voter fraud.²¹ Arizona Governor Janet Napolitano and Arizona Senator John McCain have come out in opposition of Proposition 200 because of the detrimental effect it will have on minority, especially Latino and Native American, voters.

Incidents of voter suppression and intimidation carried out in the last election period are summarized below by type of suppression/ intimidation, county, and date. Part B summarizes incidents reported in the Election Incident Reporting System ("EIRS") Database.²² These

¹⁵ People For The American Way Foundation, *Run-Up To Election Exposes Widespread Barriers To Voting*, available at <http://interactive.pfaw.org/pdf/BarriersToVoting.pdf> (last visited July 29, 2005).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Vote Watch 2004, "Older News: Fox News Reporter Intimidates Students Registering New Voters In Arizona, Suggesting That They Were Potentially Signing Up Students to Commit Felonies," available at <http://vote2004.eriposte.com/swingstates/arizona.htm> (last visited July 29, 2005).

¹⁹ Codified as A.R.S. § 46-140.01 (2004), A.R.S. § 16-579 (2004). For more information on Proposition 200 and other legislative proposals, see *supra* Section II. Legislative Proposals.

²⁰ Yvonne Wingett, *Citizen Proof is Required to Vote*, The Arizona Republic, Jan. 26, 2005, at <http://www.azcentral.com/specials/special29/articles/0126prop200-voting26.html> (last visited July 29, 2005).

²¹ League of Women Voters of Arizona, Statement Against Proposition 200, AMENDING SECTIONS 16-152, 16-166 AND 16-579, ARIZONA REVISED STATUTES; AMENDING TITLE 46, CHAPTER 1, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 46-140.01; RELATING TO THE ARIZONA TAXPAYER AND CITIZEN PROTECTION ACT.

²² The summary contained in Section V.B was compiled from 91 incident reports from Arizona in EIRS, which is a small subset of the total reports made in Arizona. The case numbers from the 91 incidents are: 15021, 15468, 17884, 19012, 20879, 21741, 23115, 31515, 35147, 42971, 44610, 45292, 16099, 16962, 18173, 18739, 19047, 19099, 19218, 22742, 27365, 29915, 31209, 32082, 33041, 37013, 37866, 38196, 39528, 40394, 43455, 44844, 45368, 45492, 45560, 46700, 47387, 47499, 47978, 48956, 50222, 51906, 52498, 52528, 53923, 53966, 54169, 58488, 59248, 60379, 15751, 31012, 31041, 31308, 31651, 32266, 33039, 35682, 36236, 36432, 37790, 37976, 38297, 38707, 39500, 40342, 40844, 41437, 41752, 42177, 43156, 43535, 45940, 46143, 49068, 49635, 49941, 53184, 55507, 55517, 55525, 55530, 55625, 57648, 57650, 57654, 57655, 57699, 57951, 59100, 35579. Of these 91 incident reports, 24 of the individuals making the report identified themselves by one of the following race/ethnicity categories: Hispanic (13), White (6), Black (2), Native American/ Alaska Native (1), Asian/ Pacific Islander (1), and Other (1).

incidents are divided into five main categories: 1) Minority Language Assistance; 2) Voter Intimidation and Harassment; 3) Voter Suppression; 4) Misinformation; and 5) Voter Intimidation or Harassment Related to Political Party Affiliation. Most of the incidents have been reported by county. Part C summarizes incidents reported in sources other than EIRS, including the media and various organizations.

Instances of *reported* voter suppression during previous elections, though there are some reported incidents, are sparse. It appears that most reported incidents of voter suppression and intimidation were made during the most recent national election in the fall of 2004.

B. ELECTION INCIDENT REPORTING SYSTEM DATABASE

1. Minority Language Assistance Related Incidents

a) Maricopa County

- Nov. 2004 - In a heavily Spanish-speaking precinct, ballots were produced in two colors, green and purple. While Spanish language ballots were provided in purple, no Spanish language ballots were provided in green. At the same precinct, some Spanish speakers were told that Spanish language ballots would not count in the election. Consequently, some voters opted for English language ballots even though they did not know English.
- Nov. 2004 - At some precincts only English language ballots and instruction booklets were provided. No Spanish language ballots were provided at all.
- Nov. 2004 - No Spanish speaking poll workers were present to assist Spanish speaking voters. It took poll workers 40 minutes to find a bi-lingual Election Protection volunteer to assist the voter.
- Nov. 2004 - Volunteers translating for voters who only spoke Spanish were told by poll workers that they had no right to aid the voters in spite of the voters' requests for assistance.

b) Pima County

- Nov. 2004 - In a heavily Spanish-speaking precinct, no Spanish speaking poll workers were present to assist voters who only spoke Spanish.
- Nov. 2004 - At some precincts only English language ballots and instruction booklets were provided. No Spanish language ballots were provided at all.
- Nov. 2004 - There were no ballots available with the voter proposition texts in Spanish. A single sample Spanish ballot was posted at the polling entrance. The poll workers stated that a voter should read the Spanish text, note the proposition number, and vote on the English ballots once inside.

2. Incidents of Voter Intimidation and Harassment

a) Maricopa County

- Nov. 2004 - In a heavily Spanish-speaking precinct, some Spanish speakers were told that Spanish language ballots would not count in the election. Consequently, some voters opted for English language ballots even though they did not know English.
- Nov. 2004 - A voter felt intimidated when at a polling place she was told that she was not on a registered voter list. When she produced her Voter Registration card the poll worker suddenly found that she was registered to vote and on the list. The voter was then given a felt-tip pen to mark her ballot, despite the fact that Arizona election officials had previously stated that felt-tip pens were a source of many invalid ballots during the previous election. When the voter went to deposit her ballot, a poll worker warned her that the ballot had to be folded “just right” or it would not be counted. The poll worker then refolded the ballot and deposited it.
- Nov. 2004 - At certain precincts, trucks with megaphones were parked outside. The drivers warned Latinos that they would be deported if they had wrongfully registered to vote.
- Nov. 2004 - Some voters were treated badly at polling places. For example, some voters were called liars when they provided identification to vote, the ballots were placed in envelopes separate from other ballots, and they were followed out to their cars after they left the polling places.
- Nov. 2004 - There were reports of people standing or sitting in cars outside of polling places taking pictures or filming voters as they entered and left polling places.
- Nov. 2004 - Poll workers asked only minority voters for identification at some polling places.
- Nov. 2004 - ROTC officers were reported at some polling places to be dressed in uniform and harassing voters waiting in line to vote.
- Nov. 2004 - An intimidating looking security guard who wore a badge on his belt stood at the entrance to a polling place. When told that law enforcement was not allowed to be there, the man stated that he was he was not a police officer, but rather “City of Phoenix Security,” and refused to leave. There were also other instances of police cars parked at polling places and officers walking around in full uniform.

b) Phoenix County

- Nov. 2004 - A man in a suit was taking pictures of a polling place and voters.

c) Pima County

- Nov. 2004 - Voters in some polling places were subjected to verbal racist comments, but were still permitted to vote. Some poll workers assumed that certain voters only spoke Spanish and forced them to vote with Spanish ballots.
- Nov. 2004 - Men dressed in black t-shirts that said “U.S. Constitutional Enforcement” harassed voters waiting in line to vote. They carried video cameras and wore tool belts with cameras and other equipment. The men claimed to be looking for “illegals” who were voting fraudulently. The men videotaped and interviewed voters standing in line to vote, asking voters to show identification to prove their citizenship.

- Nov. 2004 - At a precinct, a man dressed in black was seen to have an automatic weapon and magazines in his pockets.
- Nov. 2004 - At one location, a Border Patrol Officer appeared in uniform to vote.
- Nov. 2004 - At many locations, the booths were very close to each other and voters felt intimidated because other could see for whom they were voting.
- Nov. 2004 - Police cars were seen driving around polling places and parked within view of polling places.

3. Incidents of Voter Suppression

a) Maricopa County

- Nov. 2004 - Poll workers refused to provide some voters with provisional ballots and would only do so if the voters demanded them.
- Nov. 2004 - While waiting in line to vote, a woman voter who asked another voter a question was threatened by a poll worker. The poll worker threatened to deny the woman the right to vote. At other polling places, voters were not allowed to discuss party affiliations of election candidates while waiting in line and were also threatened.
- Nov. 2004 - Hispanic voters were turned away from polling places without voting when they were told that their signatures did not match those in the voter registry. Poll workers refused to look at the Hispanic voters' drivers' licenses to verify the authenticity of their signature.
- Nov. 2000 - A voter entered a polling place to check in and was asked whether she spoke English by the poll worker. When the voter replied "no," the poll worker stated that she should go back to Mexico and learn English. The voter was prevented from casting her vote.
- Nov. 2004 - At a polling place, a poll worker became loud and aggressive, yelling at legal volunteers and Election Protection volunteers for assisting voters with the voting process. The worker refused to provide the name of his supervisor or his own name.
- Nov. 2004 - Some Native Americans were told that they had voted early, even though they had not, and were provided ballots to vote.

b) Pima County

- Nov. 2004 - Poll marshals would not allow voters to have the Election Protection's Voters' Bill of Rights in polling places unless they kept the document in their pockets. Individuals who were denied the right to vote were ushered to their cars by poll marshals before they had an opportunity to talk to Election Protection volunteers. At one location, a poll marshal refused to inform a member of the National Council of La Raza whether there were Spanish ballots available to voters.
- Nov. 2004 - Voters who did not have a political party affiliation indicated on their voting cards were told that they could not vote unless they were affiliated with a political party.
- Nov. 2004 - Voters were told that they would be fined for voting at the wrong precincts because it was illegal. At other polling places, poll workers discouraged voters by telling them that 75% of provisional ballots would be disallowed.

4. Incidents of Misinformationa) Maricopa County

- Nov. 2004 - Absentee ballots had conflicting instructions on how to mark votes. The ballot instructed the voter to use a ballpoint pen to mark their votes, while a separate instruction sheet mailed with the absentee ballots instructed the voter to use a No. 2 pencil.
- Nov. 2004 - Voters mailing absentee ballots with 37 cent postage were later told that the ballots could only be mailed with 50 cent postage. Many voters did not know whether their absentee ballots were ever received and counted.
- Nov. 2004 - At one polling place, there was a sign outside that stated that the polling place had moved. However, when the voter went inside, the polling place was still there.
- Nov. 2004 - Some Native Americans were told that they had voted early, even though they had not, and were provided ballots to vote.

b) Unreported County

- New residents of Arizona were told by election officials that they could not register to vote because they had not gotten Arizona license plates for their car. The law only required that residents live in the state for more than 29 days before they can register to vote, which they did.

5. Incidents of Voter Intimidation or Harassment Related to Political Party Affiliationa) Maricopa County

- Nov. 2004 - Voters felt intimidated and harassed by partisan campaign volunteers who were handing out political pamphlets at the entrances to polling places.
- Nov. 2004 - A day before the election, Republican party representatives called registered Democrats to ask who the individual would vote for. If they replied that they were voting for a Democrat, the voter was wrongfully told that his polling place had changed and given a false address. Those who indicated they were voting for a Republican were told to go to the correct address.
- Nov. 2004 - A voter called "Poll Locator" to get the address for her polling location. The Poll Locator representative initially gave her the wrong address. When she called back, the representative inquired into her party affiliation, asking her if she knew that she was a registered Democrat. When the voter acknowledged that she was a registered Democrat, but that she was voting Republican, the Poll Locator representative then gave her the correct polling location.
- Nov. 2004 - At some polling places, large pictures of George Bush and Dick Cheney were posted inside. When county officials instructed the workers to take them down, the poll workers did not do so.
- Nov. 2004 - At polling place, a large picture of John Kerry was posted inside.
- Nov. 2004 - Voters were intimidated by representatives of MoveOn.org who were standing at the entrances to polling places.

- Nov. 2004 - Voter wearing a George Bush t-shirt and hat at a polling place was told to go outside and remove her hat. She was closely watched by poll workers through a window when she did so. Upon returning, the poll workers told her that she was lucky that they did not have her remove her shirt. The poll workers then proceeded to talk about John Kerry in front of her.

b) Navajo County

- Nov. 2004 - Some voters were concerned by poll workers who were keeping separate lists of voters and writing down incorrect party affiliations next to their names.
- Nov. 2004 - At a polling place, a voter was not allowed to vote because he was wearing a John Kerry hat.

c) Pima County

- Nov. 2004 - Messages were left at voters' homes telling them to go to the wrong polling place. One voter used a telephone service allowing the recipient of a telephone call to call the last person who called him and was directed to the Republican Party Headquarters. The voter told the representative that he was a Republican and the representative then provided the correct polling place location.
- Nov. 2004 - MoveOn.Org volunteers were harassing people by asking who they voted for and following people to their cars.
- Nov. 2004 - Flyers were distributed stating, "Republicans vote on Tuesday, Democrats vote on Wednesday."

d) Tucson County

- Nov. 2004 - An election official with a gun warned Moveon.org volunteers to stay more than 100 feet away from the polling place, which they were, and threatened to file a complaint against them.

e) Yavapai County

- Nov. 2004 - At a polling place, some voters were given a list of "write in" candidates for the ballots while other voters were not. This was done after the voters were asked to identify their political affiliations.

C. INCIDENTS REPORTED BY THE MEDIA AND ORGANIZATIONS

The People For the American Way has produced reports that reflect recent voter suppression and intimidation in a number of states. In *Run-Up To Election Exposes Widespread Barriers To Voting*, instances of voter intimidation in Arizona by a Fox News reporter and men wearing "U.S. Constitution Enforcement" t-shirts are recounted (as described in Part A above).²³ The foundation's *Shattering the Myth* report also recounted incidents of harassment by men

²³ People For The American Way Foundation, *Run-Up To Election Exposes Widespread Barriers To Voting*, 4-5, available at <http://interactive.pfaw.org/pdf/BarriersToVoting.pdf> (last visited July 29, 2005).

wearing “U.S. Constitution Enforcement” t-shirts and an incident where a poll marshal refused to tell a volunteer whether Spanish ballots were available.²⁴

International and domestic media have also reported voter suppression techniques in Arizona. An article in the *Guardian*, a newspaper of the United Kingdom, briefly mentioned that “[f]rom Pennsylvania to Arizona, a Republican consulting firm [was] discouraging new Democratic voters from getting on the rolls [sic].”²⁵ Various domestic newspapers have also published articles on the disproportionate effect Proposition 200 will have on minority voters.²⁶

Websites for various organizations, such as the Election Protection website,²⁷ have also reported incidents of voter suppression and harassment. The Election Protection website reported the lack of availability of Spanish language ballots, political candidates setting up tables within 75 feet of polling places and soliciting votes, and the misinformation (e.g., wrong polling place locations) provided to Democrat voters.²⁹ The organization also reported that some polling places displayed photographs of George Bush and an incident where a man drove around in a big van covered with American flags waving a large photograph of a police officer to voters.³⁰ The Vote 2004 website³¹ provided additional information, elaborating on many incidents reported by Election Protection such as the Fox News reporter’s attempt to intimidate students registering to vote and bomb threats directed at polling locations.

²⁴ People For The American Way Foundation, *Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement In the 2004 Elections*, 29-32, available at <http://www.lawyerscomm.org/preliminaryreport.pdf> (last visited July 29, 2005).

²⁵ Sidney Blumenthal, *Comment & Analysis: America’s Hidden Vote*, *Guardian* (UK), Oct. 21, 2004, available at 2004 WLNR 4643261.

²⁶ Tim Herdt, *Latinos Discuss Role in Politics*, *Ventura County Star*, June 27, 2003; *Voting Rights Groups Urge Carter-Baker Election Commission to Oppose National Voter Identification Card: ‘A Remedy in Search of a Problem That Could Deny Millions of Eligible Voters Their Right to Vote’*, *Ascribe Newswire*, June 29, 2005; C.J. Karamargin, *Prop. 200 Bouncing New Voter Sign-Ups*, *Arizona Daily Star*, May 6, 2005, available at 2005 WLNR 8001242.

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BINGHAM McCUTCHEN

COLORADO REPORT

FOR
THE NATIONAL COMMISSION ON THE
VOTING RIGHTS ACT

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I. DEMOGRAPHICS

A. GENERAL POPULATION DEMOGRAPHICS

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
Total population	4,301,261	100.0	3,200,466	100.0
Hispanic or Latino (of any race)	735,601	17.1	476,879	14.9
Not Hispanic or Latino	3,565,660	82.9	2,723,587	85.1
One race	3,492,939	81.2	2,682,662	83.8
White	3,202,880	74.5	2,473,860	77.3
Black or African American	158,443	3.7	111,334	3.5
American Indian and Alaska Native	28,982	0.7	21,053	0.7
Asian	93,277	2.2	70,384	2.2
Native Hawaiian and Other Pacific Islander	3,845	0.1	2,807	0.1
Some other race	5,512	0.1	3,224	0.1
Two or more races	72,721	1.7	40,925	1.3

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File.

B. MINORITY REPRESENTATION IN CONGRESS

There is 1 minority member in the United States House of Representatives and 1 in the United States Senate from Colorado.

Source: "House Press Gallery," available at <http://www.house.gov/daily/hpg.htm>; "Minorities in the Senate" available at http://www.senate.gov/artandhistory/history/common/briefing/minority_senators.htm.

Representative John T. Salazar (D), Hispanic American, 2004
Source: <http://www.house.gov/salazar>.

Senator Ken L. Salazar (D), Hispanic American, 2004
Source: <http://salazar.senate.gov>.

C. MINORITY REPRESENTATION IN STATE LEGISLATURE

There are 10* minority members (8 Hispanic Americans, 2 African Americans) in the Colorado House of Representatives and 4* (2 Hispanic Americans, 2 African Americans) in the Colorado State Senate.

*As of data updated December 29, 2003 at the NCSL websites provided below, which only includes statistics for Hispanic American and African American state legislators. State office declined to convey more recent data. Please see Exhibit B for rosters of both branches of Colorado Legislature.

Source: “Colorado House of Representatives,” *available at* http://www.state.co.us/gov_dir/leg_dir/house/members/index.htm; “Colorado Senate,” *available at* http://www.state.co.us/gov_dir/leg_dir/senate/members/index.htm; “Numbers of African-American Legislators 2003,” *available at* <http://www.ncsl.org/programs/legman/about/afrAmer.htm>; “Numbers of Latino Legislators,” *available at* <http://www.ncsl.org/programs/legman/about/Latino.htm>.

II. LEGISLATIVE PROPOSALS**A. REDISTRICTING**

BILL	TYPE	SUMMARY	STATUS
S.B. 03-352	Redistricting	Congressional redistricting with minimal population deviation	Signed by Governor on May 9, 2003
S.C.R 05-009	Redistricting	Amends state constitution to change the name of the reapportionment commission to the redistricting commission and authorizes such commission to draw congressional and state legislative plans	Assigned to Senate Committee on State, Veterans & Military Affairs; postponed indefinitely (2005)

B. VOTER ID REQUIREMENTS

BILL	TYPE	SUMMARY	STATUS
S.B. 03-102	Voter Identification Requirements	Establishes voter identification requirements at the polling place and for absentee voters	Signed into law April 22, 2003
S.B. 04-84	Voter Identification Requirements	Modifies ID requirements contained in HAVA.	Signed into law April 13, 2004
S.B. 04-213	Voter Identification Requirements	Changes the definition of "identification" in the Uniform Election Code of 1992; deletes the requirement that a pilot's license contain a photo of the voter; adds the following forms as proper identification: valid Medicare or Medicaid card; a certified birth certificate issued in the U.S.; certified documentation of naturalization	Signed into law May 21, 2004

C. OTHER

BILL	TYPE	SUMMARY	STATUS
H.B. 02-1307	Provisional Ballots Election Judges	Permits, among other things, a voter who made an	Signed into law, June 7, 2002

	Poll Watchers Counting	emergency registration or who changed registration on election day or whose qualification to vote cannot be immediately established to cast a provisional ballot. Entitles minor political parties to have watchers in precinct polling places and all political parties to have watchers in places where votes are counted.	
H.B. 03-1006	Provisional Ballots	Revised state statute to a) allow voter who registers to vote by emergency registration may vote a provisional ballot only if the voter registers on election day at the polling place, b) allow a voter who failed to register in county after change of address to vote a provisional ballot , c) requires provisional voters to provided identification and a provisional ballot affidavit, d) require each county clerk and recorder to create a system to allow provisional voters to determine if their ballots were counted, d) repeal the provision allowing a voter who requested an absentee ballot but did not return it to vote a provisional ballot.	Signed into law on April 17, 2003
H.B. 03-1356	HAVA	Implements the Help America Vote Act of 2002 provisions re federal elections assistance fund, statewide centralized voter registration system, required forms of identification from first-time voters and appropriation.	Signed into law May 22, 2003
S.B. 04-153	Vote Centers	Authorizes an election	Signed into law

		official to establish one or more vote centers for any election. "Vote center" is defined as a polling place at which any registered elector in the political subdivision holding the election may vote, regardless of the precinct in which the elector resides.	May 27, 2004
S.B. 05-206, S.B. 05-198	Provisional Ballots	Allows a voter to cast a provisional ballot if a) qualification to vote cannot be immediately established, b) identification is not presented, c) if absentee ballot was requested but not cast. Sets forth requirements for provisional ballots.	Signed into law on June 6, 2005

D. APPENDIX OF SOURCES

III. PUBLISHED VOTING RIGHTS ACT CASES

A. *Carstens v. Lamm*, 543 F. Supp. 68 (D. Colo. 1982)

- **Decision by:** Chief Judge Finesilver
- **Facts:** El Paso County is subject to preclearance requirements under the Voting Rights Act (“VRA”) (the only county in Colorado at the time subject to preclearance). Multiple suits were filed by minority voters in El Paso County (“Carstens plaintiffs”) requesting the court to enjoin the defendants, Governor Lamm and Secretary of State Mary Buchanan from conducting the primary or general congressional elections until a new redistricting plan was adopted.
- **VRA Claim(s):** Carstens plaintiffs claim their proposed redistricting plan better comports with the VRA. The plaintiffs suggest “sensitivity to the Voting Rights Act concern for racial representation by combining Black voting strength in El Paso County with minorities in other immediately contiguous areas” is achieved by their redistricting plan.
- **Issue(s):** Does the plaintiffs proposal meaningfully enhance the strength of the minority vote?
- **Holding:** The court declined to rule on current status of El Paso County under the VRA. Because the Court fashioned its own plan rather than implementing a legislative proposal, the preclearance requirements of the Act are not applicable in the instant case. *Carstens*, 543 F. Supp. at 82. Moreover, the determination that a county is subject to preclearance requirements under the VRA is made on the basis of minority population and voter registration in that specific county. The placement of a preclearance county in a particular congressional district has no bearing on the county’s status under the VRA. *Id.* at 87. The court found the current Congressional districting plan unconstitutional and incorporated its own plan to satisfy legal requirements, adopting the previous 1982 Colorado Congressional Redistricting Plan.

B. *Sanchez v. Bond*, 875 F.2d 1488 (10th Cir. 1989)

- **Decision by:** Senior District Judge Wesley E. Brown sitting by designation.
- **Facts:** Plaintiff-appellants, voters from Saguache County, Colorado, claimed that the at-large election process used to elect county commissioners impermissibly dilutes Hispanic voting in violation of Section 2 of the VRA. Plaintiffs argue that no Hispanic had ever won a contested county-wide election and that three Hispanics had run for county commissioner and were defeated. The defendants countered, pointing out that a few unopposed Hispanics had won county-wide positions. The defendants argued that polarization occurs along party lines and that Democratic candidates had been regularly elected to county positions. The district court found no VRA violation because while sufficiently large and geographically compact, the Hispanic minority did not constitute a politically cohesive group and thus failed to satisfy the *Gingles* preconditions for a VRA vote dilution claim. *Sanchez*, 875 F.2d at 1492. Plaintiffs appealed.

- **VRA Claim(s):** Vote dilution violation of Section 2.
- **Issue(s):** (1) Did the district court improperly find that Hispanics were not politically cohesive? (2) What can be used as evidence of majority support for minority preferred candidates? (3) Was the district court's finding of no VRA violation supported by the evidence presented?
- **Holding:** The court held that there was no VRA violation. The court affirmed the district court's ruling, finding: (1) the district court did not apply an erroneous standard of law in concluding that Hispanics were not politically cohesive; (2) election of unopposed Hispanics to county office could be considered as evidence of Anglo support for Hispanics because *Gingles* does not establish a *per se* rule against consideration of such evidence; and (3) the district court's ultimate finding that the system used to elect county commissioners did not violate the VRA was supported by the evidence.
- **Expert Testimony:** The circuit court examined the evidence presented to the district court, including expert testimony. Plaintiffs presented an expert on voting patterns and election systems, who testified that in his opinion, Hispanics in Saguache County had less opportunity than Anglos to participate and to elect candidates of their preference and concluded that this condition was due to the at-large election procedure used in Saguache County elections. The expert's conclusion was based largely on a statistical study of selected political contests, examining ten races in which Anglo and Hispanic candidates ran against each other. Using the voting results from each precinct, he found a high correlation between Hispanic voters and support received by a Hispanic candidates, leading him to conclude that voting in nine of the races was "highly polarized" and that whites voted as a bloc to systematically defeat Hispanic candidates. The expert also concluded Hispanics were politically cohesive.
 - The defendants' expert concluded voting in Saguache County was polarized along party lines, suggesting that party affiliation was a better predictor of how a voter would vote than the voter's race. *Id.* at 1490.
 - The district court found the plaintiffs' study to be inadequate and unreliable because it did not consider Anglo candidates sponsored by Hispanics. The circuit court noted that of the ten races analyzed by plaintiffs' expert, four involved state representative elections covering a five-county area, which the district court likely considered of limited value in assessing whether voting for county commission seats was racially polarized. Only three of the races analyzed were general elections for the Saguache County Commission. Thus, the court stated "[w]ith this limited number of elections underlying the plaintiffs' claim, together with the evidence suggesting that Hispanics were not politically cohesive, the trial court's finding that plaintiffs failed to meet their burden of proof is not clearly erroneous." *Id.* at 1496.

C. Montero v. Meyer, 795 P.2d 242 (Colo. 1990)

- **Decision by:** Justice Volland. Justice Quinn dissented, joined by Justice Mullarkey and in part by Justice Kirshbaum.
- **Facts:** The Official English Committee, intervenors and appellees filed a petition with Secretary of State Natalie Meyer in support of a proposed initiative to amend the Colorado Constitution to make English the state's official language. Plaintiff-appellant Montero protested, which the Secretary of State denied. Plaintiff then filed a complaint seeking judicial review of the Secretary's denial, which the Denver District Court dismissed. Plaintiff appealed, alleging that the petitions were withdrawn and could not be re-filed by the relevant deadline and that the Secretary improperly certified the initiative for the ballot and improperly dismissed Plaintiff's protest.
- **Prior History:** The district court ruled that it was a rebuttable presumption that the petitions were circulated in one or more of twelve counties deemed to be bilingual, in violation of the VRA because the petitions were not circulated in Spanish and English in those counties. The Tenth Circuit Court of Appeals reinstated the original signatures which had been protested in December 1987. The circuit court found the period of time that Montero had to amend her protest expired and that the statute does not authorize the Secretary of State to enlarge the time period once it has expired. Plaintiff's failure to submit her amended protest to the original petitions within 10 days of denial of the protest precluded her from making further objections to the original petitions.
- **VRA Claim(s):** Plaintiff challenged the petition, alleging that the Secretary violated voter rights under the VRA by preparing, approving, and circulating petitions only in English in counties subject to the bilingual provisions of the VRA. *Montero*, 795 P.2d at 243.
- **Issue(s):** Did the district court have jurisdiction to rule on the alleged Voting Rights Act violations?
- **Holding:** The district court has jurisdiction over the VRA claims. *Id.* at 248. The state Supreme Court affirmed the District Court's dismissal of plaintiff's complaint.

D. Montero v. Meyer, 790 F. Supp. 1531 (D. Colo. 1992)

- **Decision by:** Justice Carrigan.
- **Facts:** The district court, , 696 F.Supp. 540, granted preliminary injunction, and appeal was taken. The court of appeals, 861 F.2d 603, reversed and remanded. The parties cross-motivated for summary judgment.
- **VRA Claim(s):** Action was brought under the bilingual requirement provision of the VRA challenging initiative petitions proposing an amendment to the state constitution designating English as Colorado's official language.
- **Holding:** (1) the plaintiffs' motion to amend the complaint is granted; (2) the plaintiffs' motion for summary judgment is granted; and (3) the defendants' cross motion for summary judgment is denied.

E. *In re Reapportionment of the Colorado General Assembly, 828 P.2d 185 (Colo. 1992)*

- **Decision by:** Justice Erickson. Justice Lohr, concurred in part, dissented in part. Justice Quinn also filed a concurring and dissenting opinion, which was joined by Justice Mullarkey in part. Justice Mullarkey filed an opinion concurring in part and dissenting in part that was joined by Justice Quinn. Justice Vollack filed a separate concurring and dissenting opinion.
- **Facts:** As required by article V, section 48(1)(e) of the Colorado Constitution, the Supreme Court of Colorado, sitting en banc, reviewed a plan adopted by the Colorado Reapportionment Commission (“Final Plan”) to determine whether it complied with state and federal constitutional requirements, i.e., Fourteenth and Fifteenth Amendments.
- **VRA Claim(s):** Two separate VRA objections were raised to the Final Plan, both asserting that the plan violates Section 2 of the VRA:
 1. Blacks for Fair Reapportionment (“BFFR”) claimed that minority voting was diluted by the Final Plan, and instead proposed that the district boundary lines within Denver be shifted to increase black and minority voting power. The Commission rejected this proposal, claiming that it would require crossing county and city lines in violation of the state constitution and Section 2.
 2. Jessie Sanchez, as an individual, and others claim that District 60, an area with a large group of Hispanic voters in Southern Colorado, should be redrawn to include a majority Hispanic voting-age population.
- **Issue(s):**
 1. Can the court consider the VRA in its analysis of a reapportionment plan?
 2. Are the objections raised under Section 2 consistent with the *Gingles* factors and therefore constitute a violation of Section 2 of the VRA? *Thornburg v. Gingles*, 478 U.S. 30 (1986).
 - The Commission responded to the BFFR, claiming that their proposal would itself violate Section 2 by inadequately considering rural voters and that they failed to satisfy the first *Gingles* precondition, which requires a minority group to demonstrate a sufficiently large and geographically compact population to constitute a majority in a single-member district. *In re Reapportionment*, 828 P.2d at 193.
 - The Commission responded to Sanchez and others, contending that they failed to show a politically cohesive group as required by *Gingles*.
- **Holding:**
 1. The court concluded that while not explicitly required by the state constitution to determine if the Final Plan submitted by the Commission conforms to Section 2 of the VRA, because the VRA applies to state reapportionment plans and the Final Plan must not violate the VRA, the court must consider the VRA in evaluating the sufficiency of the Commission’s Final Plan. *Id.* at 189. The court’s evaluation, however, is narrow and takes the Commission’s factual assertions in good faith.

2. Both VRA claims fail. Neither made a sufficient evidentiary showing that enabled the court to reject the Final Plan and the Commission's contentions, and the Commission made a good faith effort to comply with Section 2. *Id.* at 193.
 3. Plan was disapproved and remanded with instructions to correct certain community boundaries to comply with state constitutional requirements. The amended plan was then approved after remand (828 P.2d 213).
- *See Sanchez v. Colorado*, 97 F.3d 1303 (10th Cir. 1996).

F. *Montero v. Meyer*, 306 F. Supp. 2d 1016 (10th Cir. 1994)

- **Decision by:** Circuit Judge Tacha.
- **Facts:** Voting Rights Act action was brought challenging initiative petitions proposing amendment to the state constitution designating English as Colorado's official language. After preliminary injunction was granted, 696 F. Supp. 540, appeal was taken, and order was reversed and remanded, 861 F.2d 603. Upon remand, the Colorado district court granted challengers' motion for partial summary judgment, 790 F. Supp. 1531. Challengers and proponents cross-appealed.
- **VRA Claim(s):** VRA challenge to initiative petitions proposing amendment to the Colorado Constitution designating English as Colorado's official language.
- **Issue(s):** VRA claim was previously dismissed on remand to the district court.
- **Holding:** The Court of Appeals reversed, holding that plaintiffs had no right to participate in the Title Board hearing, to obtain rehearing, or to seek review in the Colorado Supreme Court. Summary judgment for the defendants was ordered.

G. *Sanchez v. Colorado*, 97 F.3d 1303 (10th Cir. 1996)

- **Decision by:** Circuit Judge John C. Porfilio
- **Facts:** Hispanic voters brought suit challenging the reconfiguration of their legislative district after the 1990 census, claiming that the resulting single-member district did not provide Hispanic voters the fair opportunity to elect candidates of their choice, diluting minority voting strength.
- **Prior Holding:** The Colorado district court denied Hispanic voters declaratory and injunctive relief, concluding that the plaintiffs failed to establish *Gingles*' three preconditions or demonstrate, based on a totality of circumstances that HD 60 violates Section 2(b) of the VRA.¹
 - The Valley which include Alamosa and Saguache counties, contains one of three of Colorado's largest native born Hispanic populations. *Sanchez*, 97 F.3d at 1306.
 - Hispanics comprise the largest ethnic minority in Colorado, which at the time of the case was 12.5% of the total population.

¹ *Sanchez v. Colorado*, 861 F. Supp. 1516 (D. Colo. 1994).

- Election Data Services (“EDS”), consulted by the Commission concluded that “[i]t is necessary to create districts that are more heavily Hispanic in the San Luis Valley than elsewhere in the state because of the degree of racially polarized voting found in this area of the state.” *Id.* at 1307.
- “Despite the EDS data on racial bloc voting and recommendation to create an Hispanic majority district; the awareness of the lack of success of Hispanic candidates from the SLV seeking election to the state legislature; and the concern about VRA liability, the Commission ultimately adopted the alternative which neither split the Valley nor touched Trinidad or Pueblo, preserving the incumbents’ seats.” *Id.* at 1308.
- The Colorado Supreme Court concluded the Final Plan satisfied constitutional criteria. *In re Colorado General Assembly*, 828 P.2d 185 (Colo.1992) (see above).
- Plaintiffs filed suit against the state, the Commission, and other state officials.
- **VRA Claim(s):** Plaintiffs filed suit asking the court to declare HD 60, their legislative district failed to protect Hispanic voting rights violation of Section 2 of the VRA.
- **Issue(s):**
 1. Can the plaintiffs satisfy the *Gingles* preconditions of (1) sufficiently large and compact group, (2) politically cohesive, and (3) racial bloc voting?
 2. Does the evidence presented establish a VRA claim under section 2(b) based on the totality of circumstances? The Senate Report states this is evinced by racially polarized voting and the extent to which minorities are elected to public office.
- **Holding:** The district court’s denial of relief for the plaintiffs was reversed and remanded with directions. The redrawn district was found to unlawfully dilute the voting strength of Hispanic voters.
 - The district court committed reversible error in concluding that the plaintiffs failed to establish racial bloc voting - plaintiffs used the same statistical method *Gingles* requires.
 - “Plaintiffs established under the totality of circumstances racial polarization drives the voting community in HD 60 despite limited local success in being elected or appointed to political office. Thus, plaintiffs have satisfied the two conditions necessary for the State to have a compelling interest to remedy their § 2 claim.” *Id.* at 1329.
- **Expert Testimony:** Both plaintiffs and state presented experts who used different methodology to present statistical proof of voter dilution. The district court referenced expert testimony but did not state a basis for its use of either methodology, or the reason for not referencing the plaintiffs’ statistical proof and relying on the state’s multivariate analysis. Instead the court merely stated that there was “substantial evidence that many factors influence voting behavior and electoral success in H.D. 60.” *Id.* at 1316. This left the appellate court with little basis for review, thus they reviewed both experts’ testimony and found that the district court relied too much on the LULAC to conclude that disparity resulted from partisanship and not race, and not enough on *Gingles* in its analysis of plaintiffs’ proof. *Id.* at 1320.

H. *Cuthair v. Montezuma-Cortez, Colorado School Dist. No. RE-1, 7 F. Supp. 2d 1152 (D. Colo. 1998)*

- **Decision by:** District Judge Sparr
- **Facts:** Plaintiffs, Native American voters, members of the Ute Mountain Tribe within the Ute Mountain Indian Reservation, and residents in the Montezuma-Cortez School District No. RE-1 in Montezuma County, Colorado, brought this action against the school district and members of the Board of Education. Plaintiffs assert that the at-large method of electing the Board of Education dilutes Native American voting strength in violation of the VRA.
- **Prior History:** Plaintiffs brought a 1989 vote dilution claim against the defendants. A consent decree was entered in 1990, settling the plaintiffs' claims and establishing a majority Native American Director District D for the School District Board of Education for the 1991 and 1993 elections. The 1991 contest was a special mid-term election created by the consent decree, which prohibited residents of Director District D to vote on the other School Board Director contests. The remaining residents of the School District continued to vote at-large, but were not permitted to vote on the contest in Director District D.
 - The consent decree also provided that if no Native American candidate, or candidate endorsed by the Ute Mountain Tribal Council, was elected to the School Board for District D in either the 1991 special or the 1993 regular elections, the defendants would have a year within which to seek a declaratory judgment from the court allowing them to restore the pre-existing at-large method of elections for the entire School District. After no Native American was elected in either election, the defendants motioned to resume at-large voting for the Board. Plaintiffs filed an opposition to the motion on the grounds that the proposed change would be retrogressive under Section 5. Following a hearing, the Court found the consent decree unenforceable because the defendants had not admitted liability and the Court had not made a finding that the at-large system of elections violated either Section 2 or the Constitution. Consequently, the court ordered a trial on the issues.
- **VRA Claim(s):** (1) Vote dilution under Section 2; (2) retrogressive change to the process under Section 5.
- **Issue(s):** Do the Native American plaintiffs satisfy the *Gingles* preconditions? If so, based on a totality of circumstances, does the election process demonstrate that the challenged election practice “has resulted in the denial or abridgement of the right to vote based on color or race”? *Id.* at 1165.
- **Holding:** Native American voters proved that the use of an at-large method of electing members of a board of education minimized or cancelled out their ability to elect their preferred candidates in violation of Section 2. Experienced local politicians testified voting was clearly polarized. Combined with statistical evidence and the lack of minority electoral success, the testimony strongly indicated a high probability of minority vote dilution. The court stated that the “fact that, prior to trial in this case, no Native American candidate had ever been elected in a non-tribal election in Montezuma county cannot be disregarded.” *Id.* at 1169.

I. *In re Reapportionment of the Colorado General Assembly*, 46 P.3d 1083 (Colo. 2002)

- **Decision by:** Justice Hobbs
- **Facts:** Colorado Reapportionment Commission submitted for review a plan that reapportioned districts for both state legislative houses. The Supreme Court disapproved of the plan and remanded the matter to the Commission for revision.²
- **VRA Claim(s):** Courts should look to the VRA to see if the Commission’s plan should be approved.
- **Issue(s):** Federal and state constitutional criteria that guide the Commission and the Court, in order of their applied priority are the following:
 - 1) Fourteenth Amendment Equal Protection Clause and the Fifteenth Amendment;
 - 2) Section 2 of the Voting Rights Act;
 - 3) Colorado Constitution article V, section 46, equality of population of districts in each house;
 - 4) Article V, section 47(2) districts not to cross county lines except to meet section 46 requirements and the number of cities and towns contained in more than one district minimized;
 - 5) Article V, section 47(1) each district to be as compact as possible and to consist of contiguous whole general election precincts; and
 - 6) Article V, section 47(3) preservation of communities of interest within a district. *Id.* at 1087.
- **Holding:** The court found the plan complied with all six of the above criteria (including the VRA) and state constitutional criteria and: (1) allowance to one county of only two whole senate districts within its boundaries was proper because it was not possible to form a third district wholly within that county and stay within the population variance allowed by state constitution; (2) division of one county between two senate districts and between two house districts met constitutional requirement that districts not cross county lines except to meet equal population requirements; and (3) placement of two counties in senate districts that were not preferred by political parties in those counties was within the Commission’s discretion.

I. *Beauprez v. Avalos*, 42 P.3d 642 (Colo. 2002)

- **Decision by:** Justice Martinez, Colorado Supreme Court
- **Facts:** Plaintiffs, representing the interests of the State Democratic Party, brought suit against the Secretary of State claiming that the current congressional districts were unconstitutional and seeking to initiate the court process of redistricting if the legislature and the Governor failed to agree on a redistricting plan.
 - As a result of the 2000 state census, Colorado was determined to be entitled to a seventh representative in the House. The Denver District Court issued an order

² See *In re Reapportionment of Colorado General Assembly*, 45 P.3d 1237 (Colo. 2002) (disapproving of Commission’s adopted plan because it did not meet requirements of the state constitution in considering county boundaries and did not have sufficient factual evidence that alternatives could have better satisfied the equal population requirement of the state constitution).

finding the current congressional districts unconstitutional, enjoining the Secretary of State from conducting November 2002 congressional district elections under the current congressional districts, denying the Secretary of State's motion to dismiss, and adopting a redistricting map proposed by the Republican leadership but modified by the plaintiffs. Petitioners, self-declared Republican citizen intervenors, appealed and requested a writ of certiorari, which was granted by the State Supreme Court.

- **VRA Claim(s):** Petitioners claim, for the first time and on appeal, that the district court diluted minority voting strength in District 1, which includes the Denver area in violation of Section 2 of the VRA.
- **Issue(s):** Did the redistricting plan satisfy the constitutional requirements, which includes an absence of racial discrimination from diluting minority voting strength? To establish a Section 2 vote dilution claim, a plaintiff must prove standing through (1) residency in the district in which the alleged dilution occurred, and (2) individual harm by the alleged racial classification utilized in the redistricting plan. *Beauprez*, 42 P.3d at 650. Once standing is satisfied, the plaintiff must satisfy three conditions. First, a plaintiff must show that the minority group is sufficiently large and geographically compact. Second, that the minority group is politically cohesive. And third, that the white majority votes enable defeat of the minority's preferred candidate. *Id.* (citing *Thornburg v. Gingles*, 478 U.S. 30 (1986)).
- **Holding:** An issue not presented to the trial court will not be considered on appeal, however, even if petitioners had properly brought claim, the evidence did not establish voter dilution in violation of the VRA or Equal Protection. Petitioner had neither the requisite standing nor adequate evidence to fulfill the substantive requirements of a Section 2 claim. Because the Hispanic population does not constitute a "majority-minority" in District 1, and because there was insufficient evidence for any conclusion as to the second and third *Gingles* factors, the VRA claim failed. The congressional redistricting plan was found to be consistent with state criteria for legislative districts; the district court's adoption of the redistricting plan was affirmed.

K. *People ex rel. Salazar v. Davidson*, 29 P.3d 1221 (Colo. 2003)

- **Decision by:** Chief Justice Mullarkey. Justice Kourlis dissented in part and Justice Coats joined.
- **Facts:** At the end of the 2003 legislative session, the General Assembly enacted a bill to redraw the boundaries of Colorado's seven congressional districts. The General Assembly intended to supersede the court-ordered 2002 redistricting plan,³ which governed the 2002 general election. The Secretary of State and the General Assembly interpreted the state constitution as granting unlimited power from the people of Colorado to the General Assembly to draw and redraw congressional district boundaries (i.e., able to change the congressional districts as frequently as it liked). Opposing this view of the state constitution, the Attorney General brought an original action challenging the General Assembly, arguing that although the constitution directs the General Assembly to draw congressional boundaries, it limits the timeframe and frequency within which the General

³ See *Beauprez v. Avalos*, 42 P.3d 642 (setting out the redistricting plan, as explained above).

Assembly may do so. Specifically, the General Assembly may only redistrict once every ten years, immediately after each federal census. Thus, the General Assembly loses its power to redistrict if it does not act within the window of time beginning after each federal census and ending with the next general election. The Secretary of State brought a separate action challenging the Attorney General's authority to bring the first case.

- **Issue(s):** How does the Voting Rights Act limit the General Assembly's redistricting abilities?
- **Holding:** The VRA was used as an example by the court to explain that the General Assembly never has "unfettered authority" to redistrict. Specifically, the court cites Section 2 and Section 5 (El Paso County requires preclearance under section 5 before implementing any voting change, including redistricting) as limitations to the Assembly's plan. *Id.* at 1235. The court held: (1) the Supreme Court would exercise its discretion to decide cases; (2) the Attorney General has authority to petition the Supreme Court to enjoin the Secretary of State from conducting elections under the bill; and (3) the General Assembly's congressional redistricting bill, which was its second redistricting plan after 2000 census, violated the state constitution prohibition of congressional redistricting more than once per decade. The Secretary of State is ordered to conduct congressional elections according to the plan approved in *Beauprez v. Avalos*.

L. *United States v. Alamosa County*, 520 U.S. 1229 (D. Colo. 2004)

- **Decision by:** Justice Krieger
- **Facts:** United States challenged Alamosa County's method for electing county commissioners.
- **VRA Claim(s):** The Government claimed that the at-large method for electing county commissioners in Alamosa County violates Section 2 of the VRA by diminishing the ability of the county's Hispanic residents to participate in the electoral process and elect a representative of their choice. *Id.* at 1017. The Government argues that the election process allows Anglo residents to vote as a bloc and defeat Hispanic preferred candidates.
 - Defendants claim that Section 2 is unconstitutional, violating the Fourteenth and Fifteenth Amendments because: (1) only purposeful discrimination may be remedied under these amendments; (2) there is no evidence in the Congressional Record of widespread discrimination through the use of at-large elections; (3) its remedy is overbroad; and (4) it targets private discrimination. *Id.* at 1026.
 - Defendants further argue that the at-large method of electing county commissioners does not violate Section 2.
- **Issue(s):**
 1. Is Section 2 of the VRA constitutional?
 2. Does the at-large election of county commissioners violate Section 2 of the VRA?
 - a. *Gingles* precondition: Do Hispanic residents in Alamosa County constitute a sufficiently numerous and geographically compact majority?
 - b. *Gingles* precondition: Are they politically cohesive?

- c. *Gingles* precondition: Does the Anglo majority usually vote as a bloc to defeat the preferred candidate of the Hispanic voters?
- d. Even if the *Gingles* conditions create an inference of a violation, do the totality of the circumstances establish a Section 2 violation?

▪ **Holding:**

1. The court declined to explore the constitutionality of Section 2 because both the Supreme Court and the Tenth Circuit Court of Appeals have affirmed its constitutionality.
2. The court held that the county's method for electing county commissioners did not violate the VRA.
 - a. The plaintiffs proposed districts satisfies the first *Gingles* precondition.
 - b. The parties stipulate and the experts agreed that Hispanic voters vote cohesively. *Id.* at 1029.
 - c. Experts did not offer evidence to establish the voting preference of Anglo or Hispanic voters, leaving the stipulation of parties that Hispanic voters prefer Hispanic candidates. The court noted that unlike *Sanchez*, Hispanic candidates had been elected as County commissioner and could not conclude that ethnic bloc voting "usually" results in the defeat of the minority-preferred candidate, but the evidence is sufficient to warrant exploration of the totality of the circumstances.
 - d. The proof or the participation of the Hispanic voters negates a finding of discrimination based on the totality of circumstances.

IV. DEPARTMENT OF JUSTICE ENFORCEMENT

A. DOJ ENFORCEMENT LITIGATION [SINCE AND INCLUDING 1982]

Case Citation

United States v. Alamosa County, 306 F. Supp. 2d 1016 (D. Colo. 2004)

Complaint:

In this case, the United States' complaint alleged the at-large method of election of the Alamosa County Board of Commissioners violated Section 2 of the Voting Rights Act because it diluted the voting strength of Hispanic voters in violation of Section 2.

Settlement/ Consent Decree/ Order:

The case was tried in May 2003. On November 26, 2003, the court found for Alamosa County, entering an opinion finding that a Section 2 violation had not been proved.

Case Citation

U.S. v. State of Colorado, (D. Colo. 1990) (*case not found*)

B. FEDERAL OBSERVERS/MONITORS [SINCE AND INCLUDING 1982]

<u>City/Town</u>	<u>Date</u>	<u>Election Type</u>	<u># of Observers/ Monitors</u>	<u>Press Release/ Newspaper Comments and Notes</u>
<u>[None found]</u>				

V. VOTER SUPPRESSION

A. SUMMARY

The majority of election related voter suppression and intimidation occurred in Adams, Denver, El Paso, Pueblo, and Boulder counties.⁴ Some incidents occurred in other counties; however, those incidents averaged fewer in number than the above counties.⁵

The majority of voter suppression and intimidation incidents were comprised of the following: attempts to intimidate voters related to political party affiliation; misinformation; and ill-informed poll workers.

Media outlets and their coverage of the election focused primarily on broader legal and institutional forms of voter suppression. For example, much of the media discussion focused on efforts by Colorado state officials to purge felony voter rolls and invalidate provisional votes in closely contested senate races.

Specific incidents of voter suppression and intimidation carried out in the last election period are summarized below by type of suppression, county, and date. Incidents reported in the Election Incident Reporting System ("EIRS") Database are grouped into five main categories: 1) Minority Language Assistance; 2) Voter Intimidation and Harassment; 3) Voter Suppression; 4) Misinformation; and 5) Voter Intimidation or Harassment Related to Political Party Affiliation.⁶

B. ELECTION INCIDENT REPORTING SYSTEM DATABASE

1. Minority Language Assistance Related Incidents

a) Denver County

- Nov. 2004: No Spanish ballots were provided and no competent Spanish speakers at polling places could serve as alternatives.
- Nov. 2004: No Spanish assistance was provided to voters.

⁴ Election Incident Reporting System: Colorado, at <https://voterprotect.org> (last visited August 10, 2005)

⁵ *Id.*

⁶ The summary contained in Section B was compiled from incident reports from Colorado in EIRS, and constitute a smaller subset of the total reports made in Colorado. The case numbers from the incidents summarized above are as follows: 57287, 61104, 44445, 33802, 43475, 24630, 33743, 60122, 47071, 47510, 56870, 60113, 45595, 45133, 45371, 18179, 49740, 37523, 25907, 25798, 23317, 56483, 57267, 57536, 34653, 57498, 53533, 55624, 49707, 57486, 44494, 46961, 57352, 57802, 56653, 40561, 48924, 48760, 33717, 34066, 43110, 43616, 45979, 27940, 36081, 26329, 27940, 50307, 44177, 46359.

b) El Paso County

- Nov. 2004: No Spanish assistance was being provided to those in need. The election judge did not look up affected voters in the master list to verify registration and instead offered only provisional ballots.

2. Incidents of Voter Intimidation and Harassmenta) Adams County

- Nov. 2004: Voters reported individuals engaging in unknown harassment of voters outside polling places.

b) Denver County

- Nov. 2004: Poll watcher was present at three precincts in predominantly African-American neighborhoods. Poll watcher reported that numerous voters, all of whom were African American, were turned away because their names were not on the rolls (despite having voted there several times previously). The precinct did not know what to do. After a poll watcher placed a call to the county clerk's office, some voters were told to go to a different precinct. When they arrived, an individual outside the polling station falsely told them that it was not a voting location and that they could not vote there, despite two large signs outside the precinct advising voters that it was indeed a polling station. The individual was not a poll worker.
- Nov. 2004: Voter reported discomfort with media representatives standing in line with voters, requesting names and asking individuals to state how they intended to vote on particular issues.
- Nov. 2004: Witness reported seeing a poll worker rip up a voter's ID Card and tell the voter to go to another polling place. The voter was then offered a provisional ballot when he was about to leave the polling place.

c) El Paso County

- Nov. 2004: Callers complained of rudeness on the part of election judges toward elderly and female voters.
- Nov. 2004: An individual representing himself as an Election Protection worker knocked on caller's door and asked caller if she was registered to vote. Though caller said that she was registered to vote, individual asked caller to sign a form verifying that she was registered to vote. Caller thought individual was fraudulently representing himself to be working for Election Protection.

d) Boulder County

- Nov. 2004: Voter reported that a polling place worker made racist comments to an Asian American voter, told her she was not on the rolls, and turned her away. Voter

then requested a provisional ballot but was denied. Same poll worker also interrogated another Asian American woman, questioned her nationality, and turned her away before voting. Voter was finally allowed to vote after returning to polling place a second time.

- Nov. 2004: Caller reported racist comments made toward Latina voter by fellow voters, and poll workers' failure to correct the problem.

3. Incidents of Voter Suppression

a) Adams County

- Nov. 2004: Young person, a new voter, applied for an absentee ballot but never received it. The individual went to an early voting location for Arapahoe county to file a provisional ballot. Later, someone (believed to be poll worker) then called the voter to say that they were throwing away the provisional ballot.
- Nov. 2004: Voter recently moved to Colorado from Iowa. Voter properly re-registered to vote and received all current Colorado voting information at current address. However, when the voter tried to cast her ballot at the precinct, she was not allowed to because she could not produce a driver's license, which she had lost.

b) Denver County

- Nov. 2004: Caller and his wife submitted early voting ballots at polling place listed as proper place to vote. Caller later received phone call from neighbor asking if they had done early voting and then informing them that their votes would not count.
- Nov. 2004: Voter was long time resident of particular precinct and was told name was not on the rolls and that voter must go to alternative polling place because provisional ballot was "too much trouble and may not be counted."
- Nov. 2004: Election judges refused to issue a provisional ballot, instead insisting that voter go downtown to election commission. Only after voter insisted several times did she get a provisional ballot.
- Nov. 2004: Voter moved two weeks prior to election day from one apartment to another across the street in the same complex. Voter was told she could only vote provisionally and felt intimidated by poll workers.
- Nov. 2004: Caller reported that voters were being turned away at poll and being told they were not registered. As it turns out, poll workers were not consulting the full list of registered voter names, but were only looking at one portion of the list. Several voters were improperly turned away.

c) El Paso County

- Nov. 2004: Reports that election judges were telling people to vote provisionally regardless of whether that was the most appropriate procedure.

d) Pueblo County

- Nov. 2004: Voter was informed that her "vote would not count" if she filled out a provisional ballot.
- Nov. 2004: Caller reported that several minority voters in minority area did not receive notice of a change in polling place. Elections officials did not answer requests for new polling place information, and several individuals purportedly were not able to vote. Caller noted that in her non-minority area, no changes in polling places occurred.

4. Incidents of Misinformationa) Denver County

- Nov. 2004: Several voters reported misinformation such as handmade cards and door hangers dropped off at people's homes directing them to the wrong polling place.
- Nov. 2004: Voter received wrong polling place location by a person who came to her door one day before the election.
- Nov. 2004: Phone call received at voter home stated that the precinct had been changed though the voter has not moved and has always voted at the same polling station.

b) El Paso County

- Nov. 2004: Phone calls reported giving wrong polling location.

5. Incidents of Voter Intimidation or Harassment Related to Political Partya) Adams County

- Nov. 2004 : Caller reported receiving recorded message claiming that Senate Candidate Salazer was threatening women.
- Nov. 2004: Caller reported the presence of an individual falsely identifying himself as an election official speaking to election judges at a polling location. This individual's car was full of Cheney literature. One of every 8 voters was being turned away at this polling location.
- Nov. 2004: Voters reported instances of harassment by telephone: automated calls purporting to be from union members soliciting votes for John Kerry and deceptively claiming Wednesday as election day though the actual day was Tuesday.

b) Denver County

- Nov. 2004: Caller in a historically African American district received a phone call from an organization identifying themselves as coloradodems.org, telling her to be sure and vote Democrat in tomorrow's election, and giving her an address for the

wrong polling place. By using the star 69 feature, she retrieved the phone number from which the call originated. She called the listed phone number on the coloradodems.org website and was told that they were not familiar with the phone campaign in question. Caller saved a copy of the voice mail she received.

- Nov. 2004: Voter received 2 phone calls telling her to go to 2 different locations other than her actual polling place to vote. She expressed concern because she heard news reports that Republican groups were calling Democrats and telling them to go to the wrong polling place.
- Nov. 2004: Caller reported that a poll worker made improper political commentary on political candidates.
- Nov. 2004: Voter reported automated phone calls relaying false voting information and purportedly affiliating itself with the Democratic party.
- Nov. 2004: Moveon.com PAC was threatened and told to move 500 feet from polling place, even though the statute only requires 100 feet of distance.
- Nov. 2004: Voters reported instances of harassment by telephone: automated calls purporting to be from union members soliciting votes for John Kerry and deceptively claiming Wednesday as election day though the actual day was Tuesday.

c) El Paso County

- Nov. 2004: Voter had already cast ballot. A "poll-watcher" identified himself as a member of the GOP, followed the voter outside, and watched the voter and friend.

d) Pueblo County

- Nov. 2004: Caller indicated that polling officials made her sister move her car from the polling place parking lot because they had Bush signs displayed. Caller noted that cars with Kerry signs were not asked to leave the parking lot. Polling official yelled at her, pounded on her car, and threatened to call the police.
- Nov. 2004: Car with Bush bumper sticker parked within 100 feet of poll entrance. Voter was told to move his car having Salazar stickers even though it was more than 100 feet from the poll entrance.

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4013

BINGHAM McCUTCHEN

NEW MEXICO REPORT

FOR

THE NATIONAL COMMISSION ON THE
VOTING RIGHTS ACT

October 13, 2005

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I. DEMOGRAPHICS**A. GENERAL POPULATION DEMOGRAPHICS**

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
Total population	1,819,046	100.0	1,310,472	100.0
Hispanic or Latino (of any race)	765,386	42.1	506,580	38.7
Not Hispanic or Latino	1,053,660	57.9	803,892	61.3
One race	1,027,867	56.5	788,788	60.2
White	813,495	44.7	648,194	49.5
Black or African American	30,654	1.7	21,865	1.7
American Indian and Alaska Native	161,460	8.9	101,717	7.8
Asian	18,257	1.0	14,125	1.1
Native Hawaiian and Other Pacific Islander	992	0.1	713	0.1
Some other race	3,009	0.2	2,174	0.2
Two or more races	25,793	1.4	15,104	1.2

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File.

B. MINORITY REPRESENTATION IN CONGRESS

There are no minority members in the United States House of Representatives or in the United States Senate from New Mexico.

Source: "House Press Gallery," available at <http://www.house.gov/daily/hpg.htm>; "Minorities in the Senate" available at http://www.senate.gov/artandhistory/history/common/briefing/minority_senators.htm.

C. MINORITY REPRESENTATION IN STATE LEGISLATURE

There are 32 minority members (27 Hispanic Americans, 2 African Americans, 3 Native Americans) in the New Mexico House of Representatives and 16 (14 Hispanic Americans, 2 Native Americans) in the New Mexico State Senate. For names of all members, please see attached sources.

Sources: Telephone conversation with contact at state government; "New Mexico Legislature," available at <http://legis.state.nm.us>; "Numbers of African-American Legislators 2003," available at <http://www.ncsl.org/programs/legman/about/afrAmer.htm>; "Numbers of Latino Legislators," available at <http://www.ncsl.org/programs/legman/about/Latino.htm>.

II. LEGISLATIVE PROPOSALS

A. REDISTRICTING

New Mexico currently has seventy house districts and forty-two senate districts.¹ Every ten years, following the U.S. census, the New Mexico legislature redistricts the New Mexico House of Representatives, the Senate, the Board of Education, the congressional districts, and the Public Regulation Commission and selected magistrate court districts. Following *Sanchez v. King*, 550 F.Supp. 13 (D. NM 1982), where the federal court found New Mexico's redistricting formulas to be illegal, the legislature began redistricting precincts based on actual population and race data provided by the Census bureau.

Following *Sanchez*, the New Mexico legislature enacted the Precinct Boundary Adjustment Act, which appropriated funds to ensure that all precincts were readjusted to conform with visible boundaries acceptable to the Census Bureau. This Act requires that before each federal decennial census, every precinct boundary be adjusted to coincide with a numbered or named street or road or with a visible terrain feature that is: (1) shown on the standard base maps developed pursuant to subsection B of this section; (2) a designated census block boundary on the federal PL 94-171 2000 census block maps; or (3) approved by the Secretary of State and the Census Bureau.²

In 2002 the legislature signed into law Senate Bill 485, the Senate Redistricting Act. The bill established Senatorial Districts, provided a method for electing Senators, filling vacancies, and fixing the number and terms of Senators.³ The precincts and boundaries used in the Senate

¹ NEW MEXICO LEGISLATIVE COUNCIL SERVICE, A GUIDE TO STATE AND CONGRESSIONAL REDISTRICTING IN NEW MEXICO 2001, available at <http://legis.state.nm.us/lcs/lcsdocs/reddocs/134250.pdf> (last visited July 18, 2005).

² N.M. STAT. ANN. § 1-3-12 (1978).

³ S.B. 485, 44th Cong. (2002).

Redistricting Act are based on the precinct boundaries pursuant to the Precinct and Boundary Adjustment Act. A similar bill, House Bill 17, was signed into law in 2001 and established House Districts.⁴ Senate Bill 624 was enacted in 2004 and established Congressional Districts for the election of representatives to the United States Congress.⁵ None of the above laws call for at-large elections instead of single district elections, but rather redistrict precincts based on the 2000 Census Bureau data.

In 2003, the legislature failed to pass House Bill 872, a legislative proposal that prohibited splitting voting precincts.⁶ As a result, government entities retain the right to create new voting districts, the boundaries of which may cross existing precincts. Voting precincts may be split by drawing boundaries, a process that could result in voter dilution.

Senate Joint Resolution 20, another failed proposal, would have allowed for municipalities with a population of over 60,000 people to implement instant-runoff voting.⁷

Due to an extensive history of state and federal court litigation over redistricting, the New Mexico legislature is sensitive to the potential impact such procedures may have on racial, ethnic, and language minorities. As such, the majority of pending and resolved proposals on redistricting do not seem to significantly impact minority voters.

B. VOTER I.D. REQUIREMENTS

House Bill 410, a 2004 legislative proposal currently pending at the House Rules and Order of Business, requires persons to present identification when voting in person.⁸ There are a

⁴ H.B. 17, 43rd Cong. (2001).

⁵ S.B. 624, 46th Cong. (2004).

⁶ H.B. 872, 45th Cong. (2003).

⁷ S.J. Res. 20, 45th Cong. (2003).

⁸ H.B. 410, 46th Cong. (2004).

number of substantively similar bills pending resolution, all which require voters to present identification when voting in person.⁹ Section 1-4-5.1 of the New Mexico Election Code outlines acceptable forms of documentation to establish identification: 1) a current and valid photo identification or voter identification card; or 2) a utility bill, bank statement, government check, paycheck, student identification card or other government document, including identification by an Indian nation, tribe or pueblo, that shows the name and address of the applicant.¹⁰ “Photo identification” means a state or federal government issued identification card or document containing the person’s name, address, or photograph.¹¹ Additionally, a voter identification card is defined as a “document containing the person’s name, address, and precinct number that is issued by the county clerk or the voter’s copy of the voter’s certificate of registration.”¹² If House Bill 410 was signed into law, rather than submitting identification only for mail registration purposes, voters would be required to present additional identification when voting in person. If the voter fails to present valid identification, he/she may be able to cast a provisional ballot.

House Bill 20, a 2005 proposal, would require voter identification by signature comparison. Each polling place would contain digital facsimiles of all registered voters’ signatures.¹³ Individual precinct boards would have discretion to determine if a significant variance existed between the voter’s actual signature and the digital facsimile signature.¹⁴ If the precinct board finds a variance and has no personal knowledge of the voter’s identity, the voter

⁹ H.B. 41, 47th Cong. (2005); H.B. 63, 47th Cong. (2005); S.B. 40, 47th Cong. (2005); S.B. 718, 47th Cong. (2005); H.J. Res. 15, 46th Cong. (2004); S.J. Res. 15, 47th Cong. (2004).

¹⁰ N.M. STAT. ANN. § 1-4-5.1 (1978); *see also* § 1-1-26.

¹¹ *See* § 1-1-26.

¹² § 1-1-27.

¹³ H.B. 20, 47th Cong. (2005).

¹⁴ *Id.*

would vote on a provisional ballot.¹⁵ The voter's provisional ballot would only be counted if an acceptable form of identification is provided to the precinct board or county clerk before 7 p.m. on election day.¹⁶ The proposal would grant significant discretion to precinct board members, creating potential discrimination against ethnic and language minorities. House Bill 20 is currently pending a vote before the House Voters and Election Committee.

C. LANGUAGE REQUIREMENTS

Due to the increasingly large population of Spanish speaking residents, a review of pending and resolved New Mexico legislation demonstrates a strong commitment to election materials being provided in both Spanish and English. New Mexico Election Code Section 1-2-3 requires that all registration or voting notices, forms, instructions, assistance or other information relating to the electoral process be printed in both English and Spanish.¹⁷ Section 1-4-5 establishes the method of registration for voters and requires the certificate of registration be filled out by a registration officer “if any qualified elector to register is unable to read and write either the English or Spanish language.”¹⁸ In addition, Section 1-4-5.1 requires that the Secretary ensure that the certificate of registration are postpaid and printed in both Spanish and English.¹⁹ Section 1-2-3 also states that “where a minority language is historically unwritten, all proclamations, registration or voting notices, instructions, assistance or other information relating to the electoral process shall be made available orally in the respective minority language.”²⁰ As such, qualified electors have the right to receive voting materials in Navajo in

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ N.M. STAT. ANN. § 1-2-3.

¹⁸ § 1-4-5.

¹⁹ § 1-4-5.1(I).

²⁰ § 1-2-3(C).

Bernalillo, Cibola, McKinley, Rio Arriba, San Juan County, Sandoval and Sororro counties; Pueblo in Bernalillo, Catron, Cibola, Mora, Sandoval, Santa Fe, Taos, and Valencia counties; and to receive voting materials in Ute in San Juan County.²¹

Senate Bill 413, a 2005 initiative, would require that in any election in which a constitutional amendment is being considered or a ballot information booklet is prepared in a general or special election, “the secretary of state shall cause to be printed samples of the text...in both Spanish and English, in a amount equal to ten percent of the registered voters in the state.”²²

In polling places designated by the Secretary of State as being subject to the provisions of the 1975 amendments to the federal Voting Rights Act of 1965,²³ Section 1-2-19 of the state Election Code requires that “oral assistance be made available to assist language minority voters who cannot read sufficiently well to exercise the elective franchise.”²⁴ A language minority voter, as defined by the Election Code, is a person of American Indian or of Spanish heritage who is unable to read the languages in which the ballot is printed or has an inability to understand instructions for operating the voting machine.²⁵

The provision also requires that a position for an election translator be created in such precincts in which oral assistance is required.²⁶ The election translator shall be appointed by the Country Clerk, except in appointments of translators in American Indian precincts in which the

²¹ PEOPLE FOR THE AMERICAN WAY FOUNDATION and LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, NEW MEXICO GUIDE TO VOTER ASSISTANCE AND ADVOCACY, *available at* http://130.94.214.68/nativevote/documents/ep-new_mexico.pdf (last visited July 18, 2005).

²² S.B. 433, 47th Cong. (2005).

²³ 42 U.S.C. § 1973.

²⁴ N.M. STAT. ANN. § 1-2-19(A).

²⁵ *Id.*

²⁶ § 1-2-19(B).

statute mandates that “the county clerk...shall seek the advice of the pueblo or tribal officials residing in the county” before appointing an election translator.²⁷

The process by which the Secretary of State determines which polling places require oral assistance is not provided by statute. Further inquiry into such procedure may prove useful. Additionally, while Section 1-4-9 mandates that the country clerk initiate nonpartisan measures to “urge and facilitate registration of language minority voters and other voters,” no further examples of such measures are provided within the legislation.²⁸

D. OTHER LEGISLATIVE PROPOSALS AND RECENT LEGISLATIVE ACTION

1. Determination of Citizenship

House Bill 291, a failed 2002 bill, attempted to expand the means in which an individual’s certificate of registration may be cancelled.²⁹ The proposal outlined a procedure in which the County Clerk could determine the non-citizenship of voters by reviewing registration records with the certification of alien status by the federal immigration and naturalization service.³⁰ Although the bill failed in the 2003 Regular Session, subsequent bills address the non-citizenship issue and point to a trend in expanding the discretionary powers vested within the County Clerk.

2. Purge List Compilation

Section 1-4-27.1 of the Election Code cancels the registration of a voter who has been convicted of a felony. In 2001, the New Mexico legislature lifted a lifetime ban and restored a felon’s right to apply to register to vote. On March 19, 2005, House Bill 64 was signed into law

²⁷ *Id.*

²⁸ § 1-4-9.

²⁹ H.B. 291, 45th Cong. (2002).

³⁰ *Id.*

and requires that the Corrections Department and County Clerk notify the Secretary of State when a person convicted of a felon becomes eligible for registration.³¹ Prior to the proposal, no statutory duty of notification existed.

While House Bill 64 was a step in the right direction, significant hurdles still exist in the purging process. In a fifteen state survey conducted by the American Civil Liberties Union (“ACLU”) in 2004, the ACLU found that none of the states surveyed had “codified any specific or minimum set of criteria for elections officials to use to ensure that an individual with a felony conviction is the same individual being purged from the voter rolls.”³² As a result, with no codified checks and balances systems in place, the potential for inaccuracy in purge list compilation in states like New Mexico remain high.

3. *Favorable Legislation*

Senate Bill 678, a third party registration agents bill, establishes procedural requirements for registering or assisting persons to register to vote on behalf of an organization that is not a state or federal agency.³³ The bill was signed into law on March 17, 2005.

House Bill 500, a 2004 proposal, updates the language of the Election Code to comply with new provisions that have been added in compliance with federal law (i.e., the National Voter Registration Act of 1993) and repeals provisions no longer relevant.³⁴ The bill is currently on the Senate calendar and is pending resolution.

³¹ H.B. 64, 47th Cong. (2005) [2005 New Mexico Session Laws Ch. 116 (H.B. 64)].

³² AMERICAN CIVIL LIBERTIES UNION, PURGED!: HOW A PATCHWORK OF FLAWED AND INCONSISTENT VOTING SYSTEMS COULD DEPRIVE MILLIONS OF AMERICANS OF THE RIGHT TO VOTE, at <http://www.aclu.org/Files/OpenFile.cfm?id=16844>, (last accessed July 18, 2005).

³³ S.B. 678, 47th Cong. (2005).

³⁴ H.B. 500, 46th Cong. (2004).

House Bill 383, a 2003 bill that conforms the Election Code to the federal Help America Vote Act of 2002.³⁵ The proposal provides additional security of a voter's information and establishes additional penalties for violations of the Election Code, and was signed into law on April 8, 2003.

House Bill 701, a 2005 legislative proposal expands registration to include same day registration and voting at primary and general elections. The bill is currently pending before the House Voters and Election Committee.³⁶

E. APPENDIX OF SOURCES

Cases

1. *Sanchez v. King*, 550 F.Supp. 13 (D. NM 1982)

Pending and Resolved Legislation

1. H.B. 17, 43rd Cong. (2001).
2. S.B. 485, 44th Cong. (2002).
3. H.B. 291, 45th Cong. (2002).
4. H.B. 383, 46th Cong. (2003).
5. H.B. 872, 45th Cong. (2003).
6. S.J. Res. 20, 45th Cong. (2003).
7. S.B. 624, 46th Cong. (2004).
8. H.B. 410, 46th Cong. (2004).
9. H.B. 500, 46th Cong. (2004).
10. H.J. Res. 15, 46th Cong. (2004).
11. S.J. Res. 15, 47th Cong. (2004).
12. H.B. 41, 47th Cong. (2005).
13. H.B. 63, 47th Cong. (2005).
14. H.B. 64, 47th Cong. (2005).
15. S.B. 40, 47th Cong. (2005).

³⁵ H.B. 383, 46th Cong. (2003).

³⁶ H.B. 701, 47th Cong. (2005).

II. Legislative Proposals – New Mexico

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16. H.B. 20, 47th Cong. (2005).
17. S.B. 433, 47th Cong. (2005).
18. H.B. 701, 47th Cong. (2005).
19. S.B. 678, 47th Cong. (2005).
20. S.B. 718, 47th Cong. (2005).

New Mexico Statutes

1. N.M. STAT. ANN. § 1-3-12 (1978).
2. N.M. STAT. ANN. § 1-4-5.1 (1978).
3. N.M. STAT. ANN. § 1-1-26 (1978).
4. N.M. STAT. ANN. § 1-1-27 (1978).
5. N.M. STAT. ANN. § 1-2-3 (1978).
6. N.M. STAT. ANN. § 1-4-5 (1978).
7. N.M. STAT. ANN. § 1-2-19 (1978).
8. N.M. STAT. ANN. § 1-4-9 (1978).
9. 42 U.S.C. § 1973.

Surveys and Reports

1. NEW MEXICO LEGISLATIVE COUNCIL SERVICE, A GUIDE TO STATE AND CONGRESSIONAL REDISTRICTING IN NEW MEXICO 2001, *available at* <http://legis.state.nm.us/lcs/lcsdocs/reddocs/134250.pdf> (last visited July 18, 2005).
2. PEOPLE FOR THE AMERICAN WAY FOUNDATION and LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, NEW MEXICO GUIDE TO VOTER ASSISTANCE AND ADVOCACY, *available at* http://130.94.214.68/nativevote/documents/ep-new_mexico.pdf (last visited July 18, 2005).
3. AMERICAN CIVIL LIBERTIES UNION, PURGED!: HOW A PATCHWORK OF FLAWED AND INCONSISTENT VOTING SYSTEMS COULD DEPRIVE MILLIONS OF AMERICANS OF THE RIGHT TO VOTE, *at* <http://www.aclu.org/Files/OpenFile.cfm?id=16844> (last visited July 18, 2005).

III. PUBLISHED VOTING RIGHTS ACT CASES

A. *U.S. v. County of San Juan, New Mexico, et al.*, No. 79-508-JB (D. N.M. 1980)

- **Facts:** The United States recognized that defendants provided substantial bilingual assistance to the Navajo citizens of the County in the past, but asserted that additional assistance was necessary to achieve effective compliance with the Voting Rights Act. Defendants denied the allegations, contending that the County provided instructions, assistance and other information relating to the registration and voting process in the Navajo language in a manner which complied with federal law. The parties agreed not to litigate this dispute and entered a Stipulation on April 8, 1980.
- **VRA Claim(s):** The United States filed this action for declaratory and injunctive relief pursuant to 42 U.S.C. § 1973aa-2, alleging that San Juan County, New Mexico and its County Board of Commissioners, violated the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973 *et seq.*, 28 U.S.C. § 2201, by failing to comply with the bilingual requirements of the Voting Rights Act.
- **Holding:** The parties entered a stipulation on April 8, 1980. The County of San Juan agreed to comply with the minority language requirements of the Voting Rights Act. Such compliance included: establishment of a voter registration program to actively register Navajo voters; appointment of a minimum of two deputy registration officers at each precinct in San Juan County where at least five percent of the voting-age population is Navajo and requiring the registration officers to be bilingual in English and Navajo to properly assist Navajo-speaking persons to register to vote; announcement and publication of the establishment of the registration office, its location, dates and hours of operation, the availability of bilingual assistance and all registration deadlines; more comprehensive recruitment and enlistment of bilingual poll officers and interpreters by the County Clerk's office; expansion of the poll worker training program; and expansion of the program for adequate translation of all voting information. Note that it is unclear whether the Court approved this Stipulation.

B. *U.S. v. McKinley County, New Mexico, et al.*

1. Consent Decree entered January 13, 1986, No. 86-0029-C (D. N.M. 1986)

- **Decision by:** Santiago E. Campos, District Court Judge
- **Facts:** Defendants did not contest that certain McKinley County election practices resulted in an electoral system in which Navajo speaking Native American voters had less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.
- **VRA Claim(s):** The United States filed this action pursuant to Sections 2 and 12(d) of the Voting Rights Act of 1965 (17 U.S.C. §§ 1973, 1973j(d) and 25 U.S.C. § 175) alleging that the design and implementation of current McKinley County election practices, including the definition of precinct boundaries and the location of polling places, resulted in an electoral system in which Native American voters had less

opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

- **Holding:** The court found defendants failed to fully comply with the minority language requirements of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973. In February 1986, the court entered the Consent Decree. The court ordered defendants permanently enjoined from further non-compliance with Section 2 and ordered defendants to establish a remedial bilingual election program designed to provide Navajo language voters with an equal opportunity to participate in McKinley County’s electoral process. The court ordered defendants to take specific steps to comply with Section 2. The court retained oversight jurisdiction of the county’s electoral process for a period of five years. The “Consent Decree” provided that after five years, defendants would be entitled to formal dissolution of the decree upon a “sufficient demonstration” that defendants had achieved the decree’s “basic objectives.”

2. *First Amended Consent Decree and Order entered July 20, 1990, No. 86-0028-M (D. N.M. 1990).*

- **Decision by:** A three judge panel consisting of one U.S. Circuit Court Judge and two U.S. District Court Judges.³⁷
- **Facts:** In July 1990, the parties submitted a joint motion for entry of a First Amended Consent Decree and Order, which provided for increased federal regulation and oversight of McKinley County’s electoral process. The decree “provided for additional measures to improve the effectiveness of McKinley County’s remedial bilingual election program.”
- **VRA Claim(s):** The United States initiated this action pursuant to Section 203 of the Voting Rights Act of 1965, amended 17 U.S.C. § 1973aa-1a.
- **Holding:** The parties agreed that further measures were required to ensure that the election process in McKinley County was fully and effectively accessible to Native American citizens. The First Amended Consent Decree provided for additional measures to improve the effectiveness of McKinley County’s remedial bilingual program. The “First Amended Consent Decree and Order,” like the original decree, was limited in duration to five years and provided for dissolution of the decree upon “sufficient demonstration” that defendants had achieved the “basic objectives” of the decree.

3. *Denial of Second Amended Consent Decree and Order, No. 86-0028, 941 F. Supp. 1062 (D. N.M. 1996)*

- **Decision by:** Bobby R. Baldock, Circuit Judge; John E. Conway, Chief District Judge; and Edwin L. Mechem, Senior District Judge
- **Facts:** Plaintiff asserted that ten additional years of federal intervention in the electoral process of McKinley County was warranted due to continued violation of the Voting Rights Act’s minority language assistance requirements. In December 1995, the parties submitted to the court for entry, without motion, a Second Amended Consent Decree and Order, which proposed more federal regulation and oversight of McKinley County’s electoral process and would for the first time mandate procedures pertaining to Zuni

³⁷ The judges’ signatures could not be deciphered on the consent decree.

language voters. Defendant did not oppose entry of the decree, but denied any continuing violation of the Voting Rights Act. The court denied entry of the Second Amended Consent Decree and Order on June 3, 1996. On June 17, 1996, plaintiff filed an Unopposed Motion for Reconsideration asking the court to reconsider its order denying entry of the decree.

- **VRA Claim(s):** Plaintiff sought reconsideration of the court’s decision to deny entry of the Second Amended Consent Decree and Order. In the Unopposed Motion for Reconsideration, the plaintiff claimed that “McKinley County has failed to comply with significant provisions of the First Amended Consent Decree, and has failed to conduct its elections in compliance with § 203 of the Voting Rights Act...and the Fourteenth and Fifteenth Amendments.” Specifically, plaintiffs claimed that McKinley County failed to adequately train ballot translators effectively denying Navajo and Zuni language voters equal access at the polls.
- **Holding:** On June 3, 1996, the court denied entry of the Second Amended Consent Decree and Order. The court reasoned that 28 C.F.R. §§ 55.2(c) and 55.14(c) stated that a jurisdiction covered under § 203(c) should determine what is necessary to comply with § 203(c). Furthermore, in the case of historically unwritten languages such as Navajo and Zuni, the covered jurisdiction “is only required to furnish oral instructions, assistance, or other information relating to registration and voting.” 42 U.S.C. § 1973aa-1a(c). The court held that the results McKinley County’s minority language assistance program had achieved in the past ten years from the earlier Consent Decrees were commendable. Since defendant stated that the procedures currently in place, as a result of the original Consent Decree and the First Amended Consent Decree and Order, would remain in place, entry of the Second Amended Consent Decree and Order was unnecessary.

4. Stipulation and Order entered February 5, 1997, No. 86-0028 (D. N.M. 1997)

- **Decision by:** Bobby R. Baldock, Circuit Judge; John E. Conway, Chief District Judge; and Edwin L. Mechem, Senior District Judge
- **Facts:** The original 1986 action was brought by the United States alleging that defendants did not provide language assistance to Native American voters in need of such assistance in violation of Section 203 of the Voting Rights Act, as amended, 42 U.S.C. § 1973aa-1a. The parties agreed not to litigate this dispute and agreed to the entry of a Stipulation and Order as binding between the parties.
- **VRA Claim(s):** The parties agreed that unresolved issues remained regarding McKinley County’s compliance with Section 203 of the Voting Rights Act.
- **Holding:** The parties settled, reaching agreement on the following issues, which were ordered by the court on February 5, 1997: 1) McKinley County shall provide interpretation of the ballot and all other election related information to voters who need such information in the Navajo and Zuni languages; 2) voters shall be informed that language assistance is available; 3) the County shall actively participate in voter assistance programs sponsored by the State of New Mexico and apprise the state of its own language and voter assistance programs; 4) the appointment of federal examiners for elections in McKinley County is authorized pursuant to Section 3(a) of the Voting Rights Act (42 U.S.C. § 1973a(a)) ending on February 1, 2001; and 5) the parties agreed to meet

and confer to take measures to ensure that voting information is effectively provided to Navajo and Zuni speaking voters. The court retained jurisdiction of this case.

C. *U.S. v. Sandoval County, New Mexico, et al.*

1. Settlement Agreement of May 17, 1990, No. 88-1457-SC (D. N.M. 1990)

- **Decision by:** Bobby R. Baldock, Circuit Judge; Santiago E. Campos, District Judge; James A. Parker, District Judge
- **Facts:** According to the 1980 census, the Director of the Census determined that the number of Keres-speaking Native Americans in Sandoval County made it a jurisdiction subject to the minority language requirements of Section 203 of the Voting Rights Act.
- **VRA Claim(s):** The United States brought this action pursuant to the Voting Rights Act of 1965, as amended 42 U.S.C. §§ 1973, 1973aa-1a, and 28 U.S.C. § 2201, alleging that Sandoval County was in violation of Section 203 of the Voting Rights Act for the Keres-speaking Native American citizens of Sandoval County.
- **Holding:** In May 1990, the parties entered into a Settlement Agreement in which Sandoval County agreed to employ a Native American Voting Rights Coordinator and Director, among other steps to increase Native American voter registration and the distribution of voting information to Keres-speaking citizens. According to the Settlement Agreement the parties agreed to devise and file with the court a comprehensive Native American Election Information Program to disseminate election related information to the Native American population of Sandoval County. The court ordered the county to implement the Native American Election Information Program on May 17, 1990 and the case could be reactivated upon the United States' motion.

2. Consent Decree entered September 9, 1994, No. 88-1457-SC (D. N.M. 1994)

- **Decision by:** Bobby R. Baldock, Circuit Judge; Santiago E. Campos, District Judge; James A. Parker, District Judge
- **Facts:** On June 10, 1993, the United States filed a Motion to Reactivate the case. On August 23, 1993, the court granted the motion. The county stipulated that it did not fully and faithfully comply with the terms and provisions of the Native American Election Information Program, which they agreed to implement according to the 1990 Settlement Agreement.
- **VRA Claim(s):** The United States initiated this action to assure compliance with the 1990 Settlement Agreement created to correct violations of Section 203 of the Voting Rights Act with regards to the Keres-speaking Native Americans of Sandoval County.
- **Holding:** The parties reached an agreement on a modified Native American Election Information Program. On September 9, 1994, the court ordered Sandoval County to begin implementation of the modified program.

3. *Consent Order entered April 30, 1997, No. 88-1457-SC (D. N.M. 1997)*

- **Decision by:** Bobby R. Baldock, Circuit Judge; Santiago E. Campos, District Judge; James A. Parker, District Judge
- **Facts:** The United States sought compliance with the Settlement Agreement entered on September 4, 1994, with Sandoval County, to provide same-day in-person absentee voting at the satellite office locations specified in the consent decree and at the Counselors Navajo Chapter House for the remainder of the absentee voting and absentee-early voting periods for the May 13, 1997 special election.
- **VRA Claim(s):** The United States filed this action as a result of Sandoval County's violation of the 1994 Settlement Agreement, which had been created to resolve violations of the minority language requirements of Section 203 of the Voting Rights Act.
- **Holding:** Sandoval County agreed to provide same-day in-person absentee voting at the satellite office locations specified in the Consent Decree and at the Counselors Navajo Chapter House for the remainder of the absentee voting and absentee-early voting periods for the May 13, 1997 special election. Sandoval County agreed to submit voting changes related to the establishment of an additional absentee-early voting location in Rio Rancho in 1996 to the U.S. Attorney General. Sandoval County further agreed to submit the voting changes related to this Consent Order to the U.S. Attorney General for review. Additionally, specific steps were ordered to ensure Sandoval County's compliance with Section 203.

D. *U.S. v. Socorro County, New Mexico, et al.*

1. *Consent Agreement entered April 11, 1994, No. CIV 93-1244 JP (D. N.M. 1994)*

- **Decision by:** Paul Kelly Jr., Circuit Court Judge; James A. Parker, District Judge; and Martha Vazquez, District Judge
- **Facts:** Plaintiff alleged that the various election standards, practices and procedures of Socorro County unlawfully denied or abridged the voting rights of Native American citizens residing in the county. The challenged practices related to voter registration, absentee voting, voter registration cancellation procedures, and the failure of the defendants to implement, as required by Section 203, effective bilingual election procedures, including the effective dissemination of election information in the Navajo language. The challenged practiced also included the county's failure to provide for a sufficient number of adequately trained bilingual persons to serve as translators for Navajo voters needing assistance at the polls on election day. The defendants did not contest that in past elections the county failed to make the election process in Socorro County equally available to Native American and non-Native American citizens, as required by Section 2 and the Fourteenth and Fifteenth Amendments. Defendants also did not contest that the county failed to comply fully with the minority language requirements of Section 203 of the Voting Rights Act.
- **VRA Claim(s):** The United States initiated this action pursuant to Sections 2, 12(d) and 203 of the Voting Rights Act of 1965, as amended 42 U.S.C. § 1973, 42 U.S.C. § 1973j(d), 42 U.S.C. § 1973aa-1a, and 28 U.S.C. § 2201, alleging violations of the Voting

Rights Act and the Fourteenth and Fifteenth Amendments arising from Socorro County's election practices and procedures affecting Native American citizens who rely in whole or in part on the Navajo language.

- **Holding:** On April 11, 1994, the three-judge court entered the Consent Agreement, which required defendants to comply with the requirements of Sections 2 and 203 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments. Under the Consent Agreement, Socorro County was required to provide equal voting rights to all citizens of Socorro County and to fully and faithfully implement the Native American Election Information Program. The Consent Agreement was set to expire on December 31, 2003. The court retained jurisdiction of the case.

2. *Order Extending and Modifying Consent Agreement entered March 30, 2004, No. CIV 93-1244 JP (D. N.M. 2004)*

- **Decision by:** Paul Kelly Jr., Circuit Court Judge; James A. Parker, District Judge; and Martha Vazquez, District Judge
- **Facts:** On December 29, 2003, the United States initiated this action to extend the original 1994 Consent Agreement. Defendant Socorro County conceded that they violated the terms of the original Consent Agreement by failing to furnish all instructions, assistance, and other information relating to voting orally in the Navajo language.
- **VRA Claim(s):** The United States sought to extend the Consent Agreement originally entered in 1994 due to Socorro County's violations of Section 203 of the Voting Rights Act and the county's continued violations.
- **Holding:** The court found that the defendant's violations of the Consent Agreement constituted good cause to extend the Agreement. The parties agreed to certain modifications of the Native American Election Information Program. On January 16, 2004, the court granted the United States' motion to extend the Consent Agreement until July 15, 2004. On March 19, 2004, the court held a hearing on the parties Joint Motion for Modification and Extension of the Consent Agreement. The court ordered that by June 20, 2004, the parties must report in writing to the court the results and effectiveness of the modified Consent Agreement as it relates to the June 2004 primary election and must set forth justifications to extend the Consent Agreement beyond July 15, 2004. The court retained jurisdiction of the case.

E. *U.S. v. Bernalillo County, New Mexico, et al.*

1. *Consent Decree entered April 22, 1998, No. CV-98-156 BB/LCS (D. N.M. 1998)*

- **Decision by:** Paul J. Kelly, Jr., Circuit Judge; John E. Conway, District Judge; Bruce D. Black, District Judge
- **Facts:** Defendants did not contest that more than five percent of the voting age Navajos, within the Canoncito Navajo Reservation, speak Navajo and have limited-English language proficiency. Defendants further agreed that the illiteracy rate of such persons is higher than the national illiteracy rate. These determinations bring Bernalillo County under the requirements of Section 203(c) of the Voting Rights Act. As a result, the

defendants are required to furnish oral instructions, assistance and other information relating to voter registration and voting in the Navajo language. The United States alleged that Bernalillo County violated Sections 2, 12(d) and 203 of the Voting Rights Acts of 1965 and the Fourteenth and Fifteenth Amendments in their election practices and procedures as they affect Native American citizens of the county. In particular, the practices affected those Native American citizens who rely in whole or in part on the Navajo language. The county admitted that in past elections the county failed in particular areas to make the election process as accessible to Native American citizens as non-Native American citizens as required by Section 203, Section 2, and the Fourteenth and Fifteenth Amendments. Defendants agreed to remedy the violations by entering a Consent Decree.

- **VRA Claim(s):** The United States alleged that Bernalillo County violated Sections 2, 12(d) and 203 of the Voting Rights Acts of 1965 and the Fourteenth and Fifteenth Amendments as a result of their election practices and procedures as they affect Native American citizens of the county.
- **Holding:** On April 22, 1998, the three-judge court entered the “Consent Decree.” Defendants were permanently enjoined from failing to comply with the requirements of Sections 2 and 203 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments. The court ordered specific steps to make all phases of the election process as accessible to the Navajo population of Bernalillo County as they are to the remainder of the county’s population. The court retained jurisdiction through June 30, 2003.

2. Stipulation entered June 20, 2003, No. CV -98-156 BB/LCS (D. N.M. 2003)

- **Decision by:** Paul J. Kelly, Jr., Circuit Judge; John E. Conway, District Judge; Bruce D. Black, District Judge
- **Facts:** In a Stipulation filed with the court, Bernalillo County conceded that it violated the terms of the 1998 Consent Decree by not providing funding for the Native Language Coordinator’s budget in 2002. The County first became subject to the minority language provisions of the Voting Rights Act in 1992. However, in the following four years the County failed to furnish in the Navajo language the information and assistance necessary to allow Navajo citizens an equal opportunity for effective participation in all aspects of the political process. The United States initiated an action in February 1998 and a Consent Decree was entered in April 1998 in which the County admitted the violations and agreed to remedy them. For the most part, Bernalillo County complied with the 1998 Consent Decree. However, on August 23, 2002, the United States learned that Bernalillo County eliminated the budget for the Native Language Coordinator for Fiscal Year 2003. As a result, the Coordinator was unable to carry out her duties under the county’s election program. Furthermore, the county’s elimination of the budget violated paragraph four of the 1998 Consent Decree. The United States requested that funding be restored and it eventually was eleven days prior to the November 2002 election.
- **VRA Claim(s):** Reports of federal observers and an investigation by the United States demonstrated that Bernalillo County failed to comply with Section 203 of the Voting Rights Act for the 2002 general election. The United States initiated this action pursuant to Section 203 of the Voting Rights Act of 1965 as a result of these findings.

- **Holding:** The court found the terms of the Stipulation to be both fair and reasonable and ordered the Stipulation approved for entry on June 20, 2003. The Stipulation stated that Bernalillo County will continue to employ a Native Language Coordinator who is bilingual in both Navajo and English. Additionally, the county will fully fund a budget for the Native Language Coordinator. The Stipulation will remain in effect through January 31, 2005.

F. *U.S. v. Cibola County, New Mexico, et al., No. 93-1134 (D. N.M. 2004)*

- **Decision by:** Bobby R. Baldock, Circuit Judge; C. Leroy Hansen, Senior District Judge; John E. Conway, District Judge
- **Facts:** On April 21, 1994, the court entered a Stipulation and Order between the parties instituting the Native American Election Information Program in Cibola County to remedy past non-compliance with the minority language requirements of Section 203 of the Voting Rights Act. The 1994 Stipulation and Order was to remain in effect until March 15, 2004. While Cibola County made some progress, the county failed to furnish all instructions, assistance and other information relating to voting orally in the Keresan and Navajo languages, in violation of the Order. Defendants concede that they violated the terms of the 1994 Stipulation and Order.
- **VRA Claim(s):** Cibola County has been subject to Section 203 of the Voting Rights Act since 1984 for the Keresan language and since 1992 for the Navajo language. In 2002, the Director of the Bureau of the Census determined the coverage under Section 203 should be continued for both languages.
- **Holding:** Order Extending and Modifying Stipulation and Order was entered March 15, 2004. The court found the terms of the Stipulation and Joint Motion for Modification and Extension of the Stipulation and Order fair and reasonable. The court ordered the April 21, 1994 Order, as modified, extended to December 31, 2006. The court further ordered the Native American Election Information Program modified pursuant to the new stipulation.

IV. DEPARTMENT OF JUSTICE ENFORCEMENT

A. DOJ ENFORCEMENT LITIGATION³⁸ [since and including 1982]

Most of the enforcement actions brought by the DOJ in New Mexico all centered on enforcing compliance under the minority language assistance provisions, Section 203, of the VRA for different American Indian languages (Keresan and Navajo).

1. *United States v. Bernalillo County*, No. CV -98-156 BB/LCS (D. N.M. 1998), No. CV -98-156 BB/LCS (D. N.M. 2003)³⁹

- **Complaint:** In 1998, the United States filed its complaint alleging that Bernalillo County had violated Sections 2 and 203 of the Voting Rights Act by failing to provide voting and election information in the Navajo language, an American Indian language that is historically unwritten.
- **Settlement/ Consent Decree/ Order:** The parties initially resolved this case that year through a consent decree that required the county to establish an effective Native American Election Information Program. On July 1, 2003, a three-judge federal court entered an order approving a Stipulation which extended certain provisions of the consent decree through January 31, 2005.

2. *United States v. Socorro County*, No. CIV 93-1244 JP (D. N.M. 1994), No. CIV 93-1244 JP (D. N.M. 2004)⁴⁰

- **Complaint:** The United States initiated this action in 1993 alleging that the county had violated Sections 2 and 203 of the Voting Rights Act by failing to provide voting and election information in the Navajo language, an American Indian language that is historically unwritten.
- **Settlement/ Consent Decree/ Order:** The parties initially resolved this case in 1994 through a consent agreement that required the county to establish an effective Navajo language program. On July 13, 2004, a three-judge federal court issued an order extending the federal examiner provision of that consent agreement through December 15, 2004.

³⁸ See *supra* Section III for a more in-depth analysis and summary of the DOJ enforcement litigation described in this Section IV.A.

³⁹ See *supra* Section III.E for a more in-depth analysis and summary.

⁴⁰ See *supra* Section III.D for a more in-depth analysis and summary.

3. *United States v. Cibola County, No. 93-1134 LH/LFG (D. N.M. 2004)*⁴¹
- **Complaint:** In its complaint filed in 1993, the United States alleged that Cibola County had violated Sections 2 and 203 of the Voting Rights Act by failing to provide voting and election information in the Keresan and Navajo languages, American Indian languages that are historically unwritten.
 - **Settlement/ Consent Decree/ Order:** The parties initially resolved this case in 1994 through a stipulation and order that required the county to establish an effective Native American Election Information Program. On May 3, 2004, a three-judge federal court entered an order approving a joint stipulation, which modified the original stipulation, and extended it through December 31, 2006.
4. *U.S. v. State of New Mexico and Sandoval County, No. 88-1457-SC (D. N.M. 1990), No. 88-1457-SC (D. N.M. 1994), No. 88-1457-SC (D. N.M. 1997)*⁴²
- **Complaint:** The United States filed a complaint alleging that the State of New Mexico and Cibola County had violated Sections 2 and 203 of the Voting Rights Act by failing to provide voting and election information in the Keresan and Navajo languages, American Indian languages that are historically unwritten.
 - **Settlement/ Consent Decree/ Order:** The parties initially resolved this case that same year through a settlement agreement that required the state and county to implement a Native American Election Information Program. Pursuant to the agreement, the case was dismissed against the state on December 31, 1990. On September 9, 1994, a three-judge federal court entered a consent decree proposed by the county and the United States, which modified the original Native American Election Information Program (NAEIP) and extended the modified program through September 9, 2004. On November 8, 2004, a three-judge court entered an order approving a joint stipulation between the county and the United States, which further modified the NAEIP and extended its provisions through January 15, 2007.
5. *United States v. McKinley County, 941 F. Supp. 1062 (D. N.M. 1986)*⁴³
- **Complaint:** The federal government asserted that ten additional years of federal intervention into McKinley County's electoral process is warranted due to continuing violation of the Voting Rights Act's minority language assistance requirements.
 - **Settlement/ Consent Decree/ Order:** The court denied any continuing intervention into McKinley County's electoral process, finding that the VRA did not intend the federal court to endlessly supervise a county's electoral process without good reason.
6. *United States v. San Juan County, NO. 79-508-JB (D. N.M. 1980)*⁴⁴

⁴¹ See *supra* Section III.F for a more in-depth analysis and summary.

⁴² See *supra* Section III.C for a more in-depth analysis and summary.

⁴³ See *supra* Section III.B for a more in-depth analysis and summary.

⁴⁴ See *supra* Section III.A for analysis and summary of this case.

B. FEDERAL OBSERVERS/MONITORS [since and including 1982]

City/Town	Date	Election Type	# of Observers / Monitors	Press Release/ Newspaper Comments and Notes
Bernalillo	6/2/1998	Primary	3 obs.	Lawyers' Committee list
Bernalillo	11/3/1998	Federal	3 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/1998/November/516_cr.htm
Bernalillo	6/6/2000	Primary	3 obs.	Lawyers' Committee list
Bernalillo	11/7/2000	Federal	7 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2000/November/650.htm
Bernalillo	11/5/2002	Federal	7 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2002/November/02_crt_640.htm
Bernalillo	11/2/2004	Federal	15 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2004/October/04_crt_725.htm
Chaves	11/2/2004	Federal	? Mon.	http://www.usdoj.gov/opa/pr/2004/October/04_crt_725.htm
Cibola	6/3/1986	Primary	5 obs.	Lawyers' Committee list
Cibola	11/4/1986	Federal	7 obs.	Lawyers' Committee list
Cibola	2/2/1993	School Board	14 obs.	Lawyers' Committee list
Cibola	2/1/1994	Spec School Bon	14 obs.	Lawyers' Committee list
Cibola	6/7/1994	Primary	21 obs.	Lawyers' Committee list
Cibola	11/8/1994	Federal	16 obs.	Lawyers' Committee list
Cibola	6/4/1996	Primary	14 obs.	Lawyers' Committee list
Cibola	11/5/1996	Federal	16 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/1996/Nov96/538er.htm
Cibola	6/2/1998	Primary	16 obs.	Lawyers' Committee list
Cibola	11/3/1998	Federal	16 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/1998/November/516_cr.htm
Cibola	6/6/2000	Primary	16 obs.	Lawyers' Committee list
Cibola	11/7/2000	Federal	10 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2000/November/650.htm
Cibola	6/4/2002	Primary	16 obs.	Lawyers' Committee list
Cibola	11/5/2002	Federal	12 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2002/November/02_crt_640.htm
Cibola	11/2/2004	Federal	18 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2004/October/04_crt_725.htm
McKinley	6/3/1986	Primary	25 obs.	Lawyers' Committee list
McKinley	11/4/1986	Federal	13 obs.	Lawyers' Committee list
McKinley	6/7/1988	Primary	18 obs.	Lawyers' Committee list
McKinley	11/8/1988	Federal	13 obs.	Lawyers' Committee list
McKinley	6/5/1990	Primary	22 obs.	Lawyers' Committee list
McKinley	11/6/1990	Federal	21 obs.	Lawyers' Committee list
McKinley	2/5/1991	School Board	14 obs.	Lawyers' Committee list

IV. DOJ Enforcement – New Mexico

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City/Town	Date	Election Type	# of Observers /Monitors	Press Release/ Newspaper Comments and Notes
McKinley	6/2/1992	Primary	24 obs.	Lawyers' Committee list
McKinley	11/3/1992	Federal	24 obs.	Lawyers' Committee list
McKinley	2/2/1993	School Board	22 obs.	Lawyers' Committee list
McKinley	6/7/1994	Primary	24 obs.	Lawyers' Committee list
McKinley	11/8/1994	Federal	10 obs.	Lawyers' Committee list
McKinley	10/7/1997	Bond	5 obs.	Lawyers' Committee list
McKinley	6/2/1998	Primary	22 obs.	Lawyers' Committee list
McKinley	11/3/1998	Federal	20 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/1998/November/516_cr.htm
McKinley	6/6/2000	Primary	22 obs.	Lawyers' Committee list
McKinley	11/7/2000	Federal	31 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2000/November/650.htm
Rio Arriba	11/2/2004	Federal	? Mon.	http://www.usdoj.gov/opa/pr/2004/October/04_crt_725.htm
San Juan	11/2/2004	Federal	? Mon.	http://www.usdoj.gov/opa/pr/2004/October/04_crt_725.htm
Sandoval	6/3/1986	Primary	7 obs.	Lawyers' Committee list
Sandoval	11/4/1986	Federal	8 obs.	Lawyers' Committee list
Sandoval	9/22/1987	Special Sch Bd	12 obs.	Lawyers' Committee list
Sandoval	6/7/1988	Primary	26 obs.	Lawyers' Committee list
Sandoval	11/8/1988	Federal	32 obs.	Lawyers' Committee list
Sandoval	2/7/1989	School Board	22 obs.	Lawyers' Committee list
Sandoval	6/5/1990	Primary	5 obs.	Lawyers' Committee list
Sandoval	11/6/1990	Federal	24 obs.	Lawyers' Committee list
Sandoval	2/5/1991	School Board	24 obs.	Lawyers' Committee list
Sandoval	6/2/1992	Primary	24 obs.	Lawyers' Committee list
Sandoval	11/3/1992	Federal	26 obs.	Lawyers' Committee list
Sandoval	6/7/1994	Primary	28 obs.	Lawyers' Committee list
Sandoval	11/8/1994	Federal	26 obs.	Lawyers' Committee list
Sandoval	2/7/1995	School Board	26 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/Pre_96/February95/69.txt.html
Sandoval	6/4/1996	Primary	26 obs.	Lawyers' Committee list
Sandoval	11/5/1996	Federal	26 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/1996/Nov96/538cr.htm
Sandoval	6/2/1998	Primary	21 obs.	Lawyers' Committee list
Sandoval	11/3/1998	Federal	21 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/1998/November/516_cr.htm
Sandoval	2/2/1999	School Board	6 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/1999/February/041cr.htm
Sandoval	6/6/2000	Primary	21 obs.	Lawyers' Committee list
Sandoval	11/7/2000	Federal	26 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2000/November/650.htm
Sandoval	6/4/2002	Primary	25 obs.	Lawyers' Committee list
Sandoval	11/5/2002	Federal	30 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2002/November/02_crt_640.htm

IV. DOJ Enforcement – New Mexico

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City/Town	Date	Election Type	# of Observers / Monitors	Press Release/ Newspaper Comments and Notes
Sandoval	11/2/2004	Federal	28 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2004/October/04_crt_725.htm
Socorro	6/7/1994	Primary	4 obs.	Lawyers' Committee list
Socorro	11/8/1994	Federal	4 obs.	Lawyers' Committee list
Socorro	2/7/1995	School Board	3 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/Pre_96/February95/69.txt.html
Socorro	6/4/1996	Primary	3 obs.	Lawyers' Committee list
Socorro	11/5/1996	Federal	4 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/1996/Nov96/538cr.htm
Socorro	6/2/1998	Primary	4 obs.	Lawyers' Committee list
Socorro	11/3/1998	Federal	3 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/1998/November/516cr.htm
Socorro	11/7/2000	Federal	4 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2000/November/650.htm
Socorro	6/4/2002	Primary	3 obs.	Lawyers' Committee list
Socorro	11/5/2002	Federal	4 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2002/November/02_crt_640.htm
Socorro	11/2/2004	Federal	4 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2004/October/04_crt_725.htm

V. VOTER SUPPRESSION

A. SUMMARY

New Mexico has received a lot of press about voter inconsistencies and problems. A majority of the issues are similar to the allegations that have arisen in other states. For example, voters reported problems with polling location changes without adequate or clear notice, insufficient provisional ballots, malfunctioning polling machines, and registration errors.⁴⁵ Incidents reported in the Election Incident Reporting System ("EIRS") are summarized in Section B by county. The media also reported that a Republican judge in Bernalillo County, who was assigned to examine provisional ballots at a precinct, disqualified ballots cast by Democrats while qualifying ballots cast by Republicans. Shea Anderson, Judge Eyed on Ballots, Albuquerque Tribune, Nov. 10, 2004.

One incident unique to New Mexico that has garnered a significant amount of news coverage is the legal fight over a ballot recount for the 2004 elections. On August 26, 2005, New Mexico's Supreme Court heard arguments on whether or not to order a recount of the 2004 general election because of inaccurate counting. See Ellen Theisen and Warren Stewart, Summary Report on New Mexico State Election Data (2005), available at <http://www.votersunite.org/info/NewMexico2004ElectionDataReport-v2.pdf> (last visited Oct. 13, 2005) (summarizing and defining the various problems that prompted the New Mexico recount law suit); see also Philip N. Howard, Within The Margins: Victory In The Context Of Equipment Error, Incident Reports And Residual Votes In 2004 (2005), available at <http://depts.washington.edu/ccce/assets/documents/withinthemargins.pdf> (last visited Oct. 13, 2005) (containing in depth charts demonstrating the under-vote and phantom-vote problem in New Mexico).

B. ELECTION INCIDENT REPORTING SYSTEM

1. Bernalillo County

- Concerns were raised that the registration forms of Hispanic voters who registered but never received their voter registration cards were possibly tampered with or not submitted. Incident No. 50325.
- Multiple individuals in Bernalillo County reported that their name had been purged from the voting list despite having voted at the polling location in the past (Incident Nos. 44253, 44477, 44604, 59259, 32314, 59438, 59442), and some of these voters were not offered a provisional ballot. Incident Nos. 44477, 44604.
- Poll workers at various locations refused to permit voters to bring in or refer to their Voter's Bill of Rights. Incident No. 47831.

⁴⁵ Election Incident Reporting System: New Mexico, Incident Nos. 42006, 59157, 59286, 59430, 59468, 59509, 59515, 31301, 32244, 17395 (machine error); 36629, 36366, 59444 (insufficient provisional ballots); 59266, 59270, 59271, 59275, 59347, 59350, 46912, 47049, (change of polling location at Carlos Rey without notice to voters); available at <http://epc.voteprotect.org> (last visited Oct. 13, 2005).

- Voters felt intimidated by county Sheriff who drove slowly around the polling place. Incident No. 59298.
- Misinformation was also a problem at Bernalillo County with individuals handing fliers with incorrect precinct information (Incident No. 34574);
- Individuals reported errors by poll officials/ workers: poll workers distributed provisional, and not regular, ballots without following proper procedures (Incident No. 41983); a precinct judge instructing individuals to vote provisionally rather than directing them to their correct polling location (Incident No. 59354).
- Individuals, including one poll worker and one challenger, reported that an incumbent Republican House Representative was greeting and shaking hands with voters at the polling place. Incident Nos. 49753, 49964, 50181.
- Voters reported disparate treatment or harassment based on political party. One voter reported poll workers requesting voters to remove Kerry stickers while allowing Bush hats. Incident No. 42148. Another voter reported that the Republican Party called the voter and gave the voter the wrong polling location. Incident No. 59290. Presiding judges at certain precincts were observed removing some campaign posters, but not others. Incident No. 41922.

2. *Dona Ana County*

- Challengers intimidated voters in a number of different ways. Incident No. 34295. A Republican challenger intimidated a voter by watching as she completed her provisional ballot and asking about the voter's nationality. Incident No. 40696. At one polling location, voters had to pass the challenger's table. Incident Nos. 38594, 48737.
- Police vehicle reported driving around polling place and possibly writing down license plate numbers. Incident No. 58989.
- A voter was not permitted to vote because the address on the voter's driver license did not match the voter registration card. Incident No. 59363.

3. *McKinley County*

- Poll workers were reported as being rude to Navajo Native American voters. Incident No. 16872.
- No Navajo interpreters were on site to assist Navajo voters. Incident No. 16872.

4. *Sandoval County*

- Poll workers were listening to conservative radio station set loud enough for voters to hear. Incident No. 17373.

5. *Santa Fe County*

- Intimidation and harassment based on political party were problematic in Santa Fe County. Incident Nos. 37262, 44429 (Republican attorneys who were not official

challengers were reviewing rolls, exchanging information with poll workers, etc.); 37462 (voter wearing a Bush button was harassed by a poll worker).

- A voter reported that an individual purportedly representing Bush called the voter and gave the voter the wrong polling location. Incident No. 26979.

6. Valencia County

- A voter reported multiple pro-life displays inside building of polling location much less than 50 feet from the booth. Incident No. 38730.

C. APPENDIX OF SOURCES

1. Ellen Theisen and Warren Stewart, Summary Report on New Mexico State Election Data (2005), available at <http://www.votersunite.org/info/NewMexico2004ElectionDataReport-v2.pdf> (last visited Oct. 13, 2005).
2. Ellen Theisen, New Mexico Canvass Data Shows Higher Undervote Rates in Minority Precincts Where Pushbutton DREs Were Used (2005), available at http://www.votersunite.org/info/NM_UVbyMachineandEthnicity.pdf (last visited Oct. 13, 2005).
3. Philip N. Howard, Within The Margins: Victory In The Context Of Equipment Error, Incident Reports And Residual Votes In 2004 (2005), available at <http://depts.washington.edu/ccce/assets/documents/withinthemargins.pdf> (last visited Oct. 13, 2005).
4. Election Incident Reporting System: New Mexico, available at <http://epc.voteprotect.org> (last visited Oct. 13, 2005).
5. Shea Anderson, Judge Eyed on Ballots, Albuquerque Tribune, Nov. 10, 2004.

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BINGHAM McCUTCHEN

NEVADA REPORT

FOR
THE NATIONAL COMMISSION ON THE
VOTING RIGHTS ACT

October 4, 2005
[DRAFT – not authorized for circulation]

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I. DEMOGRAPHICS**A. GENERAL POPULATION DEMOGRAPHICS**

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
Total population	1,998,257	100.0	1,486,458	100.0
Hispanic or Latino (of any race)	393,970	19.7	247,736	16.7
Not Hispanic or Latino	1,604,287	80.3	1,238,722	83.3
One race	1,555,056	77.8	1,210,462	81.4
White	1,303,001	65.2	1,026,822	69.1
Black or African American	131,509	6.6	90,770	6.1
American Indian and Alaska Native	21,397	1.1	15,340	1.0
Asian	88,593	4.4	70,291	4.7
Native Hawaiian and Other Pacific Islander	7,769	0.4	5,573	0.4
Some other race	2,787	0.1	1,666	0.1
Two or more races	49,231	2.5	28,260	1.9

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File.

B. MINORITY REPRESENTATION IN CONGRESS

There are no minority members in the United States House of Representatives or in the United States Senate from Nevada.

Source: "House Press Gallery," available at <http://www.house.gov/daily/hpg.htm>; "Minorities in the Senate" available at http://www.senate.gov/artandhistory/history/common/briefing/minority_senators.htm.

C. MINORITY REPRESENTATION IN STATE LEGISLATURE

There are 4 minority members (3 African Americans, 1 Asian American) in the Nevada General Assembly and 4 (3 African Americans, 1 Hispanic American) in the Nevada State Senate. For names of members, please see attached sources.

Sources: Notes attached from telephone conversation with librarian at Nevada state government office who looked through senate and assemblyperson biographies; "Nevada State Legislature," available at <http://www.leg.state.nv.us>; "Numbers of African-American Legislators 2003," available at <http://www.ncsl.org/programs/legman/about/afrAmer.htm>; "Numbers of Latino Legislators," available at <http://www.ncsl.org/programs/legman/about/Latino.htm>.

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II. LEGISLATIVE PROPOSALS [*In Progress*]

III. PUBLISHED VOTING RIGHTS ACT CASES

O'Connor v. State of Nevada, 27 F.3d 357 (9th Cir. 1994)

- **Decision by:** T.G. Nelson, Circuit Judge, Noonan, and Ezra, U.S. District Judge for the District of Hawaii, sitting by designation.
- **Facts:** Nevada law requires that state Supreme Court candidates be attorneys. Plaintiff O'Connor, a non-lawyer, filed her declaration of candidacy for Justice of the Nevada Supreme Court with the Nevada Secretary of State, but the Secretary refused her application pursuant to Nev. Rev. Stat. § 2.020(2).
- **VRA Claim(s):** Section 5 of the VRA, 42 U.S.C. § 1973c.
- **Issue(s):** Plaintiff alleged that a three-judge court should have heard her case pursuant to 28 U.S.C. § 2284 and Section 5 of the Voting Rights Act.
- **Holding:** The court held that Section 5 of the Voting Rights Act did not apply to the Nevada statute in question. "Because the statute at issue does not have the purpose or effect of denying the right to vote on account of race, color or other language minority group, § 1973c and the three-judge court requirement contained therein are inapplicable in this case." *O'Connor*, 27 F.3d at 363. The court also dismissed O'Connor's Equal Protection, First Amendment, and state constitutional protection claims.

IV. DEPARTMENT OF JUSTICE ENFORCEMENT

A. DOJ ENFORCEMENT LITIGATION [since and including 1982]

No enforcement litigation by the Department of Justice was found.

B. FEDERAL OBSERVERS/MONITORS [since and including 1982]

City/Town	Date	Election Type	# of Observers/ Monitors	Press Release/ Newspaper Comments and Notes
Clark	11/2/2004	Federal	? Mon.	http://www.usdoj.gov/opa/pr/2004/October/04_crt_725.htm ; Las Vegas Review-Journal (Nevada) October 29, 2004 Friday
Washoe	11/2/2004	Federal	? Mon.	http://www.usdoj.gov/opa/pr/2004/October/04_crt_725.htm ; Las Vegas Review-Journal (Nevada) October 29, 2004 Friday

V. VOTER SUPPRESSION

A. SUMMARY

Voter suppression is a widespread problem occurring in both national and local elections in Nevada. The summary below is organized by types of voter suppression.

1. Voter Intimidation

In Clark county, some Hispanic citizens were denied the right to vote after a man informed potential voters that there were no ballots in Spanish.¹ In addition, voters reported that Republicans attempted to challenge voters to prevent those persons from voting. A voter can be challenged, for example, on the grounds of citizenship or the correct polling location.²

All documented challenges proved unsuccessful, despite the legality of voter challenges in Nevada.³ Former director of the Nevada GOP, Dan Burdick, used the fact that roughly 17,000 Las Vegas had changed addresses to challenge their voting rights.⁴ That attempt was rejected because changing residencies within the same city does not destroy a citizen's right to vote.⁵

2. Suppression Based On Political Party Affiliation

Problems centered around names not appearing on the rolls, although the individuals registered in time to vote in the 2004 Presidential Election.⁶ A local television station uncovered the alleged destruction of over 10,000 voter registration forms on which individuals had designated themselves as Democrats.⁷ According to former employee Eric Russell, Voter

¹ See generally Election Incidents: Nevada, <https://epc.voteprotect.org/index.php?display=EIRMapState&state=Nevada&cat=ALL&tab=ALL&pagetop=50>;

² Anne-Marie Cusac, *Counted Out*, *The Progressive*, at <http://www.alternet.org/story/19917> (Sept. 20, 2004).

³ See generally Election Incidents: Nevada, <https://epc.voteprotect.org/index.php?display=EIRMapState&state=Nevada&cat=ALL&tab=ALL&pagetop=50>; see also Vote Watch 2000, <http://vote2004.eriposte.com/swingstates/Nevada.htm> (explaining challenger must have a "good faith belief" to lawfully challenge voter's validity) (Date n/a).

⁴ Vote Watch 2000, <http://vote2004.eriposte.com/swingstates/Nevada.htm> (Date n/a).

⁵ *Id.*

⁶ ELECTION PROTECTION COALITION, SHATTERING THE MYTH: AN INITIAL SNAPSHOT OF VOTER DISENFRANCHISEMENT IN THE 2004 ELECTIONS (Dec. 2004), at 1, available at http://www.pfaw.org/pfaw/dfiles/file_477.pdf (last visited Aug. 1, 2005) [hereinafter SHATTERING THE MYTH].

⁷ George Knapp, *Investigation into Trashed Voter Registrations*, KLAS-TV EYEWITNESS NEWS, Oct. 13, 2004, at <http://www.klas-tv.com/global/story.asp?s=2421595&ClientType=Printable> (last visited Aug. 1, 2005); *Run-Up to Election Exposes Widespread Barriers to Voting*, available at www.pfaw.org; Sito Negron, *Man Sues County over Voting Registration*, LAS VEGAS SUN, available at <http://www.lasvegassun.com/sunbin/stories/text/2004/oct/22/517707468.html>, (Oct. 22, 2004).

Outreach of America destroyed voter registration applications after the firm received almost \$500,000 from the Republican National Committee.⁸

3. Misinformation

Voters were told that their votes would not be counted and that they were wasting their time when they attempted to vote using provisional ballots in Clark and Washoe counties.⁹

In certain precincts voters were handed flyers with directions to polling facilities that were not in their region.¹⁰

4. Absentee Ballot Related Problems

Nevada residents experienced various problems with absentee ballots such as receiving the ballots after the actual election or never receiving the ballots at all.¹¹ According to incidents reported in the Electronic Incident Reporting System (EIRS) database, in both Nye and Clark counties two families were prevented from voting after their absentee ballots were never forwarded to their home addresses.¹²

5. Felony Disenfranchisement Problems

Persons convicted of felonies were required to fill out additional paperwork, despite already having received a voter registration card.¹³ Of those past felons who were allowed to vote, many were given provisional ballots or were informed that their votes would not count.¹⁴

B. APPENDIX OF SOURCES

1. Anne-Marie Cusac, *Counted Out*, *The Progressive*, at <http://www.alternet.org/story/19917> (Sept. 20, 2004).

⁸ *Id.*; see also Atle Erlingsson, *Voter Fraud Follow Up*, <http://www.klas-tv.com/global/story.asp?s=2425626&ClientType=Printable>, (Oct. 13, 2004) (article explaining investigation into voter fraud spreads from Clark to Washoe County); Norwegian Chef, *Latest Update on Nevada Situation*, *Daily Kos*, <http://www.dailykos.com/story/2004/10/14/13749/196>, (Oct. 14, 2004).

⁹ *Id.*; SHATTERING THE MYTH, at 1.

¹⁰ *Id.*; see generally Election Incidents: Nevada, <https://epc.voteprotect.org/index.php?display=EIRMapState&state=Nevada&cat=ALL&tab=ALL&pagetop=50>

SHATTERING THE MYTH.

¹² Election Incidents: Nevada, <https://epc.voteprotect.org/index.php?display=EIRMapState&state=Nevada&cat=ALL&tab=ALL&pagetop=50>.

¹³ SHATTERING THE MYTH, at 1.

¹⁴ See generally Election Incidents: Nevada, <https://epc.voteprotect.org/index.php?display=EIRMapState&state=Nevada&cat=ALL&tab=ALL&pagetop=50>.

V. Voter Suppression – Nevada

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2. *Nevada Dirty Tricks & Suppression*, <http://www.flcv.com/Nevada.html> (July 8, 2005).
3. Atle Erlingsson, *Voter Fraud Follow Up*, <http://www.klas-tv.com/global/story.asp?s=2425626&ClientType=Printable>, (Oct. 13, 2004).
4. George Knapp, *Investigation into Trashed Voter Registrations*, <http://www.klas-tv.com/global/story.asp?s=2421595&ClientType=Printable>, (Oct. 13, 2004).
5. Norwegian Chef, *Latest Update on Nevada Situation*, Daily Kos, <http://www.dailykos.com/story/2004/10/14/13749/196>, (Oct. 14, 2004).
6. ELECTION PROTECTION COALITION, SHATTERING THE MYTH: AN INITIAL SNAPSHOT OF VOTER DISENFRANCHISEMENT IN THE 2004 ELECTIONS (Dec. 2004), *available at* http://www.pfaw.org/pfaw/dfiles/file_477.pdf (last visited Aug. 1, 2005).
7. *Run-Up to Election Exposes Widespread Barriers to Voting*, *available at* www.pfaw.org (Date n/a).
8. Sito Negron, *Man Sues County over Voting Registration*, LAS VEGAS SUN, *available at* <http://www.lasvegassun.com/sunbin/stories/text/2004/oct/22/517707468.html>, (Oct. 22, 2004).
9. Cy Ryan, *Complaint Charges 160 Illegal Votes Cast In Assembly Contest*, LAS VEGAS SUN, *available at* <http://www.lasvegassun.com/sunbin/stories/text/2002/nov/20/514275451.html>, (Nov. 20, 2002).
10. Sito Negron, *Feds 'Help Sought In Voter Fraud Allegations*, LAS VEGAS SUN, *available at* <http://www.lasvegassun.com/sunbin/stories/text/2004/oct/28/517738026.html>, (Oct. 28, 2004).
11. Timothy Pratt, *Many Minorities First-Time Voters*, LAS VEGAS SUN, *available at* <http://www.lasvegassun.com/sunbin/stories/text/2004/nov/03/517767555.html>, (Nov. 3, 2004).

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12. Vote Watch 2000, <http://vote2004.erioposte.com/swingstates/Nevada.htm> (Date n/a).

13. Election Incidents: Nevada,
[https://epc.voteprotect.org/index.php?display=EIRMapState&state=Nevada&cat=ALL&t
ab=ALL&pagetop=50](https://epc.voteprotect.org/index.php?display=EIRMapState&state=Nevada&cat=ALL&t
ab=ALL&pagetop=50). (Date N/A/).

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BINGHAM McCUTCHEN

UTAH REPORT
FOR
THE NATIONAL COMMISSION ON THE
VOTING RIGHTS ACT

October 12, 2005

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I. DEMOGRAPHICS**A. GENERAL POPULATION DEMOGRAPHICS**

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
Total population	2,233,169	100.0	1,514,471	100.0
Hispanic or Latino (of any race)	201,559	9.0	123,364	8.1
Not Hispanic or Latino	2,031,610	91.0	1,391,107	91.9
One race	2,000,302	89.6	1,376,337	90.9
White	1,904,265	85.3	1,312,182	86.6
Black or African American	16,137	0.7	10,546	0.7
American Indian and Alaska Native	26,663	1.2	16,358	1.1
Asian	36,483	1.6	27,580	1.8
Native Hawaiian and Other Pacific Islander	14,806	0.7	8,563	0.6
Some other race	1,948	0.1	1,108	0.1
Two or more races	31,308	1.4	14,770	1.0

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File.

B. MINORITY REPRESENTATION IN CONGRESS

There are no minority members in the United States House of Representatives or in the United States Senate from Utah.

Sources: "House Press Gallery," available at <http://www.house.gov/daily/hpg.htm>; "Minorities in the Senate" available at http://www.senate.gov/artandhistory/history/common/briefing/minority_senators.htm.

C. MINORITY REPRESENTATION IN STATE LEGISLATURE

There are no minority members in the Utah House of Representatives or in the Utah State Senate.* For names of all members, please see attached sources.

*Based on a telephone conversation with contact at state government office. Please also see numbers from NCSL tables.

Sources: Telephone conversation with contact at state government office; "Utah State Legislature," available at <http://legislature.utah.gov>; "Numbers of African-American Legislators 2003," available at <http://www.ncsl.org/programs/legman/about/afrAmer.htm>; "Numbers of Latino Legislators," available at <http://www.ncsl.org/programs/legman/about/Latino.htm>.

II. LEGISLATIVE PROPOSALS

A. INTRODUCTION

Legislative proposals related to Utah's Election Code (20-A) between 2000 and 2005 were reviewed and are summarized by category below.

B. REDISTRICTING

If Utah becomes entitled to four representatives in the U.S. House of Representative, an increase from the current three representatives, Section 20A-13-101 is repealed and a 2001 Session Law will be enacted calling for the division of four Congressional districts. S.B. 2003, 2d Spec. Sess., 2001 Utah Laws Ch. 7 § 1.

The county legislative body "may establish, divide, abolish, and change voting precincts." Utah Code Ann. § 20A-5-303. A 2002 amendment added the requirement that the county legislative body file a notice within 30 days describing any such action taken "and specifying the resulting boundaries of each voting precinct affected." 2002 Utah Laws Ch. 225 § 4; Utah Code Ann. § 20A-5-303(b). In 2003, an amendment added the requirement that the county legislative body act *after* "receiving recommendations from the county clerk." H.B. 2001, 2003 Utah Laws Ch. 1 § 1, 2d Spec. Sess.; § 20A-5-303(a). Another 2003 amendment removed the requirement that voting precincts voting at common polling places lie within the same legislative district. H.B. 206, 2003 Utah Laws Ch. 147 § 1, 2d Spec. Sess.

The Utah League of Women Voters reports that during the 2004 election some areas of Utah that had recently been redistricted were too small to afford to have a polling place and thus everyone was asked to mail in their vote.¹ Come election day, many people did not know where to go or had not received anything in the mail. This issue will likely arise again in the 2006 elections.

C. VOTER I.D. REQUIREMENTS

Utah's Election Code defines "proof of identity" as "some form of photo identification, such as a driver license or identification card, that establishes a person's identity." Utah Code Ann. § 20A-1-102(50). "Proof of residence" can be established through "some official document or form, such as a driver license or utility bill." § 20A-1-102(51). For the individual's *first* time voting in a certain precinct, the voter must *either* 1) provide a copy of photo identification *or* proof of residence with the registration form; or 2) present photo identification *or* proof of residence at the polling location before voting. §§ 20A-2-104; 20A-3-104. If proof of identity or proof of residence has not been established, there is a provisional ballot alternative. § 20A-3-104(1)(e). The proof of identity or residence requirement for an individual's *first* time voting in a certain precinct was added by Senate Bill 68 in 2003. S.B. 68, Gen. Sess., 2003 Utah Laws Ch. 37 § 1.

¹ Apparently this incident garnered some local press, but we were unable to locate related articles.

House Bill 258, which would have required voters to show identification *or* sign a statement under oath *each time* before voting, was defeated. H.B. 258, Gen. Sess. (Utah 2002). Section 20A-3-104 of the Election Code did not require identification from registered voters to vote. § 20A-3-104. House Bill 258 would have created an additional identification requirement for every time an individual votes, not just the first time. However, the proposal included an exception to permit an individual to vote if identification was not available (i.e., signing a statement under oath attesting to the individual's identity). This proposal appears to be less cumbersome and potentially discriminatory than the pending Senate Bill 67, which does not include such an exception.

Pending Senate Bill 67, sponsored by Senator Mark Madsen (R), would replace the current requirements with a higher level of identification requirements. S.B. 67, Gen. Sess. (Utah 2005). An individual would have to present identification *each time* before voting, not just the *first* time the individual votes in a certain precinct. *Compare id. with* § 20A-2-104. "Valid voter identification" permits establishing identity through either 1) a photo ID with the voter's name and current address; or 2) two forms of identification with voter's name and current address including a utility bill, financial statement, paycheck, naturalization documentation, hunting or fishing license, military ID card, federal pilot's license, or Medicaid card. S.B. 67, Gen. Sess. (Utah 2005).

Citizenship Requirements. Utah's legislature has been increasing the burden for establishing citizenship to vote. In 2003, the legislature changed the voter registration form by adding citizenship and age questions, requiring (no longer optional) that a driver license or ID card number be provided, and requiring (no longer optional) that the last four digits of the individual's Social Security Number be provided. H.B. 103, Gen. Sess., 2003 Ch. 117 § 2. In 2004, the legislature added a "Citizenship Affidavit" section to the voter registration form requiring the individual to sign a sworn oath of citizenship. H.B. 301, Gen. Sess., 2004 Utah Laws Ch. 219 § 1.

A controversy regarding Utah's driving privilege card, which is issued to non-citizens who do not have a Social Security card, arose because this card was sometimes incorrectly accepted as proof of citizenship. Pending Senate Bill 67 addresses this problem by specifying which types of identification can be used for voting purposes and excluding the driving privilege card as proof of citizenship. S.B. 67, Gen. Sess. (Utah 2005).

However, Senate Bill 67 goes beyond merely excluding the driving privilege card as proof of citizenship. The bill requires an *affirmative showing* of citizenship to register where the current Section 20A-2-104 only requires signing a sworn oath of citizenship, which was already an increase in the burden from the pre-2003 requirements. *Compare id. with* § 20A-2-104. Under Senate Bill 67, the individual must also include a copy of a Utah driver license, birth certificate, United States passport, naturalization documents, documents under the Immigration Reform and Control Act of 1968, Bureau of Indian Affairs Card number, tribal treaty card number, or tribal enrollment number to establish citizenship for voting registration purposes. S.B. 67, Gen. Sess. (Utah 2005).

D. OTHER LEGISLATIVE PROPOSALS

House Bill 267, which proposed an amendment to the election code to allow voter registration on the day of the election at their precinct, did not pass. H.B. 267, Gen. Sess. (Utah 2005).

Voting by provisional ballot is permitted when an individual's "name is not found on the official register" or when the individual's right to vote is challenged. § 20A-3-105.5; *see* S.B. 36, 2002 Utah Laws Ch. 177 § 6 (original enacting legislation). In order to vote by provisional ballot, the individual must provide proof of identity and proof of residence. § 20A-3-105.5(2). Voting by provisional ballot is also permitted when proof of identity or proof of residence has not been established. § 20A-3-104(1)(e).

The absentee voting procedures have also been modified by several amendments to make it easier for a voter to obtain an absentee ballot by removing or lessening strict requirements.

E. APPENDIX OF SOURCES

1. Telephone Interview with Sandy Peck, President, Utah League of Women Voters (July 7, 2005). Contact information: (801) 272 8683, lwvut@xmission.com.
2. Utah Code Ann. § 20A-1-102.
3. Utah Code Ann. § 20A-2-104.
4. Utah Code Ann. § 20A-3-104
5. Utah Code Ann. § 20A-5-303
6. S.B. 67, Gen. Sess. (Utah 2005) (pending).
7. H.B. 267, Gen. Sess. (Utah 2005) (defeated/ failed).
8. H.B. 258, Gen. Sess. (Utah 2002) (defeated/ failed).
9. S.B. 68, Gen. Sess., 2003 Utah Laws Ch. 37 § 1 (passed).
10. H.B. 103, Gen. Sess., 2003 Ch. 117 § 2 (passed).
11. H.B. 301, Gen. Sess., 2004 Utah Laws Ch. 219 § 1 (passed).
12. S.B. 36, 2002 Utah Laws Ch. 177 § 6 (passed, alternative measure).
13. 2002 Utah Laws Ch. 225 § 4.
14. H.B. 2001, 2003 Utah Laws Ch. 1 § 1, 2d Spec. Sess. (passed).
15. H.B. 206, 2003 Utah Laws Ch. 147 § 1, 2d Spec. Sess. (passed).

III. PUBLISHED VOTING RIGHTS ACT CASES

A. *United States v. San Juan County, Utah*

1. *Original Settlement, NO. C-83-1287 (D. Utah 1984)*

- **Decision by:** Judge B.G.[*can not read the rest of the signature*] approved a settlement between the parties on January 11, 1984.
- **Facts:** Forty six percent of the population of San Juan County is American Indian. Vast majority of the American Indians residing in the county are Navajo and a large proportion of them are unable to speak, write or read English.
- **VRA Claim(s):** The defendant county, while has taken some steps to comply with the minority language requirement (Section 203) of the Voting Rights Act, has not fully complied.
- **Issue(s):** Lack of bilingual voter registration programs to provide information and voting registration help to non-English speaking American Indians.
- **Holding:** The County and the United States reached a settlement agreement in January 1984. The county agreed to take a series of actions to create a remedial bilingual voter registration program. The program is designed to inform Navajo voters and make their registration process easier.

2. *Agreed Settlement and Order, No. C-83-1286 (D. Utah 1984)*

- **Decision by:** Judge David K. W² approved a settlement between the parties on April 4, 1984.
- **Facts:** The United States alleges and the County does not contest that the county's at-large voting procedure used to select County Commissioners fails to comply fully with Section 2 of the Voting Rights Act.
- **VRA Claim(s):** County government election procedure violates Section 2 of the Voting Rights Act.
- **Issue(s):** The at-large voting procedure used in San Juan County, Utah to select County Commissioners denies Native American residents full participation in the political process. However, the settlement agreement does not discuss how the rights of the Native American residents were denied by the at-large voting procedure.
- **Holding:** In the settlement agreement the County agreed to design and then submit for voter approval an alternative form of government consisting of fairly drawn single member districts. The County adopted its Final Plan for a general county form of government on November 26, 1984, after voters approved the Final Plan on November 6, 1984.

² The full signature could not be read on the copy of the order.

3. *First Amended Settlement and Order, No. C-83-1287 (D. Utah 1990)*

- The parties agreed to a First Amended Settlement and Order on August 21, 1990, stipulating further detailed actions the County needs to take to ensure its election process is fully and effectively accessible to Native American citizens. *See* First Amended Settlement And Order, No. C-83-1287 (filed Aug. 21, 1990). The federal government agreed not to seek any additional relief for four years and the County was to use these four years to fully implement the bilingual election program.

4. *Termination of Consent Decree, NO. C-83-1287 (D. Utah 1995)*

- On July 19, 1995, after the four year period expired, both the United States and San Juan County agreed to terminate the Consent Decree. *See* Joint Motion For Termination Of Consent Decree And Entry Of Order, No. C-83-1287 (filed July 19, 1995).

IV. DEPARTMENT OF JUSTICE ENFORCEMENT

A. DOJ ENFORCEMENT LITIGATION [since and including 1982]

1. *United States v. San Juan County, Utah*

- *See supra* Section III Published Voting Rights Act Cases.

B. FEDERAL OBSERVERS/MONITORS [since and including 1982]

City/Town	Date	Election Type	# of Observers/Monitors	Press Release/ Newspaper Comments and Notes
San Juan	11/8/1998	Federal	23 obs.	Lawyers' Committee list
San Juan	11/6/1990	Federal	25 obs.	Lawyers' Committee list
San Juan	11/3/1992	Federal	20 obs.	Lawyers' Committee list
San Juan	11/8/1994	Federal	18 obs.	Lawyers' Committee list
San Juan	11/5/1996	Federal	17 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/1996/Nov96/538cr.htm
San Juan	11/3/1998	Federal	19 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/1998/November/516cr.htm
San Juan	11/7/2000	Federal	19 obs.	Lawyers' Committee list
San Juan	6/25/2002	Primary	20 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2002/June/02_crt_366.htm
San Juan	11/5/2002	Federal	25 obs.	Lawyers' Committee list; http://www.usdoj.gov/opa/pr/2002/November/02_crt_640.htm
Third Congressional District	6/22/2004	Primary	2 monitors	http://www.usdoj.gov/opa/pr/2004/June/04_crt_420.htm ; <i>The Salt Lake Tribune</i> , June 23, 2004

V. VOTER SUPPRESSION

A. SUMMARY

Utah seems to be taking efforts to address fairness issues in the election process. There were not many problems to note in the Election Incident Reporting System ("EIRS"). Most reported incidents surrounded lost absentee ballots and uncertainty regarding polling locations. However, there were a few important incidents to note. However, in Salt Lake County, the local media reported that a Republican candidate for the Utah legislature attempted to de-register approximately 1,500 registered Democrats by challenging their voter registration as fraudulent. EIRS Incident No. 27907 (note that these reports have not been corroborated through this research).

Sandy Peck, President of Utah's League of Women Voters, reports that a small controversy has arisen with respect to identification. Utah has what is known as a 'driving privilege card' for non-citizens. The controversy arose because sometimes this card was inappropriately accepted as proof of citizenship. Apparently, Senator Madsen's pending bill S.B. 67 is supposed to remedy this problem. No other voter suppression incidents were uncovered.

The League of Women Voters also reported that during the 2004 election some areas of Utah that had recently been redistricted were too small to afford to have a polling place and thus everyone was asked to mail in their vote. Come election day, many people did not know where to go or had not received anything in the mail. Apparently this incident garnered some local press, but we were unable to locate related articles.

B. APPENDIX OF SOURCES

1. Telephone Interview with Stephen Kroes, Executive Director, Utah Foundation (July 7, 2005). Contact information: (801) 355 1400, steve@utahfoundation.org, www.utahfoundation.org.
2. Telephone Interview with Sandy Peck, President, Utah League of Women Voters (July 7, 2005). Contact information: (801) 272 8683, lwvut@xmission.com.
3. Utah Politics, *at* www.utahpolitics.org.
4. Election Incident Reporting System: Utah, *at* <https://voterprotect.org>.
5. *Pay Up; Democracy's Cost: The State Should Buy More Voting Machines*, SALT LAKE TRIBUNE (June 18, 2005).
6. Dan Harrie and Mark Eddington, *33,000 Ballots Lost in Shuffle*, SALT LAKE TRIBUNE (Nov. 13, 2004).
7. Murshed Zaheed, *Voter Verified Paper Trail in Utah...*, Common Cause (June 5, 2005), *at* <http://www.commonblog.com/story/2005/6/5/11448/02299>.

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**Report to Commissioners: Northeast
Regional Hearing**

Report to the Commissioners

**NORTHEAST REGIONAL
HEARING OF THE NATIONAL
COMMISSION ON THE VOTING
RIGHTS ACT**

June 14, 2005

prepared by:
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CONNECTICUT EXECUTIVE SUMMARY**DEMOGRAPHICS:**

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
Total population	3,405,565	100.0	2,563,877	100.0
Hispanic or Latino (of any race)	320,323	9.4	204,664	8.4
Not Hispanic or Latino	3,085,242	90.6	2,359,213	92.0
One race	3,032,346	89.0	2,327,479	90.8
White	2,638,845	77.5	2,053,286	80.1
Black or African American	295,571	8.7	202,510	7.9
American Indian and Alaska Native	7,267	0.2	5,192	0.2
Asian	81,564	2.4	60,461	2.4
Native Hawaiian and Other Pacific Islander	958	0.0	718	0.0
Some other race	8,141	0.2	5,312	0.2
Two or more races	52,896	1.6	31,734	1.2

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File.

MINORITY REPRESENTATION:

There are no minority members of the United States Senate or House of Representatives from this state. There are three African American members of the state Senate. There are ten African American and six Latino members state House of Representatives.

SECTION 5 RELATED MATTERS:

Connecticut is not covered under Section 5 of the Voting Rights Act.

SECTION 203 AND OTHER MINORITY LANGUAGE MATTERS

The following towns are covered under Section 203 for the Spanish language: Bridgeport, Hartford, Meriden, New Britain, New Haven, Waterbury, and Windham.

In the mid-1980's, local Latino activists filed suit against Bridgeport. They alleged that Bridgeport had violated Section 203 by not providing adequate language assistance in Spanish. The case was resolved by settlement agreement where Bridgeport agreed to translate language materials and to hire a person in the elections office that spoke Spanish.

In the annual canvassing of voters done in Hartford in 1991, several thousand registered voters were removed from the voting rolls despite the fact that they continued to live in the same

locations where they were registered. As a disproportionate number of these voters were Latino and Spanish-speaking, the Connecticut Civil Liberties Union brought suit under Section 2 of the Voting Rights Act. The suit was settled when Hartford agreed not to purge the voters.

SECTION 2 RELATED MATTERS:

After the 1990 Census, the City of Bridgeport adopted a plan that was proposed by the Redistricting Advisory Committee. This plan created one African American majority district, one Latino majority district, two combined African American and Latino majority districts, and six white majority districts. The Bridgeport Coalition for Fair Representation sued claiming the plan was in violation of § 2 of the Voting Rights Act. The district court ruled that plaintiffs were entitled to a preliminary injunction enjoining the use of Bridgeport's plan and ordering a new plan in place. Bridgeport Coalition for Fair Representation v. City of Bridgeport, 1993 U.S. Dist. LEXIS 19741 (D. Conn. 1993). Though the Second Circuit upheld the district court's finding for the plaintiff, Bridgeport Coalition for Fair Representation v. City of Bridgeport, 26 F.3d 271 (2d Cir, 1994), the decision was reversed and remanded by the Supreme Court of the United States for further factfinding in accordance with a recent Supreme Court decision. Bridgeport Coalition for Fair Representation v. City of Bridgeport, 512 U.S. 1283 (1994). The case was subsequently settled.

DOJ OBSERVER/MONITOR COVERAGE

For the November 5, 2002 election, the Department of Justice sent attorneys to monitor the election in Waterbury.

OTHER ISSUES OF INTEREST

In 2000, Waterbury, whose aldermen are elected at-large, put the issue of district elections on the ballot. The Sunday before the election, the priest of the largest Catholic congregation in the city, told the members of his congregation that if the referendum passed, they would have to vote in a predominantly minority area of the town. The referendum failed.

NARRATIVE**I. Canvassing: The Purging of Latino Votes**

During the 1991 canvas, a yearly review of registered voters in Hartford, a number of voters were removed from the voter registration roll despite the fact that they continued to reside at the same address that was listed on their registration documents.¹ The state's actions appeared racially motivated. Although Latino only comprised only 26 percent of the city's population, they composed 42 percent of the removed voters.² The Connecticut Civil Liberties Union brought suit under the Voting Rights Acts of 1975 and 1982, claiming that the way in which Hartford canvassed voters discriminated against minorities with low incomes and Hispanics in particular. U.S. District Judge Peter C. Dorsey granted emergency relief so that the nearly 6,000 voters (including 2,733 Latino voters) who had been purged from the voter registration roll were reinstated.³

Additionally, the Department of Justice sent federal election monitors to Waterbury, Connecticut, for the 2002 election.⁴ The monitors were sent in response to fears that Hispanic voters would face difficulties voting.

II. Redistricting

¹ Lipton, Eric, *The Hartford Courant*, "City Voter Rules Unfair to Minorities, Critics Say; Voter Registrars' Policy Called Discriminatory," September 10, 1992 at A1.

² Scheffey, Thomas, *The Connecticut Law Tribune*, "Suit Allows More to Vote," November 4, 1991 at 15.

³ Lipton, Eric, *The Hartford Courant*, "City Voter Canvassing Draws CCLU Criticism; Canvassing Process Criticized," July 29, 1993 at D1.

⁴ Press Release, Department of Justice, Federal Observers and Justice Department to Monitor General Election in States Across the Nation (Nov. 4, 2002) available at http://www.usdoj.gov/opa/pr/2002/November/02_crt_640.htm.

In 1993, voting rights activists initiated a lawsuit over the manner by which Bridgeport redrew its district lines.⁵ The plaintiffs claimed that Latino and African-American voters had been underrepresented on the city council for the past twenty-five years,⁶ and that the city's plan would not create more minority districts, thereby continuing the dilution of the African-American and Latino voters.⁷ District Court Judge Dorsey ruled that the redistricting plan violated the Voting Rights Act because the districts were drawn in such a fashion as to prevent African-American and Latino candidates from winning council seats.⁸ The U.S. Court of Appeals for the Second Circuit upheld the decision;⁹ however, the United States Supreme Court reversed,¹⁰ and remanded the case for further consideration in light of more recent redistricting decisions.

⁵ Bridgeport Coalition for Fair Representation v. City of Bridgeport, 1993 U.S. Dist. LEXIS 19741

⁶ Mahoney, Edmund, *The Hartford Courant*, "Bridgeport Voter Suit Mired in Litigation," October 10, 1994 at A1. See also Gombossy, George, *The Hartford Courant*, "Lawsuit Says Bridgeport Voting Plan Unfair to Minorities," July 7, 1993 at B7.

⁷ McGushin, Colleen Bridget, *The Connecticut Law Tribune*, "Second Circuit Upholds Bridgeport Redistricting," April 4, 1994 at 12.

⁸ Mahoney, Edmund, *The Hartford Courant*, "Bridgeport Asks High Court to Hear Voters' District Case," August 19, 1994 at D15.

⁹ *Id.*; 26 F.3d 271 (1994).

¹⁰ *City of Bridgeport v. Bridgeport Coalition for Fair Representation*, 512 U.S. 1283 (1994). See also, *The Providence Journal*, "American Journal High Court Sides with City," September 24, 1994 at 2A.

PUBLISHED VRA CASES

**Bridgeport Coalition for Fair Representation v. City of Bridgeport, 26 F.3d 271 (1994),
rev'd and remanded, 512 U.S. 1283 (1994)**

Majority: Mahoney, Walker and Spouse (Circuit Judges)

Facts: Following the 1990 Census the Redistricting Advisory Committee proposed a redistricting plan with one black and one Latino majority district, two combined black and Latino majority districts and six majority white districts. Defendants adopted the plan. Plaintiffs proposed an alternative plan with two black majority districts, two Latino majority districts, and one combined black and Latino majority district. Plaintiffs filed suit in the United States District Court for the District of Connecticut alleging defendants' reapportionment plan violated § 2 of VRA by diluting minority voting opportunities. Plaintiffs asked that the City be required to adopt the alternative plan it submitted. The trial court granted a preliminary injunction prohibiting defendants from conducting city elections under the plan and ordered defendants to adopt a balanced plan. It refused, however, to enjoin the upcoming municipal election because it was scheduled to occur only five days after the order. It also declined to impose the plan offered by plaintiffs or to mandate specific line drawing. The court ordered the City to establish a new system of districts within 60 days of the order and to hold an election under the new districting scheme within 120 days of the order. Defendants sought review of the grant of preliminary injunction.

VRA Claim(s): The redistricting plan adopted by the City violated § 2 of VRA by diluting minority voting opportunities.

Issue: Whether the district erred in granting a preliminary injunction prohibiting defendants from conducting city elections under the plan because it found that plaintiffs were likely to succeed on their claim.

Majority: The court affirmed in part, modified in part and remanded for modification on dates for compliance. The court found, after an abuse of discretion review, that the trial court did not err in finding irreparable harm would befall plaintiffs if the injunction had not been issued because it balanced the probable harm in making its decision. The court found that there was no error in the trial court's conclusion that dilution of minority votes had not been cured by the reapportionment plan because defendants created only one voting bloc for each minority where there was sufficient evidence presented which showed that two of each could have been created. The court remanded the issue of election dates and directed the district court to set new dates before which the City must: (1) adopt a new City Council districting plan in accordance with the terms of the preliminary injunction, (2) conduct a primary election of town committee members in the new districts, and (3) conduct a general election to elect new City Council members following the nomination of candidates for the City Council by the newly elected town committee members.

Subsequent History: The United States Supreme Court vacated and remanded the Second Circuit opinion on the grounds that the Second Circuit found that plaintiff's satisfaction of the

three-part test in Thornburg v. Gingles, 478 U.S. 50 (1986), was sufficient to establish a violation of Section 2. After the Second Circuit decided this case, the Supreme Court held in Johnson v. DeGrandy, 512 U.S. 997 (1994), that if plaintiffs satisfied each Gingles factor, the court would have to engage in a totality of circumstances analysis. The case settled shortly thereafter in a plan that included five majority-minority districts

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DEPARTMENT OF JUSTICE ENFORCEMENT

FEDERAL OBSERVERS/MONITORS

<u>City/Town</u>	<u>Date</u>	<u>Election Type</u>	<u># of Observers</u>	<u>Press Release Comments/Notes</u>
Waterbury	November 5, 2002	General		Monitoring of elections to ensure proper assistance of Spanish-speaking voters

MASSACHUSETTS EXECUTIVE SUMMARY**DEMOGRAPHICS:**

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
Total population	6,349,097	100.0	4,849,033	100.0
Hispanic or Latino (of any race)	428,729	6.8	271,003	5.6
Not Hispanic or Latino	5,920,368	93.2	4,578,030	94.4
One race	5,810,030	91.5	4,508,514	93.0
White	5,198,359	81.9	4,069,567	83.9
Black or African American	318,329	5.0	220,658	4.6
American Indian and Alaska Native	11,264	0.2	8,150	0.2
Asian	236,786	3.7	177,829	3.7
Native Hawaiian and Other Pacific Islander	1,706	0.0	1,317	0.0
Some other race	43,586	0.7	30,993	0.6
Two or more races	110,338	1.7	69,516	1.4

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File.

MINORITY REPRESENTATION IN CONGRESS:

There are no minority members of the United States House of Representatives or the United States Senate from the Commonwealth of Massachusetts.

SECTION 5 RELATED MATTERS:

Like most of the Northeastern states, § 5 of the Voting Rights Act is inapplicable to the Commonwealth of Massachusetts.

SECTION 203 AND MINORITY LANGUAGE RELATED MATTERS:

Six towns in Massachusetts are covered for the Spanish language under Section 203 of the Voting Rights Act: Boston, Chelsea, Holyoke, Lawrence, Southbridge, and Springfield.

In 1982, in Lawrence, the Board of Registrars denied a request by the organizers of Hispanic Week festival to hold a voter registration drive. At the time, only the Board of Registrars could hold a voter a registration drive. The organizers sued the Board and received a preliminary injunction compelling the Board to hold the requested voter registration drive.

In 1998, the Department of Justice sued Lawrence for not providing Spanish-language assistance as required by Sections 2 and 203. In September 1999, the City agreed to create a Spanish language electoral assistance program that provided Spanish language assistance in all aspects of

the electoral process. Among other things, the agreement required the City to hire Spanish-speaking pollworkers to work in every precinct and to hire a bilingual coordinator.

SECTION 2 RELATED MATTERS

Black and Latino citizens filed two-related Section 2 cases regarding the post-2000 redistricting of the Massachusetts State House. Black Political Task Force v. Galvin, 300 F. Supp. 2d 291 (D. Mass. 2004) (three judge court) and Meza v. Galvin, 322 F. Supp. 2d 52 (D. Mass. 2004) (three-judge court). The black citizens prevailed and the Hispanic citizens did not. The court held that the Speaker of the House, Thomas Finneran, manipulated the plan so that about 5,000 black citizens were moved out of his district and a predominantly white group of citizens was moved in. The court held that this had the effect of diluting the voting strength of black voters. The court strongly suggested that Speaker Finneran committed perjury on the witness stand and he was indicted last week for perjury arising from his testimony.

In United States v. City of Lawrence (D. Mass.), the city of Lawrence agreed, in separate settlements, to change its method of electing the Lawrence School Committee from districts to at-large (1999), and to improve Latino electoral opportunities in the City Council and School Committee districts (2002). In a separate lawsuit, the federal district court enjoined the City of Lawrence from imposing an identification requirement in the City of Lawrence prior to the 2001 city election as requested by private plaintiffs.

DOJ OBSERVERS/MONITORS

Lawrence – November 4, 2003 General Election
Boston – March 2005 Primary

OTHER MATTERS OF INTEREST

During the 2004 election, each of Suffolk, Essex and Hampden counties contained claims by voters of race-based voter intimidation or suppression. Voters experiencing such voter discrimination have included African American, Latino and Arab-American voters.

MASSACHUSETTS NARRATIVE

I. Redistricting

In 2001, civil rights organizations, such as the Lawyers Committee for Civil Rights Under Law of the Boston Bar Association and the National Voting Rights Institute, successfully challenged Massachusetts' 2001 redistricting plan under the Voting Rights Act of 1965.¹¹ The plaintiffs alleged that the redistricting plan would transfer nearly 5,000 African-American voters from Mattapan out of the district, while importing approximately 5,000 Caucasian voters from Milton into the district,¹² and was purposely designed by Massachusetts House Speaker Thomas Finneran¹³ to dilute the voting power of the increasing number of minorities in the Mattapan section of Boston.¹⁴

In Lawrence, lawsuit against the city led to the replacement of at-large elections with district elections for School Committee and forced the municipality to redraw districts for City Council and School Committee to ensure that they were more equitable for Latino voters.¹⁵

¹¹ Euchner, Charles C., *The Boston Globe*, "Op-Ed, State Must Draw the Line, but Fairly," November 14, 2003 at 29.

¹² *United States v. City of Lawrence*, No. 98-12256 (D. Mass. 1998); *See also* Levenson, Michael, *The Boston Globe*, "Haitian-American Wins House Seat; Victory Hailed," March 16, 2005 at B1.

¹³ Mr. Finneran has recently be indicted for perjury in connection with statements he made regarding his role in the redistricting plan. *See* Finneran's New Venue, *The Boston Globe*, available at http://www.boston.com/news/globe/editorial_opinion/editorials/articles/2005/06/09/finnerans_new_venue/.

¹⁴ *Id.*

¹⁵ Hall, Matthew T., *The San Diego Union Tribune*, "Recent Voting Probes Net Different Outcomes," July 19, 2003 at NC-1.

The city also agreed to appoint a bilingual person to the board of registrars and to the staff in the elections office.

In the early 1990's, Hispanic community organizations and citizens filed suit challenging the City of Holyoke's election system for school committee and city council. Plaintiffs alleged at-large voting for some of the seats violated § 2 of the Voting Rights Act. After initially losing at the district court and being ordered to reduce the number of at-large seats from eight to two,¹⁶ the city appealed and moved for a stay. The First Circuit granted the stay and remanded the case to the district court.¹⁷ On remand, the district court reversed and held for the city on the ground that the presence of at-large representatives on the city council insured the perspective of the community as a whole was well represented. The court concluded that it could not state that the interaction of race and the electoral system, as of 1997, resulted in significantly diminished opportunities for minority participation in elective government.¹⁸

II. Language: A Barrier to Voting

Examples of voter intimidation and suppression that resulted from language barriers were documented both by the media and through anecdotal reports.¹⁹ Such problems arose either when language aides instructed voters on how to vote or when language aides were absent altogether.

¹⁶ Vecinos De Barrio v. City of Holyoke, 880 F. Supp. 911 (D. Mass 1995); 882 F. Supp. 9 (D. Mass 1995).

¹⁷ Vecinos De Barrio v. City of Holyoke, 72 F.3d 973 (1st Cir. 1995).

¹⁸ Vecinos De Barrio v. City of Holyoke, 960 F. Supp. 515 (D. Mass.1997).

¹⁹ Election Incident Reporting System: 1-866-OUR-VOTE, at <http://voteprotect.org> (last visited Jun. 7, 2005) (hereinafter EIRS). This system was established to track and report on voting rights abuses of all types and in all U.S. jurisdictions.

- In 2002, in Brighton, civil rights activists revealed that Russian and Chinese interpreters were instructing voters which candidate to vote for.²⁰
- Similarly in Boston, the Chinese Progressive Association found that translators had instructed voters which candidate to vote for and, in some cases, actually pulled the levers themselves.²¹
- In Lawrence, as a result of difficulties facing Spanish-speaking voters, the city entered into a settlement with the Department of Justice providing for a Spanish-language voter information program, the hiring of a bilingual program coordinator, the translation of election information into Spanish, the development of an outreach program for Spanish-speaking voters, and the assignment of bilingual, Latino poll workers to work in all the city's voting precincts.²²

In other cases, no language materials were available at all. In Suffolk County, a lack of Vietnamese instructions resulted in one voter filling out her ballot improperly while an onlooker watched, denying her an effective ballot.²³ Similarly, the Mexican American Legal Defense and Educational Fund, on behalf of a voter, unsuccessfully tried to alert the Boston Election Department that a lack of Spanish poll workers impeded Spanish speakers from voting.²⁴

²⁰ Id.

²¹ Magpantay, Glenn D., 11 Asian L.J. 31, 52, "Asian American Access to the Vote: The Language Assistance Provisions (Section 203) of the Voting Rights Act and Beyond," 2004.

²² Hall, Matthew T., *supra* note 13. See also http://www.usdoj.gov/opa/pr/2002/February/02_crt_100.htm.

²³ EIRS, County Election Incidents: Suffolk County, MA reported Nov. 2, 2004.

²⁴ Id.

In some instances, language bias was compounded by racial or ethnic prejudice. For instance, a voter asked about receiving a ballot in Spanish and was told by the election worker, "This is America".²⁵ To ensure language minorities were not treated unfairly in Boston's March 2005 primary, the Justice Department sent federal election monitors.²⁶

III. Race-Based Voter Intimidation or Suppression

Although, voter complaints about intimidation and/or suppression focuses largely around language, racial and/or ethnic discrimination was exists also.

- In Suffolk County, a Muslim Arab-American woman, wearing a headscarf, was the only voter asked to present identification, and was denied a provisional ballot until she demanded one under the terms of the "Voter Bill of Rights."²⁷
- In Essex County, a Latino voter felt that the police were intimidating her after she was asked for identification, despite the fact that no Caucasian voters were asked for such identification.²⁸
- Finally, in Hampden County, an African-American voter was denied a provisional ballot despite the fact that a similarly situated non-African-American voter was given one.²⁹

²⁵ Id.

²⁶ See Michael Levenson, "Haitian-American Wins House Seat", *Boston Globe*, B1.

²⁷ EIRS, County Election Incidents: Suffolk County, MA reported Nov. 2, 2004.

²⁸ EIRS, County Election Incidents: Essex County, MA reported Nov. 2, 2004.

²⁹ EIRS, County Election Incidents: Hampden County, MA reported November 2, 2004.

MASSACHUSETTS REPORTED VRA CASES**Black Political Task Force, et al. v. Galvin, et. al, 300 F. Supp. 2d 291 (2004)**

Majority: Selya (Circuit Judge), Woodlock and Ponsor (District Judges)

Facts: This is the companion case to *Meza v. Galvin*, 322 F. Supp. 2d 52 (2004). Following the 2000 Census, the Commonwealth enacted a new redistricting plan reflective of the population growth. African-American and Hispanic voters filed suit in the United States District Court for the District of Massachusetts alleging the redistricting scheme, as it pertains to House districts in Boston, denied them equal opportunity "to participate in the political process and to elect representatives of their choice" in violation of § 2 of VRA. After the House debated the plan, one key amendment was enacted, the result of which was to make a former majority-minority district a majority-white district to protect a white incumbent. Plaintiffs attempted to show, among other things, that the plan simultaneously packed minority voters into a tiny number of districts and splintered the minority vote in other districts in an effort to protect white incumbents. They emphasized that, despite the increase in Boston's minority population and the concomitant decrease in the white population, the Redistricting Act reduced the number of majority-minority districts while increasing the number of majority-white districts. They proffered two alternate redistricting schemes as potential remedies for the alleged imbalance.

VRA Claim(s): The redistricting scheme, as it pertained to House districts in Boston, denied African-American and Hispanic voters equal opportunity to participate in the political process and to elect representatives of their choice in violation of § 2 of VRA.

Issue(s): Whether the redistricting scheme, as it pertained to House districts in Boston, denied African-American and Hispanic voters equal opportunity to participate in the political process and to elect representatives of their choice in violation of § 2 of VRA.

Majority: The court struck down the Redistricting Act as to the seventeen House districts at issue, enjoined the state officials from holding elections for any of those seats under the enacted plan and ordered the state to prepare and submit a new redistricting plan consistent with the requirements of § 2 of VRA. The court held that the Redistricting Act deprived African-American voters of the rights guaranteed to them by § 2 of VRA. The Redistricting Act, in delineating the seventeen House districts at issue, diluted the voting power of African-American voters and denied them equal opportunity to participate in the political process and to elect representatives of their race. The claims met the Gingles preconditions, and analysis of the totality of the circumstances confirmed the presumption of impermissible vote dilution. The court attached particular significance to the evidence concerning proportionality, retrogression, and the state House's willingness to turn a blind eye to the racial implications of its single-minded effort to protect incumbents at virtually any social cost. This conclusion rendered it unnecessary to decide whether the Redistricting Act also deprived Hispanic voters of the rights guaranteed by § 2 of VRA.

Angel Meza, et al. v. William Francis Galvin, 322 F.Supp.2d 52 (2004)

Majority: Selya (Circuit Judge), Woodlock and Ponsor (District Judges)

Facts: In 2001 the Massachusetts legislature enacted a new redistricting plan. Plaintiffs, three Latino voters and two nonprofit organizations, filed suit in the United States District Court for the District of Massachusetts alleging the legislature, in drawing the lines of the 2d Suffolk House District under the 2001 Redistricting Act, impermissibly diluted the voting strength of the Hispanic community in Boston and most of the city of Chelsea. Under the 2001 redistricting plan, the 2d Suffolk House District included all of the Charlestown neighborhood of Boston and most of the city of Chelsea. According to the 2000 Census, the 2d Suffolk House District, with the 1993 lines, had a total population of 42,790, which exceeded the target district population for the 2001 redistricting plan and necessitated a reduction of the population in that district. The 2001 plan moved four precincts in the northern part of Chelsea into the adjoining 16th Suffolk House District to bring the 2d Suffolk House District within the target population range. Between the 1990 Census and the 2000 Census, the percentage of Hispanics in the total population increased from 31.4% to 48.4% in Chelsea, from 17.6% to 39% in East Boston and from 2.1% to 11.6% in Charlestown.

VRA Claim(s): By configuring the 2d Suffolk House District to include Charlestown, the legislature countenanced a split of the rapidly growing Hispanic populations in Chelsea and East Boston and thereby impermissibly diluted the Hispanic vote in those areas in violation of § 2 of VRA.

Issue(s): Whether plaintiffs, under the totality of the circumstances analysis, have shown that the redrawing of 2d Suffolk House District impermissibly diluted the Hispanic vote in Chelsea and East Boston in violation of § 2 of VRA.

Majority: Plaintiffs failed to establish their vote dilution claim under § 2 of VRA based on the totality of the circumstances. There was no significantly probative evidence of any current official discrimination that touched upon Hispanic participation in the democratic process nor any structural dimensions to the machinery of elections which hindered minority participation. If plaintiffs can surmount the Gingles threshold, they must then demonstrate, given the "totality of the circumstances," the plan deprives minority voters of an equal opportunity to participate in the electoral process and to elect candidates of their choice. VRA is not aimed at ensuring equality of representation; rather its aim is to safeguard voters' opportunities to elect their preferred representatives and as such promotes electoral, not representational, equality. Plaintiffs failed to satisfy the third Gingles precondition for establishing a vote dilution claim under § 2 of VRA since they did not sufficiently demonstrate majority bloc voting. Determining whether bloc voting exists is not merely an arithmetic exercise that consists of totaling up columns of numbers, and nothing more, but rather must be a commonsense assay of all the evidence. A renewed final judgment for the defendant was entered.

Vecinos De Barrio UNO, et al. v. City of Holyoke, 960 F.Supp. 515 (1997)**Decision:** Ponsor (District Judge)

Facts: The Holyoke city council is composed of 15 members, eight elected at large and seven elected by ward. Each voter is entitled to cast a ballot for a candidate in her ward and to vote for up to eight at-large candidates. The ward lines in Holyoke were last redrawn in 1992. The Hispanic community in Holyoke has grown dramatically over the past two decades. In 1980, persons of Hispanic origin accounted for 13.8% of the total population, but they accounted for 31.1% of the total population by 1990. Hispanic voters comprise a clear majority in two wards and account for nearly one-third of the population in a third ward. Hispanic-preferred city council candidates have prevailed in the two Hispanic majority wards, but never to an at-large seat. The district court held the Hispanic vote had been diluted in violation of § 2 of VRA. The court ordered the number of at-large seats to be reduced from eight to two. Under the court ordered format, Hispanics would probably continue to control two of the ward seats. The decreased board size from 15 to eight would boost Hispanics' representation to a level comparable to their share of the voting age population as a whole. The city appealed and moved for a stay. The United States Court of Appeals, First Circuit granted the stay and then remanded the case to the district court. On remand the court reversed and held for the City of Holyoke.

VRA Claim(s): While Hispanics constituted 21.89% of Holyoke's voting age population, the electoral structure limited the Hispanic community's ability to elect the candidates it preferred to only 14% of the available council seats (two of 15) in violation of § 2 of VRA.

Issue(s): The District Court was directed to provide support for its finding of vote dilution in violation of § 2 of VRA by further explaining why vote dilution persisted in spite of improved political conditions.

Majority: On remand, the trial court held the policy underlying the at-large component was not tenuous. The presence of at-large representatives on the city council insured that the perspective of the community as a whole was well represented. The court concluded that it could not state that the interaction of race and the electoral system, as of 1997, resulted in significantly diminished opportunities for minority participation in elective government. The court entered a judgment for the city.

Latino Political Action Committee, Inc., et al. v. City of Boston, et al., 609 F.Supp. 739 (1985)

Decision: Cafrey (Chief Judge)

Facts: Plaintiff political action committee filed suit in the United States District Court for the District of Massachusetts challenging the city's plan for the election of city council and school committee members by district. The political action committee was a Latino group of four non-profit organizations which sought to increase minority participation and influence in politics, and twelve individuals who were residents and registered voters of the city. Plaintiffs argued the city's geographical configuration of the nine electoral districts created by the city's plan impermissibly diluted minority voting strength. Plaintiffs argued the plan minimized the political impact of minority votes in three specific ways: it consolidated or "packed" the black population into only two districts; it divided or "fragmented" the Hispanic population among several districts, and it placed the racially and ethnically diverse population of Boston's South End in a district which is politically dominated by South Boston, an area whose virtually all white population is reputed to be hostile toward minorities. Plaintiffs asserted that by denying minorities equal access to the political process the plan violated § 2 of VRA.

VRA Claim(s): The city's plan impermissibly diluted the political impact of minority votes by packing the black population into only two districts; fragmenting the Hispanic population among several districts and placing the racially and ethnically diverse population of Boston's South End in a district which is politically dominated by South Boston in violation of § 2 of VRA.

Issue(s): Whether the city's plan impermissibly diluted the political impact of minority votes by packing the black population into only two districts; fragmenting the Hispanic population among several districts and placing the racially and ethnically diverse population of Boston's South End violated § 2 of VRA.

Holding: The court entered judgment for the city and held the city's plan did not violate VRA § 2. The court considered the totality of circumstances that affected minority voting strength under the city's district plan and held that it gave minorities an equal opportunity to participate in the city's political life and to elect representatives of their choice. Despite the evidence produced at trial that discrimination against minorities persists in Boston, the record further suggests that such discrimination has not significantly impaired the ability of blacks, Boston's largest minority group, to participate in the City's political life. Furthermore, the City's present electoral scheme is devoid of any practices or procedures which can operate to minimize the impact of minority votes. Plaintiffs cannot and do not contend the City's Latino population is large enough to form a district majority. In fact, the evidence shows that it would be impossible to create a district that was even one-quarter Latino, considering that Latinos constitute only about 6% of Boston's total population and are dispersed throughout the City. Plaintiffs nevertheless maintained Hispanics have the potential to become "a considerable voting bloc," and the existing district plan deprives Hispanics of the opportunity to engage in meaningful coalition building. Plaintiffs cite no legal authority, and the Court found none, supporting the proposition that a minority which cannot form even a bare population majority in one district may nevertheless maintain a voting dilution claim based on a theory of fragmentation.

DEPARTMENT OF JUSTICE ENFORCEMENT

Litigation

United States v. City of Lawrence, No. 98-12256 (D. Mass 1998)

Complaint 1: City's methods of electing its city council and school board violated Section 2 of the Voting Rights Act because they denied Hispanic citizens an equal opportunity to participate in the political process and elect candidates of their choice. The city violated Section 203 and Section 2 of the Act by failing to provide Hispanic citizens with electoral information and assistance in Spanish and refusing to appoint Hispanic and Spanish-speaking poll workers.

Settlement 1: City agreed to change the method of electing its school committee from at-large to single-member districts, and to adopt an election plan for its city council and school board that complied with Section 2 upon release of the 2000 Census. The City agreed to create a Spanish language electoral assistance program that provided Spanish language assistance in all aspects of the electoral process. Among other things, the agreement required the City to hire Spanish-speaking pollworkers to work in every precinct and to hire a bilingual coordinator.

Complaint 2: City's post-2000 Census redistricting plans did not resolve the Section 2 violation.

Consent Decree 2: City agreed to revise the districting plans for both bodies to provide an additional Hispanic-majority district. City also agreed to appoint a bilingual person to the board of registrars

DOJ Monitors/Observers

<u>City/Town</u>	<u>Date</u>	<u>Election Type</u>	<u># of Observers</u>	<u>Press Release Comments/Notes</u>
Lawrence	November 4, 2003	General		Monitoring Connected to Consent Decree regarding Spanish-language assistance
Boston	March 2005	Primary		Monitoring in Chinatown

RHODE ISLAND EXECUTIVE SUMMARY**DEMOGRAPHICS:**

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
Total population	1,048,319	100.0	800,497	100.0
Hispanic or Latino (of any race)	90,820	8.7	55,818	7.0
Not Hispanic or Latino	957,499	91.3	744,679	93.0
One race	936,683	89.4	732,012	91.4
White	858,433	81.9	678,358	84.7
Black or African American	41,922	4.0	28,337	3.5
American Indian and Alaska Native	4,181	0.4	2,723	0.3
Asian	23,416	2.2	16,807	2.1
Native Hawaiian and Other Pacific Islander	320	0.0	250	0.0
Some other race	8,411	0.8	5,537	0.7
Two or more races	20,816	2.0	12,667	1.6

MINORITY REPRESENTATION:

There are no minority members of the United States House of Representatives or the United States Senate from this state. There are two Hispanics, two Cape Verdians and one biracial (white/Cape Verdian) member of the state senate. There is one African American and one biracial (African American/Cape Verdian) member of the state house of representatives.

SECTION 5

Rhode Island is not covered under Section 5.

SECTION 203 AND OTHER MINORITY LANGUAGE MATTERS

The cities of Providence and Central Falls are covered under Section 203 for Spanish language.

SECTION 2 MATTERS

In Rhode Island, the major issue to dominate the voting rights discussion has been the dilution of the minority vote due to redistricting.

In 2001, Harold Metts and other African American voters filed suit in the United States District Court of Rhode Island to challenge the state redistricting plan. After having reduced the number of seats in the house and senate based on the 2000 census, the legislature reduced the black population in the only district represented by an African American. In 2002, the African

American incumbent lost his seat to a Latino challenger – the new district had more Latinos than African Americans. In the lawsuit, the district court held that plaintiffs could not state a claim because they could not devise a majority African American district. The district court's ruling was reversed by the 1st Circuit, sitting en banc, in 2004. Metts v. Murphy, 363 F.3d 8 (1st Cir. 2004)(en banc). After the case was remanded to the district court, the parties settled the matter. The settlement plan restored the black population in the challenged district and placed the Latino incumbent in a different district. The lead plaintiff, Harold Metts, prevailed in the redrawn district in 2004.

In Brown v. Dean, 555 F. Supp. 502 (D.R.I. 1982), the district court held that the moving of a polling place in the black community violated Section 2 of the Voting Rights Act.

DOJ OBSERVERS/MONITORS:

This state has never had DOJ Observers or Monitors.

RHODE ISLAND NARRATIVE**I. Redistricting**

Redistricting has been a common battleground for voting rights activists in Rhode Island. In 2004, a challenge was brought to a Rhode Island Senate redistricting plan,³⁰ which among other things, placed the state's only African-American state senator in the same district as the state's only Latino state senator.³¹ The plaintiffs charged that the new districts intentionally diluted the strength of the African-American vote, in violation of the Voting Rights Act of 1965.³² According to Anita Earls, then of the Lawyers' Committee for Civil Rights Under Law, the plan "unnecessarily dilute[d] the voting strength of ... [African-American] voters when it [was] possible to draw a map that [wouldn't] do that."³³ In one state senate district the percentage of African-Americans was reduced from 25.6 percent to 21 percent.³⁴ For years the district had been represented by African-American state senator Charles Walton. In the first post-redistricting election of 2002, however, Mr. Walton lost his bid for reelection. African-American voters in Rhode Island then filed suit alleging the state redistricting plan violated § 2 of the Voting Rights Act.³⁵

³⁰ Metts v. Murphy, 363 F.3d 8 (1st Cir. 2004) (en. banc).

³¹ Smith, Gregory, *The Providence Journal*, "Campaign 2004—New Senate District a Win For Minorities," September 8, 2004 at A-01.

³² Fitzpatrick, Edward, *The Providence Journal*, "At the Assembly – Suit Seeks to Nullify Senate Districts," May 3, 2002 at B-01.

³³ Fitzpatrick, Edward, *The Providence Journal*, "Civil Rights Group to File Suit Challenging Redistricting Map," May 2, 2002 at B-05.

³⁴ Press Release, NAACP, Providence Branch Secures Redistricting Voting Victory (Apr. 5, 2004) available at <http://www.naacp.org/news/2004/2004-04-05.html>.

³⁵ Metts v. Governor Lincoln Almond, 217 F.Supp.2d 252 (D.R.I. 2002)

The district court dismissed the complaint holding it failed two of the three threshold tests under *Gingles*. Appellants appealed and petitioned for rehearing en banc to the United States Court of Appeals, First Circuit. The First Circuit was unwilling to foreclose the possibility that a § 2 claim could be made where the African-American population of a single member district was reduced in redistricting legislation from 26% to 21%. The district court judgment was vacated and the matter remanded. The parties eventually brokered a compromise requiring realignment of twelve of the state's thirty-eight districts.³⁶ The remedial plan restored the African American population in the challenged district, and the plaintiff, Harold Metts, prevailed in the redrawn district in 2004.

³⁶ Id.

RHODE ISLAND SECTION 2 CASES**Harold Metts, et al. v. William J. Murphy, et al., 363 F.3d 8 (2004)**

Majority: Boudin, Stahl, Lynch, Lipez and Howard
Dissent: Selya (joined by Torruella)

Facts: Black voters in Rhode Island filed suit in the United States District Court for the District of Rhode Island alleging the state redistricting plan violated § 2 of VRA because it had the effect of denying black voters equal opportunity to elect state senate candidates of their choice. Following the 2000 census the Rhode Island legislature adopted a plan reducing the number of seats in both the house and senate. Blacks were 25.7% of State Senate District 9 in Providence prior to the adoption of the redistricting plan. Hispanics were 41.1%. Under the new plan blacks were 21.4% and Hispanics 46.7%. A Hispanic challenger defeated a black incumbent in the primary election following adoption of the plan. The District Court dismissed the complaint holding it failed two of the three threshold tests under Gingles. Appellants appealed and petitioned for rehearing en banc to the United States Court of Appeals, First Circuit.

VRA Claim(s): The Rhode Island state redistricting plan violated § 2 of VRA because it had the effect of denying black voters equal opportunity to elect state senate candidates of their choice.

Issue(s): Whether the United States District Court for the District of Rhode Island should have granted the motion to dismiss.

Majority (Boudin, Stahl, Lynch, Lipez and Howard): The court was unwilling at the complaint stage to foreclose the possibility that a § 2 claim could be made where the black population of a single member district was reduced in redistricting legislation from 26 to 21%. The court noted that several Supreme Court opinions after Gingles have offered the prospect that Gingles' first precondition – that a racial minority must be able to constitute a "majority" in a single-member district – could extend to a group that was a numerical minority but had predictable cross-over support from other groups. The court vacated the district court's judgment and remanded for further consideration regarding how many cross-over votes would be needed to win an election.

Dissent (Selya, joined by Torruella): The dissent argued that the appellants' claim depended on the radical premise that a minority group whose members cannot conceivably comprise anything close to a numerical majority, even in what is from their point of view an ideally configured single-member district, could mount a vote dilution claim. Given the small size of the black population and the magnitude of the crossover voting on which it must rely, the dissent believed that the district court's ruling should have been affirmed.

Note: After the remand, the case was settled.

Harold Metts, et al. v. Governor Lincoln Almond, et al., 217 F.Supp.2d 252 (2002), rev'd and remanded, 363 F.3d 8 (1st Cir. 2004) (en banc).

Decision: Torres (Chief Judge)

Facts: The Rhode Island General Assembly adopted a redistricting plan that revised the boundaries of the state's senatorial districts. The plan was adopted in response to the results of the 2000 census and an amendment to the Rhode Island Constitution which reduced the number of senatorial districts from 50 to 38. Plaintiffs, voters and organizations that represented voters, filed an action in the United States District Court for the District of Rhode Island under § 2 of VRA, claiming that the redistricting plan adopted by the State of Rhode Island denied black voters an equal opportunity to elect candidates of their choice. Plaintiffs alleged that under the plan the percentage of blacks residing in State Senate District 2 is less than 26%, which was the percentage of blacks who resided in former District 9, which also was the percentage that would enable a black candidate preferred by black voters to win an election in an "influence district" that is less than 50% black in population with the help of white and Hispanic crossover voters and that it was possible to create such a district. Defendants moved to dismiss the action.

VRA Claim(s): Black voters claimed the plan violated their rights under § 2 of VRA because it reduced the percentage of the black population in one of the new districts from 25.69% to 21.43%, and increased the percentage of the Hispanic population in the same district from 41.08% to 46.74%, thereby denying Black voters an equal opportunity to elect candidates of their choice.

Issue(s): Whether a group whose members constitute less than a majority of the population in a proposed voting district but who claim the ability to "elect" or "influence" the election of candidates can maintain an action for a violation of § 2 on the ground that the plan denies members of the group the opportunity to elect representatives of their choice.

Holding: The court held the plaintiffs' failure to allege that black voters could constitute a majority in the reconfigured district and their acknowledgment that the reconfigured district did not have a white majority were fatal to their claim. The defendants' motion to dismiss the plaintiffs' lawsuit was granted. The court added that there is nothing in the wording of the statute that supports the assertion of "influence" claims. Although the plaintiffs do not frame their claim as one for denial of equal opportunity to "participate" in the electoral process, construing the term "participate" to include a claimed ability to "influence" the outcome of elections would make the statute's reference to the opportunity to "elect" superfluous. If Congress had intended "participation" to encompass the ability to "influence" electoral results, the reference to the opportunity to "elect" would serve no purpose because the ability to elect, necessarily, is included in the broader and easier to prove ability to influence. The statute's express reference to the opportunity to "elect" suggests that Congress viewed the ability to affect the outcome of elections as something separate and distinct from the ability to participate in the political process.

Subsequent history: see above

Brown v. Dean, 555 F. Supp. 502 (1982)**Decision:** Selya (District Judge)

Facts: A black voter in Providence filed suit in the United States District Court for the District of Rhode Island seeking to enjoin the city Board of Canvassers from using a new polling place. The City Charter expanded the number of wards within the city from 13 to 15, prompting changes to the boundary lines of each district and in the locations of polling places within those districts. For the primary elections, the Board selected the Community Center at Chad Brown as the polling location for the voter's district, but a month later the Board announced the polling place for that district would be moved to a more remote location. The Urban League, other community organizations and concerned individuals conducted a special voter education and registration campaign within Chad Brown during the summer of 1982. The voter registration drive, combined with the use of the Community Center as a voting place, resulted in a significantly higher voter turnout from among the residents of Chad Brown for the primary elections. Plaintiff alleged that a change in the polling place from the Community Center to the new location would make it considerably more difficult for the class members to vote. Many of the class members were elderly and/or without a means of transportation. The public transportation from Chad Brown to the new polling place stopped running at 6:30 p.m., one and one-half hours before the polls closed.

VRA Claim(s): A change in the polling place from the Community Center to the new location would impermissibly dilute minority voting by making it considerably more difficult for the class members to vote, in violation of § 2 of VRA.

Issue(s): Whether the operation of the voting facility at the new location abridged the free exercise of the right to vote of black voters in violation of § 2 of VRA.

Holding: The court enjoined the city from using the polling place at the new location because it would be a substantial deterrent to voting by the members of the plaintiff class and ordered the polling place at the old location restored.

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DEPARTMENT OF JUSTICE ENFORCEMENT

The Department of Justice has not been involved in any voting enforcement matters in Rhode Island.

NEW YORK EXECUTIVE SUMMARY**DEMOGRAPHICS:**

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
Total population	18,976,457	100.0	14,286,350	100.0
Hispanic or Latino (of any race)	2,867,583	15.1	1,974,551	13.8
Not Hispanic or Latino	16,108,874	84.9	12,311,799	86.2
One race	15,742,758	83.0	12,067,663	84.5
White	11,760,981	62.0	9,197,989	64.4
Black or African American	2,812,623	14.8	1,978,647	13.8
American Indian and Alaska Native	52,499	0.3	35,652	0.2
Asian	1,035,926	5.5	801,553	5.6
Native Hawaiian and Other Pacific Islander	5,230	0.0	3,973	0.0
Some other race	75,499	0.4	49,849	0.3
Two or more races	366,116	1.9	244,136	1.7

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File

MINORITY REPRESENTATION IN CONGRESS:

African American Representatives are Gregory Meeks, Major Owens, Charles Rangel, Edolphus Towns. Representatives Jose Serrano and Nydia Velasquez are Hispanic.

SECTION 5-RELATED MATTERS:

Three counties in New York City are covered under Section 5: the Bronx (Bronx County), Manhattan (New York County), and Brooklyn (Kings County).

There have been thirteen Section 5 objections to submissions made from New York, including the 1974 and 1982 Congressional, Senate, and Assembly redistricting plans and the 1992 Assembly redistricting plan. Redistricting efforts are coordinated by The New York State Legislative Task Force on Research and Reapportionment, and the New York City Districting Commission, respectively. New York has lost Congressional seats in each of the past 3 censuses, a result that has only raised the stakes of reapportionment. Critics of state or city-wide redistricting and reapportionment plans have generally sought the creation of additional majority-minority districts without the dilution of existing minority representation.

SECTION 203 AND MINORITY LANGUAGE MATTERS:

Seven New York counties are also required to provide language assistance under § 203: Bronx County (Spanish), Kings County (Spanish, Chinese), Nassau County (Spanish), New York County (Spanish and Chinese), Queens County (Spanish, Chinese, Korean), Suffolk (Spanish), and Westchester (Spanish).

The Department of Justice has recently brought and settled Section 203 lawsuits in Westchester and Suffolk Counties.

Indeed, the most common complaints about discriminatory polling activity cite a failure to comply with language provision requirements by using incorrect translations, failing to provide enough interpreters, or omitting appropriate signage to direct voters to and at the polling place. The Asian American Legal Defense and Education Fund (AALDEF) has been particularly vigilant in noting Section 203-related problems.

SECTION 2 MATTERS

On June 22, the Second Circuit, sitting en banc, will hear a Section 2 challenge to New York's felony disenfranchisement statute in two consolidated cases: Muntaquim v. Coombe, and Hayden v. Pataki. Felony disenfranchisement statutes are largely beyond the scope of the Commission but the issue may come up during the hearing.

Plaintiffs have been most successful in Section 2 challenges to local election systems. Goosby v. Town of Hempstead, 180 F.3d 476 (2d Cir. 1999) was a successful minority vote dilution challenge to the method of electing Hempstead's Town Board. In New Rochelle Voter Defense Fund v. City of New Rochelle, 308 F. Supp. 2d 152 (S.D.N.Y. 2003), the plaintiffs successfully challenged the dismantling of a majority-black district. Plaintiffs also successfully challenged a redistricting plan on grounds that it diluted minority voting strength in Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany, 281 F. Supp. 2d 436 (N.D.N.Y. 2003).

Plaintiffs have been less successful in other types of Section 2 claims, such as:

Eric Rodriguez v. George E. Pataki; Howard T. Allen v. George E. Pataki, 308 F. Supp. 2d 346 (S.D.N.Y. 2004) (three-judge court) (Court rejects claim that minority Plaintiffs claimed N.Y. Legislature violated VRA with 2000 Congressional redistricting plan by discriminating geographically in favor of less populated "upstate" districts).

Butts v. City of New York, 779 F.2d 141 (2d Cir. 1985) (Court reverses district court ruling that claim that NY election law requiring a run-off in an NYC primary if no candidate receives more than 40% of the vote diminishes minority participation in the political process and violates VRA).

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DOJ OBSERVERS/MONITORS

The DOJ has sent observers to New York (Manhattan), Kings (Brooklyn) and Bronx Counties nearly every year since 1989. Since 2001, the DOJ has also sent monitors to Nassau, Suffolk, and Richmond (Staten Island) Counties.

OTHER MATTERS OF INTEREST

Voting Rights Act concerns have been raised in criticizing the 2004 effort to establish nonpartisan elections in New York City (defeated by referendum) and to influencing state legislative efforts to implement the federal Help America Vote Act of 2002 (ongoing).

NEW YORK NARRATIVE**I. Redistricting**

Following the 2000 Census, the City of New Rochelle reapportioned a majority-black district so that it was only a plurality-black district. Voting rights advocates filed suit, claiming the city's plan violated § 2 of the Voting Rights Act.³⁷ The district court held that "by a course of conduct which can only be characterized as intentional and deliberate, the Council diluted a majority-minority district to a plurality-minority district." The city was directed to reconfigure the district back to a black-majority district within 60 days of the date of the judgment.

In 1994 the NAACP filed suit claiming the City of Niagara Falls' election system violated § 2 of the Voting Rights Act.³⁸ Under the city's method of electing members to the City Council, seven members were elected at-large. The district court ruled in favor of the defendants, holding the plaintiffs did not prove the white majority voted sufficiently as a bloc to enable it, in the absence of special circumstances, to usually defeat the minority's preferred candidates. The Second Circuit affirmed.³⁹

A few years later, in *Goosby v. Town Board of Hempstead*, the district judge concluded the at-large system to elect town board members "operated to invidiously exclude black voters from effective participation in political life ... in violation of § 2."⁴⁰ The court ordered the town to adopt a plan consisting of six single-member districts. On appeal, the Second Circuit affirmed,

³⁷ *New Rochelle Voter Defense Fund v. City of New Rochelle*, 308 F.Supp.2d 152 (S.D.N.Y. 2003)

³⁸ *NAACP v. City of Niagara Falls*, 913 F.Supp. 722 (W.D.N.Y. 1994)

³⁹ 65 F.3d 1002 (2d Cir. 1995).

⁴⁰ *Goosby v. Town Board*, 981 F.Supp. 751 (E.D.N.Y. 1997)

agreeing with the district court in that the six-district plan was narrowly tailored to the goal of remedying the vote dilution found.⁴¹

II. Key Legislative and Municipal Initiatives

A. Implementation of the Help America Vote Act

In March 2005, civil rights organizations voiced concern about legislation proposed in the State Senate to implement the federal Help America Vote Act (HAVA) of 2002. One component of the legislation would require rejection of voter registration applications that do not provide driver's license numbers or partial social security numbers. Critics have argued that this measure would create an arbitrary barrier prohibited by the Voting Rights Act and U.S. Constitution since, according to 2003 statistics, only 53% of voting-age New York City residents possess a license, compared to 93% of the population of the rest of the state.⁴²

B. Nonpartisan Elections

Critics of a 2003 effort to establish nonpartisan elections in New York City charged such elections could violate the Voting Rights Act because "voter turnout overall tends to be lower in

⁴¹ 180 F.3d 476 (2nd Cir. 1999)

⁴² Press Release, Brennan Center for Justice, Voting Rights Groups Charge Senate Bill Implementing Help America Vote Act (HAVA) Would Disenfranchise Thousands of New Yorkers; New York State HAVA Implementation Task Force Minority Report In Response to State Implementation Plan: Testimony Before the Committee on Election Law of the New York State Assembly, Sept. 2003, available at <http://wheresthepaper.org/NYSHAVAMinorityReport.htm>.

nonpartisan elections and voter participation is skewed against residents of lower socioeconomic status....⁴³

C. Post-2000 Census Statewide Redistricting/Reapportionment

Voting rights advocates brought a number of complaints regarding the state's 2000 redistricting.

- Civil rights lawyers at the U.S. Department of Justice sought a rationale for a state redistricting plan that sought to increase the number of State Senate seats from 61 to 62.⁴⁴
- The Coalition for a Just Representation in the Bronx sought to persuade the Legislative Task Force on Demographic Research and Reapportionment to create a Hispanic majority Assembly district in the Bronx.
- The Coalition of Bronx NAACP branches criticized the initially proposed redistricting lines of the Legislative Task Force as "grossly misrepresenting at best and totally unfair at worst."
- Finally, in November 2004, the U.S. Supreme Court affirmed a ruling upholding the State's redistricting plan as being in compliance with the Voting Rights Act.⁴⁵

⁴³ Doug Muzzio, "Voting Rights Act," *Gotham Gazette*, June 10, 2003, at <http://www.gothamgazette.com/article/voting/2003-06-10 00:00:00/17/420> (last visited June 1, 2005).

⁴⁴ Richard Perez-Pena, "Questions From Justice Department Delay Plan to Add District to New York Senate," *The New York Times*, June 3, 2002.

⁴⁵ *Rodriguez v. Pataki*, 125 S. Ct. 627 (2004). See also, Associated Press, "Metro Briefing: New York: Court Upholds Redistricting," *The New York Times*, Nov. 30, 2004, at B7.

D. Post-2000 Census Citywide Redistricting/Reapportionment

The redistricting of New York City's 51 City Council districts after the completion of the 2000 Census by the New York City Districting Commission was similarly a focus of voting rights advocates. Because New York County (Manhattan), Bronx County, and Kings County (Brooklyn) are covered jurisdictions under the Voting Rights Act, any city redistricting plan is subject to U.S. Department of Justice preclearance. Despite criticism, the Commission approved a City Council redistricting plan that created two new majority-Hispanic and two new majority-Asian districts. Nevertheless, a representative from the Asian American Legal Defense Fund criticized the new Asian districts for diluting the broader Asian vote.⁴⁶ The Department of Justice precleared the Commission's City Council district lines as in compliance with Section 5 of the Voting Rights Act on May 29, 2003.⁴⁷

E. Other Post-2000 Redistricting/Reapportionment

Protestors demanded drawing a new voting district in the Brentwood/Central Islip area of Suffolk County that would be made up of primarily Latino voters.⁴⁸

III. Department of Justice monitoring

⁴⁶ Minority Groups Oppose City Redistricting Plan, WNBC-NY, Feb. 7, 2003, available at <http://www.fairvote.org/redistricting/reports/remanual/nynews4.htm> (last visited June 7, 2005).

⁴⁷ Muzzio, *supra* note 43.

⁴⁸ John Moreno Gonzales, "Latino District Is a Must, Suffolk Told," *Newsday*, Jan. 29, 2003.

The Department of Justice has sent observers and monitors to protect election-related civil rights on a regular basis in Nassau, Queens, Richmond (Staten Island), New York (Manhattan) and Suffolk Counties.⁴⁹ Election monitors have specifically been sent to protect compliance with the minority language provisions of the Voting Rights Act with respect to Korean, Chinese, and Hispanic-American voters.

IV. Section 203 Litigation

In 2004, the Justice Department filed suit against Suffolk County for failing to provide sufficient bilingual election officials, translation of election-related information into Spanish, and properly trained poll workers to avoid hostile treatment of Hispanic voters.⁵⁰ Suffolk County subsequently entered into a consent decree, in which the county agreed to establish an effective Spanish language election program and allow federal observers to monitor county elections.

In 2005, the Justice Department filed suit against Westchester County for failing to provide assistance to Spanish-speaking voters.⁵¹ A consent decree requiring the county to provide a Spanish language election program is pending approval by the court.

V. Voter Suppression and other Polling Place Issues

A. Incidents from the 2004 Presidential Election

Voters and advocates documented a number of voting problems in the 2004 Presidential election.

⁴⁹ See e.g., Department of Justice *supra* note 4.

⁵⁰ United States v. Suffolk County, No. 04-2698 (E.D.N.Y. 2004).

⁵¹ United States v. Westchester County, New York, No. 05-0650 (S.D.N.Y. 2005).

- In Westchester County, a potential voter was told that one must be a property owner in order to register to vote, and believed it was done to intimidate local Hispanic voters.
- The Asian American Legal Defense and Education Fund (AALDEF) reported that hundreds of Asian American voters were directed to the wrong poll site.
- At one precinct, a Chinese interpreter was assigned to a Korean voter.
- Finally, signage in foreign languages outside polling places was frequently missing or non-existent.

B. Incidents Reported by AALDEF from Previous Elections

AALDEF has compiled extensive findings regarding violations of Asian voters right in past elections. They include:

- Throughout recent elections, exit poll data shows that Asian American voters have regularly reported that were asked to show identification, that their names were not listed in the book of registered voters, that poll-workers were hostile to them, or that they had to vote by paper ballot.
- In the 2002 New York gubernatorial election, the use of Korean-language materials in Queens County for the first time proved a success, but more interpreters were needed.
- Chinese voting booth translations for "Democrat" and "Republican" were flipped in at least six polling sites in Flushing and Elmhurst, Queens. Chinese translation of the instructions for an absentee ballot told voters to choose any FIVE, as opposed to the three candidates they were permitted to choose.

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- Mandated provision of oral language assistance to voters under § 203 of the Voting Rights Act was violated where too few Chinese-speaking interpreters frequently gave poor directions.
- Chinese characters on ballots were too small to read.
- Asian voters were selectively forced to provide proof of citizenship in order to register to vote by the City Board of Elections.
- Finally, some voting sites had no Chinese-language materials or placed directions in hard to read places.

PUBLISHED NEW YORK VRA CASES**SECTION 5****Harry Kaloshi, et al. v. New York City Board of Elections, et al., 2003 U.S. App. LEXIS 13423 (2002)**

Facts: Plaintiffs, potential candidates for various public offices, filed a petition in the United States District Court for the Eastern District of New York seeking a preliminary injunction directing New York City Board of Elections to place them on the ballot of the September 10, 2002 Democratic Party primary election. The signature petition period was originally slated from June 4, 2002 through July 11, 2002. The legislature then changed this period to June 18, 2002 through July 25, 2002. According to Kaloshi, at some point the Board of Elections informed him that the petitioning period that was scheduled to begin on June 18, 2002 would be stayed, yet he learned on June 17, 2002 that petitioning indeed would commence on June 18, 2002. Plaintiff claimed this scheduling confusion prohibited him from assembling his team to gather signatures from the outset of the period. Plaintiff-intervenors were New York voters and argued that their choice of candidates in the Democratic Party primary would be limited if the potential candidates were removed from the ballot. The voter plaintiff-intervenors, in the name of Kaloshi and another plaintiff, asserted that the changes in the period for the circulation and filing of designating petitions enacted by the New York State Legislature violated § 5 of VRA because it was not precleared. Defendants filed a motion to dismiss.

VRA Claim(s): Board of Elections violated § 5 of VRA by not receiving preclearance to administer changes in the period for the circulation and filing of designating petitions.

Issue(s): Whether the Board of Elections' violated § 5 of VRA by enacting changes in the period for the circulation and filing of designating petitions without obtaining preclearance.

Holding: The changes were indeed precleared by DOJ on June 7, 2002. DOJ indicated that it did not interpose any objection to the changes. Accordingly, the § 5 of VRA claim was dismissed.

Roland Rogers v. New York City Board of Directors, et al., 988 F.Supp. 409 (1997)

Opinion: Scheindlin (District Judge)

Facts: Plaintiff filed forms to permit him to run for Mayor of New York City. However, he did not file an application for the city's matching funds campaign finance program before the deadline and was therefore excluded from the program and debates sponsored by the Campaign Finance Board. Plaintiff filed suit in the United States District Court for the Southern District of New York. Defendants filed a motion to dismiss.

VRA Claim(s): Plaintiff alleged defendants violated the § 5 of VRA because the Campaign Finance Board deadline was not precleared by the Attorney General or the District Court. He claimed he was unfairly excluded from participating in the televised debates. Plaintiff did *not* allege that defendants' acts had a racially discriminatory effect or purpose. Defendants filed 12(b)(6) motion to dismiss.

Issue(s): Whether the Campaign Finance Board's deadline for admission in its matching funds program was a violation of § 5 of VRA.

Holding: The motion to dismiss was granted. The Complaint failed to state a claim upon which relief could be granted in that it did not allege that race or color had anything to do with the imposition, administration or effect of the deadline. There was no reason to bring the § 5 remedy to bear when no one, including the plaintiff, believed that the challenged rule had anything to do with the policies underlying VRA, in that the Complaint made no mention of racial animus.

Puerto Rican Legal Defense and Education Fund (PRLDEF), et al. v. David Gantt, et al., 796 F.Supp. 681 (1992)

Majority: Pratt (Circuit Judge), Martin and Johnson (District Judges)

Facts: New York lost three seats in the House of Representatives, reducing its delegation from 34 to 31, following the 1990 census when it became apparent that New York's population grew at a slower rate compared to other states. This case represents three consolidated actions in the United States District Court for the Eastern District of New York, where plaintiffs brought suit seeking federal court determination of new congressional districts for New York State. The New York Legislative Task Force on Demographic Research and Reapportionment was charged with the task of preparing a redistricting plan, but after nearly a year with no resolution, a three-judge panel appointed a Special Master (SM) to develop a plan and the SM had a plan on May 26, 1992. One of the consolidated cases was remanded to the New York Supreme Court, which appointed a panel of three referees to develop a plan. The New York Supreme Court approved the referees' plan. However, it still hadn't been precleared by DOJ at the time and the election was only four months away. This court then held that the SM's plan would go into effect if no other valid plan was in place (i.e., precleared by DOJ or the Attorney General) by July 8, 1992.

VRA Claim(s): (1) Three districts in the plan diluted minority voting because the black voting age population (VAP) was no greater than 59% in any of those districts; (2) Three districts weakened Latino voting strength because the Latino VAP was no greater than 59% in any of those districts; (3) Black registration may be overestimated in two districts and if so, that feature combined with lower turnout rates for blacks compared to whites jeopardizes black voters' opportunity to participate in the political process and elect candidates of their choice; (4) Plan did not use appropriate or reasonably accurate election data to analyze the likely results in the minority "control or influence" districts the plan proposes; (5) The SM did not conduct an appropriate analysis before drawing the proposed districts; and (6) The SM ignored relevant differences between black voters within New York City and neighboring suburban communities.

Issue(s): Whether the Special Master's redistricting plan violated §§ 2 and 5 of VRA.

Holding: Claims (1) and (2) are meritless. All seven majority-minority districts (four black and three Latino) have over a 55% VAP of the relevant minority. There is no bright line rule for discerning an appropriate VAP level within a district. Courts have approved minority districts with VAPs as low as 33.6%, 42.7%, 51%, 51.8% and 55.4%. Regarding claims (3)-(5), the SM relied on actual votes cast in prior elections to conduct the analysis of the likely voting behavior of the districts. There is no evidence to show the SM's conclusions to be erroneous. Finally, regarding claim (6), the SM concluded, based on the information available to him, that the black population in New York City was not large enough to create a majority black district in that borough without submerging the Hispanic VAP there. He chose to add a significant concentration of blacks in Westchester County to a majority-minority district and simultaneously to draw two Hispanic districts in Northern Manhattan and the Bronx, thus adding at least one more Hispanic district without reducing the number of black districts. None of the submissions prove facts undermining the SM's ultimate conclusions. The court adopted the SM's redistricting plan.

East Flatbush Election Committee, et al. v. Mario Cuomo, et al., 643 F.Supp. 260 (1986)

Majority: Altimari (Circuit Judge), Mishler and Platt (District Judges)

Facts: Plaintiffs brought a class action suit in the United States District Court for the Eastern District of New York seeking a new school board election, alleging changes in polling places and time for filing objections to nominating petitions in school board election violated § 5 of VRA because they were not precleared. According to New York City, due to circumstances beyond the Board of Elections' control, some of the polling changes in New York County were submitted to the Attorney General within too short a period of time to receive preclearance prior to the holding of elections, but preclearance was obtained shortly thereafter. The City also claimed that the change in the number of days for submitting specifications to objections was submitted with a package of other material and obtained the Attorney General's "implicit" approval in 1983 through a letter from the Attorney General to the Corporation Counsel that it would interpose no objections to the changes submitted in the package of material.

VRA Claim(s): (1) Several polling places were switched and that such alterations constituted a "change" in practice or procedure relative to voting within the parameters of VRA and required preclearance before being effected; (2) A reduction of time from six to three days for the filing of specifications of the grounds of objections to nominating positions constituted a "change" in practice or procedure and required preclearance.

Issue(s): Whether changes in polling places and changes in the number of days for filing specifications to objections to nominating petitions give rise to a new school board election if not precleared prior to election under § 5 of VRA.

Holding: (1) Polling place switches: The court was initially troubled by the seeming oxymoron of "retroactive preclearance." Nevertheless, a review of case law convinced them that it was possible. (The court relied on *Berry v. Doles*, where plaintiffs sought declaratory and injunctive relief a few days prior to a scheduled election. The Supreme Court held that the undisputed obligation to submit a voting law change to a congressionally designated forum had not been discharged and directed that "the requirement of federal scrutiny imposed by § 5 should be satisfied without further delay." The district court was ordered to grant 30 days to apply to the Attorney General for approval of the change.) The court then concluded that retroactive federal approval satisfied the preclearance requirements of § 5. As the polling site switches were eventually approved by DOJ, the changes did not violate the prescription of § 5. (2) Changes in number of days for submitting specifications: Guidelines for submissions to the Attorney General require "a clear statement of the change explaining the difference between the submitted change and the prior law or practice." DOJ has taken the position that the calendar change was not specifically highlighted in the 1983 submission and therefore had not been presented for preclearance. Because the City resubmitted the change in response to DOJ's position, the Court deferred further action until the Attorney General issued a response because approval would obviate the need for any further proceedings before the court. If approval was not obtained, plaintiffs would be free to renew their request for a new election.

SECTION 2 CASES

Eric Rodriguez, et al. v. George E. Pataki, et al.; Howard T. Allen, et al. v. George E. Pataki, et al., 308 F.Supp.2d 346 (2004)

Majority: Walker (Chief Judge), Koeltl and Berman (District Judges)

Facts: The case reflects consolidated actions in the United States District Court for the Southern District of New York, where plaintiffs (black, Hispanic, and white New York voters) claimed, among other things, the New York State Legislature violated § 2 of VRA by enacting redistricting plans following the 2000 census. The State Legislature was required to reduce the State's congressional seats from 31 to 29 to reflect New York's slower population growth relative to other states. In doing so, the Legislature had to readjust districts so that each district would contain an equal number of inhabitants and be in as compact form as possible to comply with Article III, § 4 of the New York Constitution. The plans were precleared by DOJ.

VRA claim(s): The plaintiffs sought declaratory and injunctive relief against the use of the State's congressional and state legislative districts. They asserted six claims of vote dilution pursuant to § 2: (1) Senate plan as a whole violates § 2 by diluting the votes of black and Latino voters; (2) Bronx-based Senate districts violate § 2 by not drawing a majority-minority district in northern Bronx and southern Westchester counties; (3) Senate District 31 in Manhattan/Bronx violates § 2 by resulting in the denial or abridgement of Latinos right to vote; (4) & (5) Nassau and Suffolk County Senate districts, respectively, violate § 2 by fragmenting politically-cohesive and compact black and Latino communities who are sufficiently numerous to form a district in which minority voters would have the opportunity to elect the candidate of their choice into multiple districts; and (6) Congressional District 17 in the Bronx, Westchester, and Rockland counties violates § 2 by diluting the voting strength of black voters in Bronx County and throughout the city of New York.

Issue(s): Whether 2002 New York State Legislature Senate and congressional redistricting plans violate § 2 of VRA.

Holding: Plaintiffs argue the plan discriminates geographically (as opposed to racially), favoring underpopulated "upstate" districts over overpopulated "downstate" districts. Plaintiffs failed to establish their claims that the redistricting plans violated VRA. New York's redistricting laws reflect traditional districting principles. The Senate Plan reflects less than a ten percent deviation in population between any two Senate districts, falling within the category of "minor deviations." The Senate Plan achieved substantial proportionality of minority representation in the Bronx. Four of the five Bronx Senate districts are majority-minority districts. Combined, Hispanics and blacks are 76.1% of the Bronx citizen voting age population (CVAP) and 77.5% of the voting age population (VAP). In Suffolk County blacks and Hispanics combined would constitute only 33.7% and 40.2% of the CVAP and VAP, respectively, in plaintiffs' proposed "minority-coalition influence district." In Nassau County, under plaintiffs' proposed "ability to elect district," blacks would constitute less than 37% of the VAP and CVAP, respectively, and would still not have the ability to elect candidates of their choice. The relief sought by the plaintiffs cannot be justified under VRA.

New Rochelle Voter Defense Fund, et al. v. City of New Rochelle, et al., 308 F.Supp.2d 152 (2003)

Decision: Bricant (District Judge)

Facts: The City of New Rochelle reapportioned its six council districts following the 2000 Census. District 3, which prior to the reapportionment was a majority-black district, was now only a plurality-black district under the new configuration. Plaintiffs, in consolidated actions, filed suit in the United States District Court for the Southern District of New York seeking a declaratory judgment that the City of New Rochelle's redistricting plan violated § 2 of VRA and an Order directing the Council to establish district lines that are consistent with law.

VRA Claim(s): The City Council of New Rochelle (Council) unlawfully diluted the voting strength of the black community with respect to the New District 3, which is merely a plurality-black district while the Old District 3 was a majority-black district and "disregarded traditional districting principles when it fragmented Rochelle Heights, a predominantly black community with shared interests and did so to dilute their voting strength in violation of § 2 of VRA.

Issue(s): Whether the Council unlawfully diluted the voting strength of the black community with respect to the New District 3 in violation of § 2 of VRA.

Holding: By a course of conduct which can only be characterized as intentional and deliberate, the Council diluted a majority-minority district to a plurality-minority district. While Old District 3 was too large in population and defendants did a commendable job of equalizing the population in the districts, besides taking areas out of Old District 3 that were necessary to reduce its size, they also added more and took out more. The areas added had a lesser proportion of black population than those taken out. Plaintiffs have demonstrated that they have the right to have the central district configured so as to reach a black population of at least 54.5%, consistent with the 2000 Census figures. The city was directed to do so within 60 days of the date of the judgment.

Loren J. Montano, et al. v. Suffolk County Legislature, et al., 268 F. Supp.2d 243 (2003)

Decision: Spatt

Facts: Plaintiffs, minority voters, filed suit in the United States District Court for the Eastern District of New York, seeking declaratory and injunctive relief. Plaintiffs alleged that a voter redistricting plan developed following the 2000 Census violated VRA. Plaintiffs sought a preliminary injunction, enjoining legislative elections under the plan, and appointing and directing the county to pay for a Special Master. The court held an evidentiary hearing.

VRA Claim(s): Redistricting plan fails to provide for a majority Hispanic district and fails to provide the full benefits of the law to Hispanic and Black communities in violation of § 2 of VRA.

Issue(s): Whether the redistricting plan followed generally accepted redistricting principles and whether it diluted the Black and Hispanic voting strength.

Holding: The court held the voters had shown that the plan diluted the strength of Hispanic residents' votes and, thus, established irreparable harm. However, as the voters had not shown that the minority groups at issue were sufficiently large and geographically compact to actually be a majority in a hypothetical single-member district, they had no likelihood of success on the merits under § 2 of VRA. That seven out of nine of the "totality" of the circumstance factors favored defendants supported this finding. Additionally, because the plaintiffs did not present sufficient evidence to demonstrate white-bloc voting in Suffolk County Legislative elections, they did not show a likelihood of success on the merits with respect to the third Gingles precondition. The court denied the voters' motion to declare the redistricting plan in violation of § 2 of VRA, the motion to enjoin the defendants from holding any further legislative elections under the plan, the motion for a preliminary injunction and the motion to appoint a Special Master.

Mary France, et al. v. George E. Pataki, et al., 71 F.Supp.2d 317 (1999)**Decision:** Sprizzo (District Judge)

Facts: Plaintiff voters brought an action in the United States District Court for the Southern District of New York under § 2 of VRA challenging the method of selecting New York State Supreme Court Justices in New York City, contending denial of Latino and black residents of an equal opportunity to participate in the political process and seeking an order directing the implementation of a single-member district nomination system. Supreme Court Justices are elected from judicial districts that contain and are coterminous with one or more whole counties in the State, of which four encompass the five counties comprising New York City. The State of New York is divided into twelve judicial districts and the number of Justices in each judicial district is fixed by a population formula. Candidates for Supreme Court vacancies within these districts are selected through district judicial nominating conventions rather than at-large primary elections within each judicial district.

VRA Claim(s): The present method of selection, nomination, and at-large election of New York State Supreme Court Justices in the 1st, 2nd, 11th, and 12th judicial districts in New York State prohibit minority voters in New York City from having an equal opportunity to participate in the political process leading to the nomination and election of Supreme Court Justices, in violation of § 2 of VRA.

Issue(s): Whether the present method of selection, nomination, and at-large election of New York State Supreme Court Justices in the 1st, 2nd, 11th, and 12th judicial districts in New York State impermissibly prohibits minority voters in New York City from having an equal opportunity to participate in the political process leading to the nomination and election of Supreme Court Justices, in violation of § 2 of VRA.

Holding: The court dismissed the complaint with prejudice because plaintiffs failed to prove by a preponderance of the evidence the existence of required preconditions for a suit under § 2 of VRA. The court held that plaintiffs failed to meet two of three Gingles preconditions. The court found that plaintiff's redistricting plan was driven substantially by race, and did not consider other relevant factors. The plan was not narrowly tailored to further a compelling state interest. The court also held that white-bloc voting did not usually defeat minority-preferred candidates. Plaintiff's expert relied improperly on non-judicial elections for data, and admitted that winning candidates in those elections received substantial minority support.

Dorothy Goosby, et al. v. Town Board of the Town of Hempstead, New York, et al., 180 F.3d 476 (1999)

Majority: Miner, McLaughlin (Circuit Judges)
Concurrence: Leval (Circuit Judge, concurring in result)

Facts: Plaintiff voters brought an action in the United States District Court for the Eastern District of New York alleging violations of § 2 of VRA. On February 20, 1997, the district judge concluded that the at-large system used for electing members of the Town Board operated to invidiously exclude black voters from effective participation in political life in the Town of Hempstead in violation of § 2. The judge ordered the Town Board to submit a remedial plan that divided the Town into six single-member voting districts. On May 16, 1997, the Town Board submitted two proposals. The first was a highly unusual two-district plan. One of the two districts was a single-member majority-minority district that was identical to the majority-minority district proposed by plaintiffs at trial. However, under the Town Board's two-district plan, the rest of the Town was a single, multi-member district for the election of the remaining five members of the Town Board. The second proposed plan, which the Town was advancing only in the event the district judge rejected the first, was a six-district plan that was substantially similar to the plan proposed by plaintiffs at trial. Plaintiffs opposed the two-district plan, contending that it violated § 2 of VRA. They had no objection to the six-district plan proposed in the alternative. The court enjoined the town from using such a system and ordered it to adopt and utilize a remedial plan consisting of six single-member districts. Defendant town appealed.

VRA Claim(s): The at-large system used for electing members of the Town Board operated to invidiously exclude black voters from effective participation in political life in the Town of Hempstead in violation of § 2 of VRA.

Issue(s): Whether the district court erred in determining the at-large method violated § 2 of VRA.

Holding: The court affirmed the ruling on liability. Regarding remedy, the court agreed with the district court in that even if the six-district plan required strict scrutiny, it was in any event narrowly tailored to the goal of remedying the vote dilution found. It included six reasonably compact districts that are normal in shape and approximately equal in size of population. It respected local community boundaries, and racial considerations were addressed only insofar as necessary to remedy the violation. They concluded the six-district plan was an entirely appropriate remedy under the circumstances and affirmed the district court's judgment in its entirety.

Dr. Eugene T. Reed, Sr., et al. v. Town of Babylon, et al., 914 F.Supp. 843 (1996)**Decision:** Seybert (District Judge)

Facts: Plaintiffs, a class of black citizens, brought suit in the United States District Court for the Eastern District of New York alleging the town's at-large election system for the board violated § 2 of VRA. The citizens claimed the system of electing four board members and a supervisor at-large impermissibly diluted the voting strength of blacks. The Town of Babylon contains three areas of compact black population. The largest concentration is in the Wyandanch and Wheatley Heights area. Its population includes 11,864 blacks using 1990 Census figures. The second concentration is in the area of North Amityville. Its population includes 9,215 blacks using 1990 Census figures. The third concentration is on the eastern border in the hamlet of Deer Park. Approximately 1,809 blacks live in this third concentration using 1990 Census figures. The total black population in these three concentrations is 22,888. Each of these population groupings is separated from the others by significant white populations and are geographically divided. Plaintiffs sought to have the present method of election declared invalid and to have it replaced by single-member districts.

VRA Claim(s): The at-large method of electing the Town Board dilutes the voting power of the Town of Babylon's black citizens in violation of § 2 of VRA.

Issue(s): Whether plaintiffs have proven that they have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice to the Town Board.

Holding: The court found for the town and the board members in all respects and ordered all claims dismissed. The citizens did not establish that they had less opportunity than other members of the electorate to participate in the electoral process. The citizens did not meet the threshold requirement for proving a § 2 violation because they did not establish that the black group was sufficiently large and geographically compact to constitute a majority in a single-member district. The citizens' redistricting plan did not satisfy the threshold requirement because it was drawn solely based on race, was convoluted in shape, did not follow natural boundaries, and required placing 94% of the town's black population in a single district. It was not permissible to increase the size of the board, and hence the number of districts, in order to satisfy the threshold requirement. The citizens also did not prove that electoral defeat came at the hands of a cohesive white majority because losses by minority-preferred candidates were attributable to partisan voting rather than racial bias.

The NAACP, et al. v. The City of Niagara Falls, New York, et al., 65 F.3d 1002 (2nd Cir. 1995)

Majority: McLaughlin, Cabranes and Parker (Circuit Judges)

Facts: Plaintiffs, a black advocacy group and local chairperson, and black voters, filed suit in the United States District Court for the Western District of New York seeking a declaratory judgment establishing that the election system violated § 2 of VRA because it resulted in a denial or abridgement of their right to vote on account of their race. Under the present method of electing members to the City Council, a method that was approved by a city-wide referendum in 1985, the seven members of the City Council are elected at-large. Plaintiffs challenged the existing method of electing members to the Niagara Falls City Council, pursuant to § 2 of VRA. Plaintiffs believe that denial or abridgement is established by a showing that, under the totality of circumstances, the political processes leading to nomination or election to the City Council are not equally open to participation by blacks in the City of Niagara Falls in that blacks have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The district court entered judgment in favor of the defendants. The court held that while the plaintiffs demonstrated their minority group was sufficiently large and geographically compact to constitute a majority in a single-member district and the minority group was politically cohesive, they did not establish a prima facie case under § 2 of the Act because they failed to prove by a preponderance of the evidence that the white majority voted sufficiently as a bloc to enable it, in the absence of special circumstances, to usually defeat the minority's preferred candidates. Plaintiffs appealed.

VRA Claim(s): Under the present method of electing members to the City Council blacks have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice in violation of § 2 of VRA.

Issue(s): Whether the district court erred in concluding Appellants failed to prove the white majority voted sufficiently as a bloc to enable it, in the absence of special circumstances, to usually defeat the minority's preferred candidates

Majority: The court held that although the trial court erred when it found the plaintiffs failed to satisfy the third Gingles prong (legally significant white bloc voting), its ultimate conclusion that under the totality of the circumstances plaintiffs failed to prove vote dilution under § 2 was not clearly erroneous. Thus the district court decision was affirmed.

The Fund for Accurate and Informed Representation, Inc., et al. v. Saul Werpin, et al., 796 F.Supp. 662 (1992)

Majority: Cardamone (Circuit Judge), McCurn (Chief District Judge) and Munson (Senior District Judge)

Facts: Plaintiffs nonprofit corporation, other corporations and individual voters, brought three actions, since consolidated, in the United States District Court for the Northern District of New York challenging the redistricting apportionment plan for the State assembly and the 1983 assembly and senate apportionment plans. Plaintiffs allege the 1992 reapportionment plan resulted in dilution of minority voting rights and interests in violation of § 2 of VRA. This three-judge court was convened by the Chief Judge of the United States Court of Appeals for the Second Circuit to hear and determine the issues raised in three actions involving the reapportionment of the State of New York based on the 1990 Census. The ultimate relief requested by plaintiffs in these actions was for the court to adopt a constitutionally and statutorily valid redistricting plan in time for the 1992 electoral process scheduled to commence on July 9, 1992.

VRA Claim(s): The 1992 reapportionment plan resulted in dilution of minority voting rights and interests in violation of § 2 of VRA.

Issue(s): Whether the reapportionment plan impermissibly resulted in dilution of minority voting rights and interests in violation of § 2 of VRA.

Holding: The court found that the voters' challenges to the assembly redistricting plan was without merit. It found no statutory violation except for the Attorney General's refusal to preclear two districts under VRA and directed the drawing of new district lines for them compliant with VRA. The court adopted the legislature's apportionment of the remaining districts in the assembly plan. The court held that because plaintiffs conceded the maximum population deviation did not exceed 10%, they failed to establish a prima facie case of discrimination. The State did not have to justify an apportionment plan with a deviation of under 10%. There was no evidence suggesting that the government's gerrymandering contaminated the senate apportionment plan or that there was any link between the alleged fragmentation of certain minority communities and an intent to preserve the incumbency of white officials. Thus, intentional discrimination could not be inferred. The court was not persuaded that the alleged "packing" of minority districts affected in the Assembly plan rose to the level of a VRA infirmity. Plaintiffs argued the plan created too few minority control districts because it used too high a percentage of minority population to create an effective control district. The higher minority concentrations are needed, defendants claim, principally due to various lower voter turnout, registration and voting age population figures among minorities as compared to the non-Hispanic white community, and due to the geographic concentrations of minorities in certain areas. Plaintiffs did not convince the court the state legislature's decision to heighten the minority population in certain Assembly districts is a pretext for an unworthy goal.

Reverend Calvin O. Butts, et al. v. City of New York, et al., 779 F.2d 141 (1985)**Majority:** Lumbard and Newman (Circuit Judges)**Dissent:** Oakes (Circuit Judge)

Facts: A New York statute, Election Law § 6-162, requires a run-off election in a New York City primary if no party candidate receives more than 40% of the vote. Appellees, representing a class of all present or potentially eligible black and Hispanic voters residing in New York City, filed suit in the United States District Court for the Southern District of New York, alleging the election law violated § 2 of VRA on the ground that it diminishes minority participation in the political process. The district court entered judgment declaring the statute violated § 2 of VRA and enjoined the Appellants from conducting any run-offs pursuant to § 6-162. City of New York appealed.

VRA Claim(s): Election law § 6-162 violates § 2 of VRA in that it diminishes minority participation in the political process.

Issue(s): Whether the district court erred in ruling that Election Law § 6-162 violates § 2 of VRA and enjoining Appellant from conducting run-offs pursuant to it.

Majority: The district clearly erred in finding that the enactment of the run-off law was motivated by racial discrimination. VRA is directed at procedures that deny racial minorities a fair opportunity to participate in the electoral process, and not at those that may have the result of reducing the likelihood that a minority will elect its preferred candidate to a *single-member office*. A run-off requirement in an election to a single-member office does not deny any class an opportunity for equal representation and therefore cannot violate § 2 of VRA. Consequently, § 6-162 does not have the effects that are proscribed by § 2; indeed it is not yet clear whether the law will diminish the voting power of racial minorities in New York City. The judgment was reversed with direction to dismiss the complaint.

Dissent: The district court properly found that the law has a discriminatory effect so as to violate § 2 of VRA. As the majority correctly points out, it is the *anticipated* effect of the law with which we are concerned. The majority misses the point of the 1982 amendments to VRA. The majority focuses on minority opportunity for "representation," but ignores the statute's and legislative history's emphasis on opportunity to "participate."

DOJ ENFORCEMENT

LITIGATION

United States v. Westchester County, NY No. 05-0650 (S.D.N.Y. 2005)

Complaint: Westchester County violated Section 203 of the VRA by failing "to provide, in the Spanish language, the information and assistance needed by Hispanic citizens of limited-English proficiency to participate effectively in the electoral process" and by failing to post at polling locations information required by Section 302 of HAVA.

Status: Consent decree requiring county to provide a Spanish language election program and assure compliance with HAVA is pending approval. The decree would extend until August 2, 2007, with automatic extension until December 31, 2008, on motion by the United States.

United States v. Suffolk County No. 04-2698 (E.D.N.Y. 2004)

Complaint: Suffolk County violated Section 203 by failing to provide sufficient bilingual election officials, translation of election-related information into Spanish, and properly trained poll workers to avoid hostile treatment of Hispanic voters.

Consent Decree: Effective until January 31, 2007, Suffolk County must establish an effective Spanish language election program and federal observers may be assigned to monitor county elections.

United States v. Brentwood Union Free School District (E.D.N.Y. 2003)

Complaint: Brentwood School District violated Section 203 by not providing sufficient bilingual election officials, translating all election-related materials into Spanish, and failing to adequately train election officials to avoid hostile treatment of Hispanic Voters.

Consent Decree: Effective until January 31, 2007, Suffolk County must establish an effective Spanish language election program and federal observers may be assigned to monitor county elections.

SECTION 5 OBJECTIONS

These are proposed actions that the USDOJ objected to under the preclearance requirements of Section 5. The city or county presumably either presented more information or changed the course of action to overcome the objection and avoid a lawsuit.

1. September 18, 1981: Bifurcation of councilman elections, conducting of at-large contests separate from district contests
2. October 27, 1981: (Bronx, Kings, and New York Ctys.) Passage of Local Law 47 redistricting the councilman districts
3. June 22, 1982: Reapportionment of Congressional, Senate, and Assembly Districts
4. July 19, 1991: Redistricting plan for New York City Council
5. June 24, 1992: Assembly redistricting plan
6. August 9, 1993: Chinese language program for city and city school district
7. May 13, 1994: Chinese language election procedures
8. December 5, 1994: Addition of Supreme Court and Court of Claims positions and the implementation of procedures for designating candidates to particular Supreme Court positions in 1994
9. November 15, 1996: New York City Community School District 12's temporary replacement of all nine board members with three appointed trustees and the permanent replacement of all nine board members with five appointed trustees
10. February 4, 1999: Change in method of election from single transferable vote to limited voting with four votes per voter

DOJ OBSERVERS AND MONITORS⁵²

<u>City/Town</u>	<u>Date</u>	<u>Election Type</u>	<u># of Observers</u>	<u>Press Release Comments/Notes</u>
Bronx (New York)	November 5, 1985	Municipal	38	
Kings (New York)	November 5, 1985	Municipal	36	
New York (New York)	November 5, 1985	Municipal	33	
Bronx (New York)	September 12, 1989	Municipal Primary	29	
Kings (New York)	September 12, 1989	Municipal Primary	34	
New York (New York)	September 12, 1989	Municipal Primary	29	
Kings (New York)	November 7, 1989	Municipal General	40	
New York (New York)	November 5, 1991	Municipal General	19	
Kings	November 3, 1992	Federal	8	
New York	November 3, 1992	Federal	12	
Bronx (New York)	September 14, 1993	Municipal Primary	29	
Kings (New York)	September 14, 1993	Municipal Primary	34	
New York (New York)	September 14, 1993	Municipal Primary	54	
Bronx (New York)	November 2, 1993	General	29	
Kings (New York)	November 2, 1993	General	36	

⁵² Entries in plain roman type designate monitors; entries in plain roman type designate observers.

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New York (New York)	November 2, 1993	General	48	
Kings	September 13, 1994	Primary	7	Monitor whether election officials are following Chinese-Language bilingual procedures in Manhattan and Brooklyn.
New York	September 13, 1994	Primary	19	Monitor whether election officials are following Chinese-Language bilingual procedures in Manhattan and Brooklyn.
Kings	November 8, 1994	Federal	12	
New York	November 8, 1994	Federal	17	
New York	September 10, 1996	Primary	17	
New York	November 5, 1996	Federal	19	Obtain information on efforts to provide information and materials to Chinese Language voters.
New York (New York)	September 9, 1997	Primary	14	Protect the rights of Chinese speaking voters
Kings (New York)	November 4, 1997	General	7	Observe the NYC Board of Election's implementation of its Chinese-language election program. Ensure balloting information is available in Chinese and interpreters available.
New York (New York)	November 4, 1997	General	7	Observe the NYC Board of Election's implementation of its Chinese-language election program. Ensure balloting information is available in Chinese and interpreters available.
New York	September 15, 1998	Primary	9	Ensure that Chinese-language voters who need help translating ballots are given proper assistance, and that other aspects of the NYC Board of Election's Chinese-language election program are being properly implemented.
Kings	November 3, 1998	Federal	3	9 observers to "determine if efforts to provide information and materials to Chinese language voters as prescribed under the Act are effective
Kings	September 12, 2000	Primary	4	Monitor compliance with Chinese language election procedures.
New York	September 12, 2000	Primary	5	
Kings	November 7, 2000	Federal	7	Monitor treatment of Chinese American voters

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New York	November 7, 2000	Federal	7	Monitor treatment of Chinese American voters
Bronx (New York)	September 11, 2001	Municipal Primary	15	
Kings (New York)	September 11, 2001	Municipal Primary	7	Monitor polling place activities and NYC's compliance with Chinese and Spanish language election procedures.
New York (New York)	September 11, 2001	Municipal Primary	10	Monitor polling place activities and NYC's compliance with Chinese and Spanish language election procedures.
Queens, Suffolk (Brookhaven, Huntington, and Islip)	September 11, 2001	Municipal Primary		
Bronx (New York)	October 11, 2001	Municipal Primary	15	Monitor polling place activities and NYC's compliance with Chinese and Spanish language election procedures.
Bronx (New York)	November 6, 2001	Municipal General	20	Monitor compliance with Chinese and Spanish language procedures.
Kings (New York)	November 6, 2001	Municipal General	15	Monitor compliance with Chinese and Spanish language procedures.
Kings (New York)	November 6, 2001	Municipal General	8	Monitor compliance with Chinese and Spanish language procedures.
New York (New York)	November 6, 2001	Municipal General	9	Monitor compliance with Chinese and Spanish language procedures.
Suffolk (Brookhaven, Huntington, and Islip)	November 6, 2001	General		
Queens and Suffolk	September 10, 2002	Primary	12	Ensure compliance with the minority language provisions for the VRA with respect to Korean-Americans (Queens) and Spanish speaking Americans (Suffolk)
Kings	November 5, 2002	Federal	20	
New York	November 5, 2002	Federal	17	
Queens	November 5, 2002	Federal		
Queens	November 4, 2003	General		

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Nassau, Queens, Richmond, Suffolk	September 14, 2004	Primary		Assure compliance with federal law requiring provision of voters materials in Spanish (and Chinese and Korean in Queens)
Kings	November 2, 2004	General	8	
New York	November 2, 2004	General	8	
Suffolk	November 2, 2004	General	55	
Nassau, Queens, Richmond, Westchester	November 2, 2004	General		

PENNSYLVANIA EXECUTIVE SUMMARY**DEMOGRAPHICS:**

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
Total population	12,281,054	100.0	9,358,833	100.0
Hispanic or Latino (of any race)	394,088	3.2	245,424	2.6
Not Hispanic or Latino	11,886,966	96.8	9,113,409	97.4
One race	11,773,869	95.9	9,051,696	96.7
White	10,322,455	84.1	8,036,037	85.9
Black or African American	1,202,437	9.8	832,144	8.9
American Indian and Alaska Native	14,904	0.1	11,139	0.1
Asian	218,296	1.8	163,677	1.7
Native Hawaiian and Other Pacific Islander	2,691	0.0	2,032	0.0
Some other race	13,086	0.1	6,667	0.1
Two or more races	113,097	0.9	61,713	0.7

MINORITY REPRESENTATION IN CONGRESS:

Representative Chaka Fattah, a Democrat, is an African-American.

SECTION 5 RELATED MATTERS

Neither Pennsylvania nor any of Pennsylvania's counties are covered by § 5 of the Voting Rights Act.

SECTION 203 AND MINORITY LANGUAGE RELATED MATTERS

Philadelphia County is covered for the Spanish language.

In *United States of America vs. Berks County, Pennsylvania, et al.*, 277 F. Supp. 2d 570 (E.D. Penn. 2003), the court held that the unavailability of language assistance in City of Reading denied Hispanic and Spanish-speaking citizens equal opportunities to participate in the election process and also prevent eligible votes from receiving assistance from the person of their choice in violations of several provisions of the Voting Rights Act. The court ordered a permanent injunction requiring defendants' compliance and authorized the appointment of federal examiners to oversee compliance.

The Election Protection reports from 2004 indicated that minority voters also have reported significant difficulty obtaining Spanish-language assistance. Voters in four different Pennsylvania counties reported that such assistance was either delayed or altogether unavailable.

SECTION 2 RELATED MATTERS

In Angel Ortiz, et al. v. City of Philadelphia Office of the City Commissioners Voter Registration Division, et al., 28 F.3d 306 (3rd Cir. 1994), the 3rd Circuit affirmed the district court's rejection of a Section 2 challenge to Pennsylvania's purge statute.

In Metropolitan Pittsburgh Crusade for Voters v. City of Pittsburgh, Pennsylvania, et al., 686 F. Supp. 97 (W.D. Penn 1988), plaintiffs alleged that the at-large system of City-Council elections denies black citizens an equal opportunity to participate in the political process and elect representatives of their choice, violating VRA. After the lawsuit was filed, the city's voters voted to change to district elections.

DOJ OBSERVER/MONITOR COVERAGE

The Department of Justice has sent observers to reading several times (see above). It sent monitors to Philadelphia in 2004.

OTHER MATTERS OF INTEREST

Attempts at minority voter suppression and intimidation have occurred in predominantly minority communities throughout Pennsylvania. The reporting of such incidents has increased in connection with more recent elections.

In the 2003 mayoral election in Philadelphia, there were reports of intimidation against African American voters. In 2004, there were several problems reported through Election Protection. African-American communities were also the targets of an organized misinformation campaign, which erroneously advised that the period for casting ballots had been extended; for example, there was a flier that appeared to have the letterhead of a township in Allegheny County which stated that Republicans would vote on November 2 and Democrats would vote on November 3. African-American also voters reported that not only were identification requirements being selectively enforced against them, but also that they encountered hostility from poll workers.

PENNSYLVANIA NARRATIVEI. Non-English speaking votersA. The Berks County Case

In *U.S. v. Berks County, Pennsylvania*, the court made extensive findings with respect to the "hostile and unequal treatment of Hispanic and Spanish-speaking voters by poll officials."⁵³ In concluding that the maltreatment of these voters violated the Voting Rights Act of 1965,⁵⁴ the court found that poll workers in the City of Reading:

- turned away Hispanic voters because they could not understand their names, or refused to "deal" with Hispanic surnames;
- made hostile statements about Hispanic voters attempting to exercise their right to vote in the presence of other voters;
- placed burdens on Hispanic voters that were not imposed on white voters, such as demanding photo identification or a voter registration card even though no such requirement exists under Pennsylvania law;
- excluded Hispanic voters entirely during the municipal primary election; and
- made Hispanic voters generally uncomfortable and intimidated in the polling place, and discouraged them from voting.⁵⁵

⁵³ 250 F. Supp. 2d 570, 575 (E.D. Pa. 2003).

⁵⁴ The judge ordered "election officials to begin printing all election materials in both English and Spanish for any precinct where registered Hispanic voters constitute more than 5 percent of those on the rolls." Shannon P. Duffy, "Help Coming for Hispanic Voters in Pennsylvania," *Broward Daily Business Review*, Mar. 21, 2003, at A8.

⁵⁵ *Id.* at 575–76.

The case resulted in an order by the Justice Department, effective until June 30, 2007, that Berks County recruit and train bilingual poll officials, provide all election material in Spanish, publicize the availability of bilingual services, and meet with Hispanic citizens prior to every election to discuss the voting process. Further, the order allows the Justice Department to send federal examiners to monitor an elections in Reading City. In 2003 and 2004, the Justice Department exercised this right by sending a total of 216 federal examiners to Reading's primary and general elections.

B. The Ortiz Case

Pennsylvania's non-voting purge statute provided that registered voters who failed to vote for two years would be purged from the registration rolls after being provided notice of the same. In 1994, a city council member and voters' rights groups in Philadelphia filed suit to enjoin the city from implementing the purge law under § 2 of the Voting Rights Act.⁵⁶ After recognition that black and Latino voters were purged at disproportionately higher rates than whites, the district court nonetheless held the statute did not deprive minority voters of equal access to the political process in violation of § 2. On appeal the Third Circuit affirmed the district court's decision, holding the tendency of the statute to result in removal of more minority voters than others was simply indicative of the tendency of minorities to vote less frequently than other groups.⁵⁷

C. Election 2004

Much like African-Americans, non-English speakers faced considerable difficulties during the 2004 Election. In one heavily Hispanic district in Philadelphia County, no translator

⁵⁶ 824 F.Supp. 514 (E.D. Pa. 1993)

⁵⁷ Ortiz v. City of Philadelphia, F.3d 306 (3rd Cir. 1994)

was available.⁵⁸ Other voters in this county were unable to obtain any materials in Spanish, despite repeated requests.⁵⁹ One voter was permitted to take her son into the voting booth for English-language assistance, but when the election officials discovered that she "wanted to vote the straight Democratic ticket, the voter was kicked out."⁶⁰ A similar situation occurred in Lehigh County, where an "elderly woman entered the voting booth to help her husband vote."⁶¹ She was shoved aside by the poll worker, so that while her husband did vote, he was not sure that he had done so correctly.⁶² At a different polling place, also in Lehigh County, a Spanish-speaker was unable to obtain any assistance, even though the population of that area was "30% Latino."⁶³ Likewise, in Lancaster County, poll workers refused to give a Spanish-speaking woman instructions in Spanish. When representatives from ACORN arrived to assist her, they were denied access to the polling place.⁶⁴ No such help was even available for voters in Berks County, where there were reports that "some Hispanic voters were not receiving the help they needed."⁶⁵

⁵⁸ EIRS, County Election Incidents: Philadelphia County, reported Nov. 2, 2004.

⁵⁹ Id. The same was true in Dauphin County. See EIRS, County Election Incidents: Dauphin County, reported Dec. 7, 2004.

⁶⁰ Id.

⁶¹ EIRS, County Election Incidents: Lehigh County, PA, reported Nov. 2, 2004.

⁶² Id.

⁶³ Id.

⁶⁴ EIRS, County Election Incidents: Lancaster County, PA, reported Nov. 2, 2004.

⁶⁵ EIRS, County Election Incidents: Berks County, PA, reported Nov. 2, 2004. These reports are confirmed in People for the American Way, *Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections*, at 28 (Dec. 2004).

Elsewhere, Hispanic voters were subjected to verbal harassment by the Caucasian poll workers. One voter was told that he "should not vote here if [he] can't speak English."⁶⁶

D. Incidents of Discrimination in the 1990's

Earlier in the 1990s, a Justice Department investigation in Philadelphia found that campaign workers were "allegedly misleading the voters about the documents they were signing, or steering or intimidating the voters into voting for the Democratic candidate."⁶⁷ The Justice Department also sent federal monitors to Reading City to monitor the treatment of Hispanic voters in 2001 and 2002.

II. African-American Voters

A. 2004-2005 Elections

African-Americans in six different Pennsylvania counties reported voter suppression and intimidation in connection with elections in 2004 or 2005.

Many poll workers required identification from only minority voters. In Lancaster County, a poll worker asked only African-American voters for identification, while permitting Caucasian individuals to vote without providing identification.⁶⁸ A similar incident occurred in Delaware County, where an African-American voter waited behind more than thirty Caucasian voters early in the morning on November 2, 2004. While none of those ahead of him were asked

⁶⁶ EIRS, County Election Incidents: York County, PA, reported Nov. 2, 2004.

⁶⁷ Jim Crow, supra note 15 at 10; see also U.S. Department of Justice Civil Rights Division, Part II: The Civil Rights Division at Thirty-Five, A Retrospective, at 13, available at <http://www.usdoj.gov/crt/overview.html> (last visited Jun. 1, 2005).

⁶⁸ EIRS, County Election Incidents: Lancaster County, PA, reported Nov. 2, 2004; see also People for the American Way, Special Report, Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections, at 28 (Dec. 2004).

for identification, he was forced to provide identification in order to vote.⁶⁹ Some voters never even made it inside the polling place, having been "chas[ed] away" by a local politician who stated that they did not have the proper identification to vote.⁷⁰ Still another incident was reported in Allegheny County, where an African-American woman reported that she was the only one asked to provide photo identification. Poll workers refused to accept her voter registration card.⁷¹

Some African-American voters faced additional and more severe harassment. In Philadelphia County, a polling place in a lower-income, predominantly African-American community was reportedly "terribly disorganized," to the extent that "at least 40 people left without voting."⁷² In Westmoreland County, a poll worker "singled out" an African-American voter, yelling at her and demanding that she take off buttons supporting certain candidates.⁷³

Aside from the selective enforcement of identification requirements, and the general disarray and disrespect encountered by African-Americans on election day, these voters were also the targets of misinformation campaigns. In Allegheny County, minority voters at the Ross Park Mall at in North Hills received a notice on official-looking letterhead stating that "[d]ue to the immense turnout that is expected on Tuesday, November 2 the state of Pennsylvania has requested an extended voting period."⁷⁴ Democrats were erroneously informed that their voting

⁶⁹ EIRS, County Election Incidents: Delaware County, PA, reported Nov. 2, 2004.

⁷⁰ *Id.*

⁷¹ EIRS, County Election Incidents: Allegheny County, PA, reported Nov. 2, 2004.

⁷² EIRS, County Election Incidents: Philadelphia County, reported Nov. 4, 2004.

⁷³ EIRS, County Election Incidents: Westmoreland County, reported Feb. 22, 2005.

⁷⁴ Richard Byrne Reilly, "Election Day has its (Dirty) Tricks Too," *Pittsburgh Tribune Review*, Oct. 28, 2004, available at <http://www.pittsburghlive.com/x/tribune->

date was November 3rd (one day after the election would already have been concluded).⁷⁵ These voters were also the targets of a telephonic misinformation campaign, in which a speaker claiming to be Bill Clinton reminded voters that election day was on November 3rd.⁷⁶

Moreover, on November 2, 2004, voters in a predominantly African-American community in Philadelphia County were giving papers instructing them to vote at an incorrect polling place.⁷⁷ This effort occurred after a "last-minute request in Philadelphia . . . to relocate 63 polling places," which was ostensibly designed to "confuse voters."⁷⁸ Fifty-three of those polling places were located in "political divisions where the population of white voters is less than ten percent."⁷⁹

B. Pre-2004 Discrimination

Minority voter intimidation was hardly unique to the 2004 election. Prior to the 2003 mayoral election in Philadelphia, more than 300 cars with decals resembling such federal

review/trib/pittsburgh/s_266695.html (last visited Jun. 2, 2005). An image of the actual distribution is available at: <http://www.electionprotection2004.org/images/allegh.gif>.

⁷⁵ Id. African-American voters in Pennsylvania vote overwhelmingly for Democratic candidates. See, e.g., Election Results: American Votes 2004, Pennsylvania Exit Polls, at <http://www.cnn.com/ELECTION/2004/pages/results/states/PA/P/00/epolls.0.html> (last visited Jun. 2, 2005).

⁷⁶ Vote Watch 2004: Pennsylvania, at <http://vote2004.eriposte.com/swingstates/Pennsylvania.htm> (last visited May 23, 2005).

⁷⁷ EIRS, County Election Incidents: Philadelphia County, reported Nov. 2, 2004.

⁷⁸ Chris Brennan, "GOP Fails in Effort to Move Polls," *Philadelphia Daily News*, Oct. 18, 2004, available at http://www.philly.com/mld/philly/news/breaking_news/9947413.htm. (last visited Jun. 2, 2005).

⁷⁹ Id. This led Bob Lee, the voter registration administrator to conclude that the requests were "discriminatory" and "were filed too late to be eligible for a hearing." Id.

agencies as the DEA and the ATF were dispatched to African-American neighborhoods.⁸⁰

During election day, the vehicles canvassed these areas, asking prospective voters for identification. Their activities impacted many voters; in one post-election poll, seven percent of African-Americans voters reported that they had come in contact with these individuals.⁸¹

⁸⁰ People for the American Way Foundation, Special Report: The Long Shadow of Jim Crow; Voter Intimidation and Suppression in America Today, at 6 (2004) (hereinafter Jim Crow).

⁸¹ Id.

PENNSYLVANIA SECTION 2 CASES

The United States of America v. Berks County, Pennsylvania, et al., 277 F.Supp.2d 570 (2003)

Decision: Baylson (District Judge)

Facts: Plaintiff United States filed suit in the United States District Court for the Eastern District of Pennsylvania, alleging Berks County violated §§ 2, 4, and 208 of VRA in that defendants' election policies and practices denied Hispanic and Spanish-speaking citizens an equal opportunity to participate in the election process. Written election-related materials were only provided in English. Plaintiff sought a permanent injunction requiring compliance.

VRA Claim(s): (1) Defendants' election policies and practices denied Hispanic and Spanish-speaking citizens from having an equal opportunity to participate in the election process, in violation of § 2 of VRA; (2) Defendants prevented eligible voters from receiving assistance in voting for a person of their choice, in violation of § 208 of VRA.

Issue(s): (1) Whether Berks County's election policies and practices denied Hispanic and Spanish-speaking citizens from having an equal opportunity to participate in the election process, in violation of § 2 of VRA; (2) Whether Berks County prevented eligible voters from receiving assistance in voting for a person of their choice, in violation of § 208 of VRA.

Holding: The legislative history of § 208 reveals that Congress viewed § 208, as it applied to illiterate voters, as a corollary to the nationwide ban on literacy tests. Congress concluded that "the only kind of assistance that will make fully 'meaningful' the vote of the blind, disabled, or those who are unable to read or write, is to permit them to bring into the voting booth a person whom the voter trusts and who cannot intimidate him." When Defendants deny Spanish-speaking voters the right to bring their assistor of choice into the voting booth, voters feel uncomfortable with the process, do not understand the ballot, do not know how to operate the voting machine, and cannot cast a meaningful vote, in violation of § 208. Hispanic voters have been subject to unequal treatment at the polls, including being required to show photo identification where white voters have not been required to do so. Hispanic residents have been severely underrepresented as poll workers. The adverse impact of hostility toward minority voters on equal access to polling places is severe. Spanish-speaking voters in Berks County faced several substantial barriers to casting an effective ballot prior to issuance of the preliminary injunction: English-only election notices and materials; a dearth of bilingual poll officials; and barriers to voters' ability to receive assistance from the person of their choice. The lack of minority poll officials alone is a serious impediment to Hispanic voters gaining equal access to the polls. The dearth of minority poll workers was found to be an independent § 2 claim when accompanied by evidence of past or present discrimination against the minority voters. The totality of the circumstances in this case demonstrates that Defendants' practices and procedures result in an electoral system in which Hispanic and Spanish-speaking voters have less opportunity than other members of the electorate to participate in the electoral process. A permanent injunction was entered requiring defendants to comply with VRA, and authorizing the appointment of federal examiners to oversee compliance.

Angel Ortiz, et al. v. City of Philadelphia Office of the City Commissioners Voter Registration Division, et al., 28 F.3d 306 (1994)

Majority: Garth (Circuit Judge)
Concurrence: Scirica (Circuit Judge)
Dissent: Lewis (Circuit Judge)

Facts: The state of Pennsylvania's non-voting purge statute provides that registered voters who fail to vote for two years shall be purged from the registration rolls after being provided notice of the same. Plaintiffs filed suit in the United States District Court for the Eastern District of Pennsylvania seeking to enjoin the City of Philadelphia (Philadelphia) from implementing the state's non-voting purge law as violative of § 2 of VRA. After extensive fact finding and recognition that black and Latino voters were purged at disproportionately higher rates than whites, the district court nonetheless held the non-voting purge statute did not deprive minority voters of equal access to the political process in violation of § 2 and denied plaintiff's request for a permanent injunction. Appeal to the United States Court of Appeals, Third Circuit, followed.

VRA Claim(s): The Pennsylvania non-voting purge statute, which allows the removal of voters inactive in any election or primary for two preceding calendar years, causes Philadelphia's minority population to have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice in violation of § 2 of VRA.

Issue(s): Whether the district court erred by factoring into its totality of the circumstances analysis the question of whether or not the non-voting purge statute *caused* minorities to be deprived of equal access to the political system, in violation of § 2 of VRA.

Majority: In order for an election practice to violate § 2, plaintiff must show some causal connection between the challenged electoral practice and alleged discrimination that results in denial or abridgement of the right to vote. The district court properly considered whether or not the non-voting purge statute *caused* the discrimination of which plaintiff complained. The non-voting purge statute did not cause Philadelphia's minority population to have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice so as to violate § 2 of VRA. The tendency of the statute to result in removal of more minority voters than others was simply indicative of the tendency of minorities to vote less frequently than other groups. Further, the city had elected a minority mayor for two consecutive terms and minorities occupied seven out of 17 council seats. The district court's decision was affirmed.

Dissent: The district court erred in concluding that the statute doesn't violate § 2 of VRA. The statute has a substantially disparate impact on black and Latino Philadelphians. Section 2 does not require plaintiffs to prove that a challenged voting practice or procedure is "the dispositive force," or the only cause, or even the principal cause, of unequal political opportunity. Neither the statute, nor its legislative history, nor the relevant case law supports such a reading. To the contrary, that authority requires us to determine whether a challenged law interacts with other, external conditions to limit the political opportunities available to members of protected classes.

Metropolitan Pittsburgh Crusade for Voters, et al. v. City of Pittsburgh, Pennsylvania, et al., 686 F.Supp. 97 (1988)

Decision: Ziegler (District Judge)

Facts: Plaintiffs were a certified class of black citizens, residents, and registered voters of Pittsburgh, Pennsylvania who brought a civil action in the United States District Court for the Western District of Pennsylvania seeking injunctive relief to restrain the city and others from conducting future elections for Council of the City of Pittsburgh on an at-large basis and for declaratory relief to establish elections by districts. Prior to trial the voters determined by initiative and referendum to abolish the at-large election of council members. In response to that political development, the Apportionment Commission set forth a proposal that litigation in the class action be foregone until the precise percentage of black citizens was determined by the next census, which was two years away. The class counsel submitted that the class did not oppose the adoption of the Commission's proposal as the resolution of the lawsuit. Objectors complained that the Apportionment Commission failed to establish three districts in which black citizens constituted a majority, rather than two, and thereby diluted the ability of minorities to elect candidates of their choice. Defendants rejoin that the percentage of black districts created by the Commission is consistent with the percentage of black and minority persons in the City of Pittsburgh as established by the 1980 census.

VRA Claim(s): The at-large system denied black citizens an equal opportunity to participate in the political process and to elect representatives of their choice in violation of § 2 of VRA.

Issue(s): Whether the decision of plaintiff class counsel, with the apparent support of an overwhelming number of class members, to forego additional litigation and support the apportionment plan of defendant Pittsburgh Apportionment Commission, as an interim settlement of the underlying claims, was fair, adequate and reasonable.

Holding: The court held the proposed class action resolution was substantively reasonable compared to the likely rewards of litigation and that the decision of counsel and the class to forego further litigation and await the results of the 1990 census was fair, adequate and reasonable. While the objectors' proposal had superficial appeal, any plan that creates three districts with slim majorities of black citizens in total population may actually be majority-white in voting-age population. One court found that 63% of the white voting-age population was registered to vote, compared with only 49% for blacks. Hence, the plan urged by the objectors may pose grave risks to any black candidate that aspires to serve on City Council and it may preserve that which the objectors seek to abolish.

DOJ ENFORCEMENT

LITIGATION

United States v. Berks County, 250 F. Supp. 2d 525 (E.D. Pa. 2003)

Complaint: Election officials in Reading City, Berks County, denied Hispanic citizens with limited English proficiency an equal opportunity to participate in the political process, violating Sections 2 and 4(e) of the Voting Rights Act. Poll officials directed hostile remarks at Hispanic voters, failed to communicate effectively with Spanish-speaking voters regarding necessary information about their eligibility to vote, and turned away Hispanic voters at the 2001 and 2002 elections. Further, Berks County failed to provide sufficient bilingual poll officials, adequate notification to the Spanish-speaking population of the availability of bilingual assistance, and translation of election related materials. Finally, some Hispanic voters, illiterate in English, were denied the assistance of family or friends in casting their ballots.

Order: Berks County is required to recruit and train bilingual poll officials, provide all election material in Spanish, publicize the availability of bilingual services, and meet with Hispanic citizens prior to every election to discuss voting process. Further, federal examiners may be appointed to monitor elections in Reading City. Order expires June 30, 2007.

OBSERVERS AND MONITORS⁸²

<u>City/Town</u>	<u>Date</u>	<u>Election Type</u>	<u># of Observers</u>	<u>Press Release Comments/Notes</u>
Berks (Reading)	November 6, 2001	General		
Berks (Reading)	November 5, 2002	Federal		
Berks (Reading)	May 20, 2003	Primary	101	Ensure provision of written election materials in English and Spanish, as well as assign poll workers who are bilingual in English and Spanish to certain polling places.
Berks (Reading)	November 4, 2003	General	72	
Berks (Reading)	April 27, 2004	Primary		Monitor the treatment of Hispanic voters.
Berks (Reading)	November 2, 2004	General	43	
Philadelphia	November 2, 2004	General		

⁸² Entries in bold designate monitors; entries in plain roman type designate observers.

NEW JERSEY EXECUTIVE SUMMARY**DEMOGRAPHICS:**

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
Total population	8,414,350	100.0	6,326,792	100.0
Hispanic or Latino (of any race)	1,117,191	13.3	778,397	12.3
Not Hispanic or Latino	7,297,159	86.7	5,548,395	87.7
One race	7,163,470	85.1	5,463,622	86.4
White	5,557,209	66.0	4,317,152	68.2
Black or African American	1,096,171	13.0	770,340	12.2
American Indian and Alaska Native	11,338	0.1	8,249	0.1
Asian	477,012	5.7	353,721	5.6
Native Hawaiian and Other Pacific Islander	2,175	0.0	1,633	0.0
Some other race	19,565	0.2	12,527	0.2
Two or more races	133,689	1.6	84,773	1.3

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File.

MINORITY REPRESENTATION IN CONGRESS:

Representative Donald M. Payne, a Democrat, is an African American. Representative Robert Menendez, a Democrat, is Hispanic.

SECTION 5 RELATED MATTERS:

New Jersey is not covered under Section 5.

SECTION 203 AND MINORITY LANGUAGE RELATED MATTERS

New Jersey has seven counties covered by Section 203 for the Spanish language: Bergen, Cumberland, Essex, Hudson, Middlesex, Passaic, and Union.

The Department of Justice brought a lawsuit against the Passaic City and Passaic County in 1999. Part of the lawsuit involved claims that Passaic County did not provide language assistance as required by Section 203. The lawsuit was settled and Passaic was required to create a Spanish language election assistance program. Passaic's poor compliance at the beginning led the court to appoint a special master.

SECTION 2 RELATED MATTERS

In Page v. Bartels, 144 F. Supp. 2d 346 (D. N.J. 2001) (three-judge court), plaintiffs were unsuccessful in their challenge that the New Jersey statewide redistricting for Senate and General Assembly diluted minority voting strength in violation of Section 2.

DOJ OBSERVER AND MONITOR COVERAGE:

Passaic: Between 1999 and 2004, a total of 454 federal election observers were sent to Passaic County on 18 election dates to monitor the school board, municipal, primary, and general elections to assure Hispanic voters were treated properly and election materials were translated into Spanish. Additionally, the Department of Justice sent federal election monitors to Passaic County for the 2004 primary to assure voter materials were available in Spanish. In June 2005, the Department of Justice sent monitors to Edison, New Jersey because of concerns of discrimination targeted at Asian voters.

OTHER MATTERS OF INTEREST

In 1981, the RNC created a program in New Jersey that was designed to challenge voters on grounds of ineligibility. The DNC filed suit, claiming that RNC's program was a pretext for a program designed to intimidate African American and Latino voters. The parties settled the case with both national committees agreeing to engage in intimidation programs geared at minority voters.

The American Civil Liberties Union has revealed that nine different New Jersey counties are illegally preventing ex-offenders from voting once their sentences have been completed. The ACLU and Rutgers University filed suit challenging New Jersey's disenfranchisement law under state law grounds.

New Jersey voters must also confront a highly complicated voter registration form, which is electronically available only in English.

NEW JERSEY NARRATIVEI. Section 2 Litigation

In *Page v. Bartels*, African-American and Hispanic voters and Republican members of the New Jersey Senate and General Assembly filed suit in 2001 alleging the redistricting scheme following the 2000 Census resulted in vote dilution in violation of § 2 of the Voting Rights Act.⁸³ Under the old plan, three districts located principally in Essex County had populations that were majority black, but under the new plan the black population in two of those districts dropped below 50% and in the third was 51.2%. The district court denied plaintiffs' application for injunctive relief. On appeal the Third Circuit remanded the case on procedural grounds. On remand, the district court held the plaintiffs failed to prove the plan violated § 2 and, moreover, § 2 by no means *required* creation (or retention) of majority-minority districts where it was *possible* to do so.⁸⁴

In 1999, the Justice Department sued Passaic City and County for violation of the bilingual provisions of the Voting Rights Act, which requires jurisdictions to provide election materials in another language if more than 5 percent of the voting age citizens are minorities with limited English skills.⁸⁵ As a result of the suit, Passaic City and County are required to institute a Spanish language election program and translate all election related materials into Spanish. In 2000, however, the Justice Department again sued Passaic City, alleging the method used to elect the City Council members violated the Voting Rights Act by diluting the voting strength of the

⁸³ *Page v. Bartels*, 248 F.3d 175 (3rd Cir. 2001)

⁸⁴ *Page v. Bartels*, 144 F.Supp.2d 346 (D.N.J. 2001)

⁸⁵ *United States v. Passaic City and Passaic County*, (D.N.J. 1999)

city's Hispanic population.⁸⁶ In 2001, the city elected a Latino mayor, and the Justice Department dropped the lawsuit.⁸⁷

II. Commitment '81

In 1981, the Republican National Committee and six state Republican committees, including New Jersey's, created a joint venture called "Commitment '81" to help elect candidates.⁸⁸ The venture sought to prevent voter fraud in the 1981 New Jersey gubernatorial election by sending a mass mailing intended to identify ineligible voters and by monitoring polling stations on Election Day.⁸⁹

During the election, the Democratic National Party challenged the RNC's actions, succeeding in getting signs the task force had put up warning of the consequences of voter fraud taken down.⁹⁰ When the election concluded in a narrow victory for the Republican candidate, the DNC instituted a \$10 million lawsuit claiming the RNC's measures intimidated and harassed Black and Hispanic voters.⁹¹ A state investigation into possible violations of the Voting Rights

⁸⁶ United States v. City of Passaic (D.N.J. 2000)

⁸⁷ Scott Fallon & Benjamin Lesser, "Making Elections Fair to Minorities", *The Record* (Bergen County, NJ) (Apr. 4, 2004) at A1.

⁸⁸ Chandler Davidson et al., *Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression—or Both?: A Report to the Center for Voting Rights & Protection* (Sep. 2004), 49.

⁸⁹ Id.

⁹⁰ Id. at 51. The judge ruled the signs were political in nature and failed to disclose sponsorship. Id.

⁹¹ Id. at 49.

Act, however, concluded that no eligible voter had been prevented from casting a ballot.⁹² The DNC and RNC subsequently entered into a consent decree, agreeing neither side would engage in voter intimidation.⁹³

III. Election 2004

While reports of voter intimidation/suppression in New Jersey were comparatively few, several incidents were reported during the most recent national election. In Hudson County, a first-time African-American voter was "picked out by a challenger" and was told that he couldn't vote, even though he had been properly registered.⁹⁴ At another polling place in this same county, a report came in that "all blacks and Latinos [were] being questioned."⁹⁵ In Essex County, poll workers attempted to intimidate an African-American female, and even tried to "snatch[]" her voting ticket away from her.⁹⁶ In Union County, polling officials went so far as to permit challengers to enter voting booths while minority voters were attempting to vote.⁹⁷ The statewide office of the American Civil Liberties Union in New Jersey also received reports that poll workers in this county were removing instructional signs that were written in Spanish, and requiring only non-Caucasian voters to present identification before voting.⁹⁸

⁹² Id. at 53.

⁹³ Id. at 55.

⁹⁴ EIRS, County Election Incidents: Hudson County, NJ reported Nov. 3, 2004.

⁹⁵ Ibid.

⁹⁶ EIRS, County Election Incidents: Essex County, NJ, reported Nov. 2, 2004.

⁹⁷ EIRS, County Election Incidents: Union County, NJ, reported Nov. 2, 2004.

⁹⁸ Analysis of 2004 Voting Problems as identified by ACLU-contacted complaints, received from Anne Barron on May 31, 2005 (on file with Skadden Arps).

IV. Voter Registration

New Jersey recently adopted a complicated new voter registration form that may impair the ability of minority voters to register. A recent analysis by the American Institute of Graphic Arts reported that the form used "overly complicated procedures and sacrifice[d] ease of use to achieve an ideal size for mailing."⁹⁹ In particular, question #9 requests the last four digits of the applicant's Social Security Number, or his/her driver's license numbers.¹⁰⁰ Only fine print at the bottom of the form reveals that "one can register using many other forms of identification, or wait to show identification at the polls."¹⁰¹ Additionally, the Attorney General's office failed to post the form online in Spanish.¹⁰²

New Jersey requires all voters to show some form of identification at the polls in order to vote by machine; otherwise, individuals are permitted to vote only by provisional ballot.¹⁰³

⁹⁹ Press Release, American Civil Liberties Union of New Jersey, Groups Criticize New Voter Registration Form (Sept. 28, 2004), at 1, available at <http://www.aclu-nj.org/pressroom/groupscriticizenewvoterreg.htm> (last visited May 24, 2005).

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Id. at 2.

¹⁰³ Office of the Attorney General, New Jersey Dept. of Law & Public Safety, New Identification Requirements for Voters, at http://www.nj.gov/oag/elections/vote_id_req.html (last visited Jun. 6, 2005).

NEW JERSEY SECTION 2 CASES**Donald Page, et al. v. Larry Bartels, et al., 144 F.Supp. 2d 346 (2001)****Majority:** Garth (Circuit Judge), Debevoise and Ackerman (District Judges)

Facts: Black and Hispanic voters in New Jersey and Republican members of the New Jersey Senate and General Assembly filed suit in the United States District Court for the District of New Jersey alleging the New Jersey Apportionment Commission's redistricting scheme following the 2000 census resulted in vote dilution in violation of § 2 of VRA, as well as the Fourteenth and Fifteenth Amendments to the United States Constitution. The District Court initially granted a temporary restraining order (TRO), but after a hearing denied plaintiffs' application for injunctive relief. Under New Jersey's old plan, three districts located principally in Essex County had populations that were majority black, but under the new plan the black population in two of those districts dropped below 50% and in the third was 51.2%. Defendants argued that because of the existence of significant racial cross-over voting between blacks, whites and Hispanics in Essex County, a black group need not constitute a numerical majority in any single legislative district in order to possess the effective ability to elect preferred representatives. A special procedural mechanism for constitutional challenges to statewide legislative apportionment schemes, 28 U.S.C. § 2284, requires that a district court of three judges, rather than a single judge, hear "action[s] ... filed challenging the constitutionality of ... the apportionment of any statewide legislative body." The Third Circuit held the district court's disposition of the relief application was erroneous and remanded to have a three-judge court convened. The district court then convened a three-judge court and proceeded to decide the merits.

VRA Claim(s): The New Jersey Apportionment Commission's redistricting scheme following the 2000 census resulted in vote dilution of black voters in Essex County by depriving them of their ability to have the representatives of their choice elected to the New Jersey legislature, in violation of § 2 of VRA.

Issue(s): Whether the redistricting scheme following the 2000 census resulted in vote dilution of black voters in Essex County by depriving them of their ability to have the representatives of their choice elected to the New Jersey legislature, in violation of § 2 of VRA.

Majority: The court held plaintiffs failed to prove defendants' redistricting plan violated § 2 because the plan would not impair or prevent minorities from electing their chosen representatives. Section 2 by no means requires creation (or retention) of majority-minority districts where it is possible to do so. The court was satisfied the Bartels plan was designed not to prevent or interfere with the election of minority representatives but rather would enhance and expand the opportunity for African Americans and Hispanics to participate in a meaningful way in the political process.

DOJ ENFORCEMENT ACTIONS

LITIGATION

United States v. City of Passaic, (D.New Jersey 2000)

Complaint: United States alleged that the at-large method used to elect Passaic City Council members violated the Voting Rights Act because it diluted the voting strength of Passaic City's Hispanic citizens.

United States v. Passaic City and Passaic County, (D.New Jersey 1999)

Complaint: Passaic city and county violated the bilingual provisions of the of the Voting Rights Act, which require jurisdictions to provide election materials in another language if more than 5 percent of the voting age citizens are minorities with limited English skills and the illiteracy rates of those citizens exceed the national illiteracy rate.

Settlement: Passaic City and County must institute a Spanish language election information program and translate all election related materials into Spanish.

NEW JERSEY OBSERVERS AND MONITORS¹⁰⁴

<u>City/Town</u>	<u>Date</u>	<u>Election Type</u>	<u># of Observers</u>	<u>Press Release Comments/Notes</u>
Passaic	June 8, 1999	Primary	25	Ensure that all written election materials are translated into Spanish, that the county has adequately trained poll workers to assist voters whose primary language is Spanish, and that Hispanic and Spanish-speaking voters have full and equal access to the voting process
Passaic	November 2, 1999	General	25	Ensure that all written election materials are translated into Spanish, that the county has adequately trained poll workers to assist voters whose primary language is Spanish, and that Hispanic and Spanish-speaking voters have full and equal access to the voting process
Passaic	April 18, 2000	School Board	27	Ensure that all written election materials are translated into Spanish, that the county has adequately trained poll workers to assist voters whose primary language is Spanish, and that Hispanic and Spanish-speaking voters have full and equal access to the voting process
Passaic (Paterson)	May 9, 2000	Municipal	25	Ensure that all written election materials are translated into Spanish, that the county has adequately trained poll workers to assist voters whose primary language is Spanish, and that Hispanic and Spanish-speaking voters have full and equal access to the voting process
Passaic	June 6, 2000	Primary	26	Ensure that all written election materials are translated into Spanish, that the county has adequately trained poll workers to assist voters whose primary language is Spanish, and that Hispanic and Spanish-speaking voters have full and equal access to the voting process
Passaic	November 7, 2000	Federal	50	Monitor the treatment of Hispanic voters
Passaic	April 17, 2001	School Board	28	Ensure that all written election materials are translated into Spanish, that the county has adequately trained poll workers to assist voters whose primary language is Spanish, and that Hispanic and Spanish-speaking voters have full and equal access to the voting process

¹⁰⁴ Entries in plain roman type designate monitors; entries in bold designate observers.

Passaic (Passaic)	May 8, 2001	Municipal	28	Ensure that all written election materials are translated into Spanish, that the county has adequately trained poll workers to assist voters whose primary language is Spanish, and that Hispanic and Spanish-speaking voters have full and equal access to the voting process
Passaic	June 26, 2001	Special Primary	28	Ensure that all written election materials are translated into Spanish, that the county has adequately trained poll workers to assist voters whose primary language is Spanish, and that Hispanic and Spanish-speaking voters have full and equal access to the voting process
Passaic	November 6, 2001	General	28	Ensure that all written election materials are translated into Spanish, that the county has adequately trained poll workers to assist voters whose primary language is Spanish, and that Hispanic and Spanish-speaking voters have full and equal access to the voting process
Passaic	April 16, 2002	School Board	25	Ensure that all written election materials are translated into Spanish, that the county has adequately trained poll workers to assist voters whose primary language is Spanish, and that Hispanic and Spanish-speaking voters have full and equal access to the voting process
Passaic	May 14, 2002	Municipal	25	Monitor the treatment of Hispanic and other voters.
Passaic	June 4, 2002	Primary	25	
Passaic	November 5, 2002	Federal	22	
Passaic	April 15, 2003	School Board	23	
Passaic	June 3, 2003	Primary	13	Ensure that all written election materials are translated into Spanish, that the county has adequately trained poll workers to assist voters whose primary language is Spanish, and that Hispanic and Spanish-speaking voters have full and equal access to the voting process
Passaic	November 4, 2003	General	13	
Passaic	June 8, 2004	Primary		Assure provision of voter material in Spanish.
Passaic	November 2, 2004	General	18	

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Edison	7-Jun-05	Primary	Monitoring of elections focused on protecting the rights of Asian voters
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GUIDING SUPREME COURT SECTION 5 CASES

Georgia v. John Ashcroft, Attorney General, et al., 539 U.S. 461 (2003)

[The Court attempted to define "retrogression" in this case.]

Majority: O'Connor (joined by Rehnquist, Scalia, Kennedy, and Thomas)
Concurrences: Kennedy, Thomas
Dissent: Souter (joined by Stevens, Ginsburg, and Breyer)

Facts: Georgia is a covered jurisdiction under § 5 of the Voting Rights Act (VRA). The Georgia General Assembly (Assembly) redistricted following the 2000 census. Under its 1997 districting plan, the benchmark plan for this litigation, Georgia had 56 districts. Eleven of the 56 districts had a total black population greater than 50%, ten of which had a black voting age population (BVAP) greater than 50%. The 2000 census revealed that the number of districts with a black population greater than 50% increased from eleven to 13, and the number in which the BVAP exceeded 50% increased from ten to 12. The Democrat-controlled Assembly embarked on a redistricting strategy to maintain the number of majority-minority districts, increase the number of Democratic Senate seats and increase the number of districts where black voters, known to vote predominantly for Democrats, would be able to significantly influence elections – so called “influence districts”. The plan unpacked the most heavily concentrated majority-minority districts under the 1997 scheme, resulting in 13 majority-minority BVAP districts, 13 districts with BVAP between 30% and 50% and four districts with BVAP between 25% and 30%. Georgia then filed suit in the District Court for the District of Columbia (District Court) seeking a declaratory judgment that the plan was not retrogressive and therefore not a violation of § 5. The United States, through the Attorney General, argued in District Court that the plan should not be precleared because changes to the boundaries of three districts were retrogressive. Four black citizens of Georgia intervened pursuant to Federal Rule of Civil Procedure 24 (FRCP 24), claiming retrogression in two additional districts. The District Court found the three districts identified by the United States were retrogressive and the plan therefore violated § 5 and was not entitled to preclearance.

VRA claim(s): (1) The District Court erred in allowing private litigants to intervene in the lawsuit; (2) The plan should have been precleared under § 5 if it was in compliance with § 2; and (3) The plan was not retrogressive.

Issue(s): Whether Georgia’s State Senate 2000 redistricting plan was retrogressive compared to its 1997 plan and should not have been precleared under § 5 of VRA.

Majority: (1) District Court did not err in allowing private parties to intervene. FRCP 24 governs intervention in this case. District Court found intervenors’ identified interests not adequately addressed by the existing parties; (2) Section 5 has a limited substantive goal of insuring that no voting-procedure changes lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise. Any plan that is not retrogressive should be precleared under § 5, *irrespective* of its constitutionality or § 2 compliance; and (3) A diminution of a minority group’s effective exercise of the electoral franchise is sufficient to show a § 5 violation *only* if the covered jurisdiction cannot show that

the net gain in the plan offsets the net loss from a particular district. Any assessment of retrogression must encompass all relevant circumstances, including the comparative ability of a minority group to elect a candidate of its choice, the extent to which a new plan changes the minority group's opportunity to participate in the political process, maintaining or increasing legislative positions of power for minority voters' representatives of choice, and whether the representatives elected from the districts created and protected by VRA support the new plan. District Court failed to consider all of the relevant factors. It focused too narrowly on the districts identified by the United States and didn't examine the increase in BVAP in other districts. Georgia likely met its burden of showing nonretrogression. The District Court judgment was vacated and the case remanded for further proceedings.

Concurrence (Kennedy): Race was a predominant factor in the 2000 plan. If this case were brought under the Equal Protection Clause or § 2 of VRA the challengers would likely succeed. Under § 5 precedents the Court's ruling is correct. However, there is a fundamental flaw in any scheme in which DOJ is permitted to ratify a course of unconstitutional conduct in order to find compliance with a statutory directive.

Dissent (Souter): Under a proposed plan subject to § 5 preclearance, the state must show that minority voters will have effective influence translatable into probable election results comparable to what they enjoyed under the existing plan, not merely that minority voters in new districts have *some* influence. If the State's evidence fails to convince the factfinder that high racially-polarized voting is unlikely, or that high white crossover voting is likely, or that other political and demographic facts point to probable minority effectiveness, a reduction in supermajority districts must be treated as potentially and fatally retrogressive for § 5 purposes.

David Lucas, et al. v. Judy Townsend, 486 U.S. 1301 (1988)

[Confirmed that a change in the date of an election is covered by § 5 of VRA.]

Circuit Justice: Kennedy

Facts: Five black citizens registered to vote in Bibb County, Georgia filed an application to enjoin a bond referendum election in the county. The Board of Education, on December 17, 1987, planned to place a bond referendum on the primary election date of March 8, 1988. On January 4, 1988 the Board of Education resolved to change the referendum date to May 31, 1988. Applicants argued that changing the date of the referendum from the date of the primary would adversely affect minority voter turnout and the May 31, 1988 referendum had not been submitted for preclearance. The three-panel District Court for the Middle District of Georgia declined to issue the injunction on the ground that applicants failed to establish that holding the election as planned would violate § 5 of VRA because the referendum was not a "change" covered by § 5 of VRA.

VRA Claim(s): Changing the date of the election from a primary day without obtaining preclearance violated § 5 of VRA.

Issue: (1) Whether a change in the date of an election from a primary day was an election practice subject to preclearance under § 5 for a covered jurisdiction; (2) Whether injunctive relief should have been granted.

Holding: Section 5 provides that certain jurisdictions, including the one in which this case arose, may not implement any election practices different from those in force on November 1, 1964, without first obtaining approval from the United States District Court for the District of Columbia or, alternatively, from the Attorney General. Neither statutory requirement was met. Under Court precedents, setting of the date of a special election is a "change" covered by the statute. Irreparable harm would likely follow from a denial of injunctive relief. Although an injunction would doubtless place certain burdens on respondents, such burdens can fairly be ascribed to respondents' own failure to seek preclearance sufficiently in advance of the date chosen for the election. An order enjoining the election is ordered, pending timely docketing of an appeal.

GUIDING SUPREME COURT SECTION 2 CASES

Thornburg, et al. V. Gingles, et al., 478 U.S. 30 (1986)

[Established a three-prong test for evaluating vote dilution claims.]

Majority: Brennan
Concurrences: White (concurring in part), O'Connor (concurring in judgment, joined by Burger, Powell and Rehnquist)
Dissents: Stevens (concurring in part, dissenting in part, joined by Marshall and Blackmun)

Facts: Appellees, black citizens registered to vote in North Carolina, filed suit in the United States District Court for the Eastern District of North Carolina, alleging, among other things, the state diluted black voting strength by enacting a redistricting plan for the state legislature which included a number of multimember districts having substantial majorities of white voters in areas where there were sufficient concentrations of black voters to form single-member black majority districts and elect their preferred candidates. Appellees challenged six multimember and one single member district. The three-judge panel applied the "totality of the circumstances test" set forth in § 2(b) of VRA and held that (1) intent did not need to be proven to sustain a showing of a § 2 violation, only a dilutive effect, (2) such a showing had been made, and (3) the state was prohibited from conducting elections pursuant to those portions of the redistricting plan found to be in violation. The state appealed directly to the United States Supreme Court.

VRA claim(s): Redistricting plan enacted by North Carolina violated § 2 of VRA by diluting black voting strength.

Issue(s): Whether the three-judge District Court, convened in the Eastern District of North Carolina, erred in holding that the use in a legislative redistricting plan of multimember districts in five North Carolina counties violated § 2 by impairing the opportunity of black voters to participate in the political process and to elect representatives of their choice.

Majority: Generally, in order for minority voters to prevail in a § 2 claim, a bloc voting majority must usually be able to defeat candidates supported by a politically cohesive, geographically insular minority group. Specifically, the necessary preconditions for multimember districts to operate to impair minority voters' ability to elect representatives of their choice are as follows: The minority group (1) must be sufficiently large and geographically compact to constitute a majority in a single-member district; (2) must be able to show that it is politically cohesive; and (3) must show that the white majority votes sufficiently as a bloc to enable it, in the absence of special circumstances, usually to defeat the minority's preferred candidate. The question of whether a given district experiences legally significant racial bloc voting requires discrete inquiries into minority and white voting practices. The legal concept of racially polarized voting, as it relates to claims of vote dilution, refers *only* to the existence of a *correlation* between the race of the voters and the selection of certain candidates. *Plaintiffs need not prove causation or intent* in order to prove a prima facie case of racial bloc voting and defendants may not rebut that case with evidence of causation or intent. Judgment of District Court affirmed except with respect to one district.

Boley Johnson, et al. v. Miguel DeGrandy, et al. (1994)

[Attempts to define vote dilution and the facts required to show it – expounding/clarifying the Gingles analysis.]

Majority: Souter (joined by Rehnquist, Blackmun, Stevens, O'Connor and Ginsburg and joined in pertinent part by Kennedy)
Concurrences: O'Connor and Kennedy
Dissent: Thomas (joined by Scalia)

Facts: Minority voters (black and Hispanic) filed suit in the United States District Court for the Northern District of Florida alleging the voting districts created by the Florida legislature failed to reflect changes in the state's population during the ensuing decade, and were therefore mal-apportioned. The legislature then adopted a plan under which nine of 20 house districts in Dade County had a Hispanic majority and four of the seven senate districts had minority majorities (three Hispanic and one black). One other senate district had enough black voters such that they could elect representatives of their choice with some "crossover" votes. The Florida Supreme Court issue a declaratory judgment validating the plan under federal and state law. In response, the minority voters amended their complaints to include a § 2 of VRA claim. DOJ filed a similar vote dilution complaint. The three-judge panel held the legislature's plan violated § 2 with respect to both the house and senate plans because more minority districts could have been drawn. Yet, with respect to the senate plan there was no practical remedy for the § 2 violations because the remedies for blacks and Hispanics were mutually exclusive.

VRA Claim(s): The Florida legislature's reapportionment plan unlawfully fragments cohesive minority communities and otherwise impermissibly submerges their right to vote and to participate in the electoral process in violation of § 2 of VRA.

Issue(s): Whether the United States District Court for the Northern District of Florida misjudged the relative importance of the Gingles factors and of historical discrimination, measured against evidence tending to show that in spite of these facts, the legislature's plan would provide minority voters with an equal measure of political and electoral opportunity.

Majority: While proportionality is not dispositive in a challenge to single-member districting, it is a relevant fact in the totality of circumstances to be analyzed under a § 2 claim. No § 2 violation can be found where minority voters form effective voting majorities in a number of districts roughly proportional to their respective shares of the voting age population, the *facts of continuing discrimination and racial bloc voting notwithstanding*. The District Court was not critical enough in asking whether a history of pertinent discrimination reflected in the larger society and its bloc-voting behavior portended any dilutive effect from a newly proposed scheme whose pertinent features were majority-minority districts in substantial proportion to the minority's share of the voting-age population.

Concurrence (O'Connor): VRA does not require courts to maximize the number of districts in which minority voters may elect their candidates of choice. Proportionality is always relevant, but is never itself dispositive. Lack of proportionality is probative evidence of vote dilution.

Concurrence (Kennedy): Operating under the constraints of a statutory regime in which proportionality has some relevance, states might consider it lawful and proper to act with the explicit goal of creating a proportional number of majority-minority districts in an effort to avoid § 2 litigation. There is good reason for state and federal officials to recognize that explicit race-based districting embarks us on a most dangerous course. It is necessary to bear in mind that redistricting must comply with the overriding demands of the Equal Protection Clause.

**Report on Hate Crimes
and Discrimination
Against Arab Americans:
The Post - September 11 Backlash
September 11, 2001 - October 11, 2002**

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This report is dedicated to
Dr. Hala Salaam Maksoud
(1943-2002)
Our friend, leader and mentor

EXECUTIVE SUMMARY

In this Report, the American-Arab Anti-Discrimination Committee Research Institute (ADCRI) surveys the experiences of the Arab-American community in the year following the September 11, 2001, terrorist attacks.

PRINCIPAL FINDINGS

Hate crimes and discrimination

- Over 700 violent incidents targeting Arab Americans, or those perceived to be Arab Americans, Arabs and Muslims in the first nine weeks following the attacks, including several murders.
- 165 violent incidents from January 1-October 11, 2002, a significant increase over most years in the past decade.
- Over 80 cases of illegal and discriminatory removal of

passengers from aircraft after boarding, but before take-off, based on the passenger's perceived ethnicity.

- Over 800 cases of employment discrimination against Arab Americans, approximately a four-fold increase over previous annual rates.
- Numerous instances of denial of service, discriminatory service and housing discrimination.

New discriminatory immigration policies

- Secret detentions, hearings and deportations.
- Alien registration based on national origin and ethnicity.
- "Voluntary interviews" of thousands of young Arab men.
- Monitoring of international students.
- Discriminatory visa screening procedures for young Arab men.
- Selective deportation of Middle Eastern "absconders."

Disturbing provisions of the USA Patriot Act

- Indefinite detention of foreign nationals without process or appeal.
- New search and surveillance powers with insufficient judicial review.
- Measures providing for guilt by association.

Additional civil liberties concerns

- Eavesdropping on attorney-client communications.
- Military tribunals.
- Suspension of constitutional rights of U.S. citizens without due process or appeal.
- Domestic law enforcement spying on lawful political and religious activities.
- Seizure of assets without due process, especially from Muslim-American charities.
- "Operation TIPS" — Terrorist Information and Prevention System, and other programs encouraging Americans to spy on each other.

Police and FBI misconduct

- Arbitrary and abusive stops and detentions.
- Abuse of detainees.
- Racial profiling or stereotyping.

Persistent problems in educational institutions

- Physical assaults, death threats, and overt ethnic and religious bigotry in schools and on college campuses.
- Harassment and bias against Arab-American and American-Muslim students by teachers and administrators.

Defamation by public figures and in the media

- A campaign of vilification against Islam and the Prophet Mohammed by leaders of the evangelical Christian right, including Jerry Falwell, Pat Robertson

and Franklin Graham.

- Pervasive acceptance of hostile commentary against Arabs, Arab culture and Islam in mainstream media and publications.
- Increased use by the mainstream media of commentators whose main aim is to promote fear and hatred of Arab Americans, including Steven Emerson and Daniel Pipes.
- Openly racist statements by members of Congress and other prominent persons.

Instances of support, compassion and reassurance for Arab Americans

- Statements defending the community by many prominent persons, including President Bush and Secretary Powell, and institutions, including both houses of Congress.
- Fundraising for backlash victims.
- Volunteer escorts, especially for hijab-wearing Muslim women.
- Public relations efforts promoting tolerance.

CONCLUSIONS

- Arab Americans suffered a serious backlash following September 11, 2001.
- The worst elements of this backlash, including a massive increase in the incidence of violent hate crimes, were concentrated in the first nine weeks following the attacks.
- Arab Americans continue to suffer from increased levels of discrimination from their fellow citizens in many fields, while the government has shown a real commitment to uphold the law and punish offenders.
- Arab Americans, especially immigrants from the Arab world, have been the principal focus of new government powers that restrict individual freedoms and protections, and infringe upon civil liberties.

- Defamation against Arabs and Muslims, particularly attacks on Islam as a faith, has steadily increased in intensity and frequency during the entire period covered by this Report, laying the groundwork for potential future waves of hate crimes.
- In spite of numerous expressions of support for the community from public figures and thousands of private citizens, Arab Americans remain exceptionally vulnerable to hate crimes, discrimination, extreme vilification by prominent persons, and derogations of civil rights and liberties.

RECOMMENDATIONS

- Arab Americans should continue to work as closely as possible with the authorities and our fellow citizens to help ensure the security of our country while preserving civil rights and liberties.
 - The government should continue to rigorously prosecute those who commit illegal discrimination and hate crimes.
 - The government should avoid any new policies that discriminate on the basis of national origin, ethnicity or religious affiliation, especially in combination with other factors such as age and gender.
 - There is no place in the American legal system for secret detentions, evidence, hearings or deportations, or for indefinite detention without due process.
 - The fundamental human and constitutional rights of immigrants and foreign nationals in the United States should not be sacrificed, including the right to due process of law.
 - Law enforcement investigations should be restricted to persons or groups suspected of criminal activity, not those engaged in lawful political or religious activities, and should never be based on national origin, ethnicity or religious affiliation.
 - No form of racial profiling is ever acceptable or effective.
- Extraordinary measures taken in response to a national security emergency should, by definition, be regarded as temporary and rescinded as soon as possible.
 - The government should make every effort to compile statistics on law enforcement stops and searches of Arab Americans, and security checks at airports.
 - The Department of Transportation (DOT) should work with the airline industry, pilots' unions and Arab-American and Muslim groups to create guidelines for crews, including safeguards and recourses for passengers, in cases where concerns or actions based on perceived ethnicity are raised or taken following boarding.
 - National leaders, including the President, and mainstream Christian, Jewish and Muslim religious leaders, should forcefully denounce public figures who engage in vicious defamation against Arabs and Islam.
 - The media should not present hate speech as a legitimate contribution to the national conversation, or rely on commentators who routinely resort to racist stereotypes and smearing entire communities.
 - The entertainment industry should begin to feature positive and neutral Arab and Arab-American characters, and move away from stereotypical Arab villains which have long been used and have a negative impact.
 - Schools, colleges and universities should make every effort to ensure that their students have access to basic and accurate education on the fundamentals of Islam and Arab culture.
 - Arab Americans should redouble their efforts to build bridges with other communities, engage in civic life at all levels of American society, and empower themselves within the political system.



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INTRODUCTION

For over a decade, ADCRI has been publishing periodic reports on hate crimes and discrimination against Arab Americans to document the civil rights experience of the community. This Report, which covers the period between September 11, 2001, and October 11, 2002, follows similar patterns of classification as earlier reports, but in many other respects is very different from previous reports. Its unprecedented size and scope is, of course, a reflection of the extraordinary difficulties the Arab-American community faced in the days, weeks and months following the terrorist attacks against the United

States on September 11, 2001. As the Report demonstrates, the backlash following the terrorist attacks was both serious and sustained, involving everything from hate crimes and murders to widespread discrimination. The anxiety created in the community by hate crimes and discrimination was compounded by serious civil liberties concerns regarding aspects of the investigation into the terrorist attacks and new “homeland security” policies and legislation. The atmosphere of fear and suspicion, as documented in this Report, was exacerbated by a campaign in American popular culture and media of vicious defamation and vilification against Arabs

and Islam, including defamation by well-known public figures. As this Report amply demonstrates, this has been a period of profound challenges for Arab Americans, as well as other communities caught up in the backlash, including Muslims and South Asians, especially Sikh men.

But this Report also demonstrates that the situation could have been far worse. The most onerous aspects of the backlash, particularly the upsurge in violent hate crimes, were concentrated in the first nine weeks following the September 11 attacks. Statements of support by leading Americans, including President Bush, and aggressive action by federal, state and local law enforcement against vigilantes, combined with a widespread public outcry against hate crimes, combined to contain the level of violence and terminate it, sooner rather than later. While civil liberties abuses have been deeply troubling, even at times outrageous, and concerns remain very high, in this sphere as well the situation could have easily been even more onerous than it was. As this Report shows, the government has mainly focused its new powers over immigrants and foreign nationals in United States, particularly targeting Arab and Muslim non-citizens. Therefore, while Arab and Muslim foreign nationals, especially those in certain high-risk groups, have been quite vulnerable to government abuses, Arab Americans remain much less vulnerable. And while the government has been very aggressive in asserting and accumulating massive new powers, which on paper could easily authorize draconian measures tending towards a police state, it has also been fairly cautious about using many of these powers in practice. Some measures such as military tribunals, stripping U.S. citizens of their constitutional rights, and introducing evidence based on eavesdropping on

attorney-client communications have either not been used at all or have thus far been restricted to one or two cases that serve as tests of the new powers rather than broad applications of them.

The final section of this Report focuses on a small sampling of the countless expressions of support, compassion and reassurance for the Arab-American community and others affected by the backlash. Throughout the period covered by this Report, it has been clear that the overwhelming majority of Americans remain committed to maintaining a tolerant and respectful multiethnic, multicultural and multireligious society. Through polling data, anecdotal evidence and grass-roots activism, Americans across the country have demonstrated repeatedly that hatred of Arab Americans and Muslims is confined to a distinct minority. Although the Arab-American community suffered considerably as a result of the backlash detailed in this Report and is clearly more vulnerable than most to hate crimes, discrimination and civil liberties abuses, the United States has remained a country in which most Arab Americans can live without the likelihood of being abused by the government or their fellow citizens. ADCRI offers this *Report on Hate Crimes and Discrimination against Arab Americans: September 11, 2001 — October 11, 2002* as a record of the experiences of the community during this period of unprecedented difficulty. We sincerely hope that it will also be a substantial contribution to continuing to develop an American society that is tolerant, equitable, civil, free and secure.

I. LEGAL ISSUES

In the months following the terrorist attacks, the Arab-American community was the central target of a major upsurge in hate crimes and illegal discrimination. Arab Americans, like other minority groups, have long faced problems with discrimination, but following the September 11 attacks this pattern became more intense, frequent and widespread.

The Arab-American and Muslim-American communities also became the central target of the new national security campaign launched by the government. Widespread FBI interviews of young Arab and Arab-American men, combined with

hundreds of secret detentions and hearings by the Immigration and Naturalization Service (INS) added to the generalized climate of fear and hostility in creating considerable anxiety and deep feelings of isolation among Arab Americans. The INS and other Department of Justice (DOJ) agencies, which have a documented history of discriminating against Arab Americans and Arab immigrants, were granted much broader powers to target the Arab immigrant, Arab-American, and Muslim-American communities. This type of institutionalized discrimination has been significantly reinforced by legislation such as the USA PATRIOT Act, the general

decrease in concern for civil rights, and the added abuse of power by government agencies following September 11, 2001.

Discriminatory policies and disproportionate focus on the Arab-American community have encouraged racism and bigotry by the general public. There have been increased reports of hate crimes against persons and property, particularly in the first nine weeks following the terrorist attacks. During this period, ADC confirmed over 700 violent incidents aimed at Arab Americans, or those perceived to be Arab Americans. Because the intensity of the backlash, especially in terms of hate crimes and discrimination, was at its peak in the first six months following the attacks, and particularly during the first nine weeks, most of the case summaries in this report are drawn from that period of time.

Hate crimes and acts of illegal discrimination also increased in the employment sector, especially in the airline industry. Some employers are reluctant to hire Arab Americans and are routinely dismissing or creating hostile work conditions for Arab Americans with such illegal discriminatory practices increasing soon after September 11, 2001. Between September 2001 and September 2002, ADC received more than 800 complaints of employment discrimination. This represents a fourfold increase over previous annual rates for employment discrimination against Arab Americans in the past decade.

Many members of the Arab-American community who contact the ADC Legal Department are not aware of their rights and the procedures that law enforcement officials must follow. Even when Arab Americans or Arab immigrants are aware of their rights, they fear that to assert them (such as refusing a voluntary FBI interview) makes them more of a target and perceived as less patriotic.

ADC's Legal Department received approximately four times its usual volume of calls, e-mails, and letters from its constituents reporting illegal airline discrimination, police, FBI, and INS misconduct, denial of service, and physical and psychological attacks in the first six months following the terrorist attacks. ADC has had to double its legal staff and open new offices around the country to effectively respond to the dramatic increase in discrimination incidents associated with the backlash.

Institutionalized discrimination is defined as bias occurring within a specific system, procedure or organization. Following the rash of hate crimes and violence against the Arab-American community in the first nine weeks following the attacks, institutionalized discrimination from both government and private sectors, as this Report demonstrates, became the most prevalent form of anti-Arab discrimination in the period covered by this Report.

Some argue that the pool of potential terrorists of the kind that undertook the attacks on September 11 is limited to men of Arab descent. Similarly, in the wake of the Japanese attack on Pearl Harbor in 1941, it was argued that the pool of potential spies for Japan who might cause harm to our country was limited to people of Japanese descent. This shameful and discredited assumption resulted in President Franklin Roosevelt issuing Executive Order #9066, which led to the incarceration of over 100,000 American citizens of Japanese descent. While nothing done in the aftermath of the September 11 terrorist attacks is comparable to the mass internment of Japanese Americans, analogous assumptions about who constitutes a threat based on ethnic or religious identity have been a feature of the response to the September 11 attacks.

One noted public figure, Peter Kirsanow, one of President Bush's appointees to the United States Commission on Civil Rights, has even gone so far as to raise the possibility of mass internment of Arab Americans as a possible response to any further terrorist attacks on U.S. soil by persons of Arab ethnicity. Kirsanow raised the possibility of internment camps for the mass detention of Arab Americans at a commission hearing in Detroit on July 19, 2002. He did not condemn this idea, but raised it as a serious and reasonable possibility in the event of future terrorist attacks against the U.S. He also stated that, if the perpetrators of any such attack "come from the same ethnic group that attacked the World Trade Center, you can forget about civil rights," and that "not too many people will be crying in their beer if there are more detentions, more stops, more profiling, there will be a groundswell of public opinion to banish civil rights."

Supreme Court Justice Sandra Day O'Connor suggested that Americans are "likely to experience more restrictions on our personal freedom than has ever been the case in our country." Justice O'Connor is correct that it was probably inevitable that, under the circumstances, Americans

would experience more restrictions in the name of public safety and our nation's security. However, this understanding does not provide a rationalization for practices which, in effect, sentence certain members of American society to more restrictions than others because of their race, national origin, religion or ethnicity.

The experience of the September 11 attacks and other threats posed by Al-Qaeda and like-minded extremists demonstrate that a "cookie cutter" approach to the threat will be not only discriminatory, but ineffective. The terrorists have proven that they can and will recruit members from many ethnicities and many countries to carry out their aims. Americans of non-Arab ethnicity such as John Walker Lindh and Jose Padilla; Richard Reid, a British national of English and Jamaican heritage; and Zakarias Moussaoui, a French national, are all examples of how neither ethnicity nor national origin are consistent characteristics of potential Al-Qaeda operatives. Moreover, threats that emerged in the first 12 months following the September 11 attacks included a wide variety of sources, both foreign and domestic. The anthrax murders are widely considered to be instances of domestic terrorism. So too are the mailbox bombings that rocked the Midwest, plots by Jewish extremists in Florida and California to bomb Arab and Muslim targets including the office of the California Republican Congressman, and the October 2002 sniper rampage that terrorized suburban Washington, D.C., all examples of significant domestic security threats. Thus, focusing on Arabs and Arab Americans not only flies against our constitutional dedication to equality under the law, but it is also an ineffective tool of law enforcement. It does not adequately respond to the threat posed by Al-Qaeda and their allies who come from many different backgrounds, and ignores the considerable threats posed by fanatics and potential terrorists from completely different political movements and perspectives.

For purposes of this study, ADC has chosen to divide its account of the legal issues concerning hate crimes and discrimination, including civil liberties concerns, into two categories: private discrimination and public discrimination. Private discrimination refers to hate crimes and discrimination by nonstate actors: private citizens, companies, organizations and other individuals and entities outside of the government. A special section is reserved for issues involving discrimination in educational institutions, both private and public, as this constitutes a special area of concern. Public discrimina-

tion refers to discrimination by the state, or by state employees and includes, for purposes of clarity, civil liberties concerns. It is hoped that this distinction can help the reader distinguish those aspects of the post September 11 backlash which have been committed by private individuals and entities which were for the most part, strongly opposed by the government, from those aspects which are the result of government policies or actions. One of the most striking features of the backlash has been the extent to which the government has strongly opposed discrimination by non-government actors against Arab Americans and others, but, at the same time, has reserved its right towards the enactment of discriminatory policies or selected enforcement of laws and regulations in a discriminatory manner.

Discrimination facing Arab Americans at airports, the first subject of this report, is a mixture of both public and private discrimination, since for most of 2002 the airlines themselves have been responsible for airport and airline security but under strict government guidelines. In addition, many of these cases involve both airline employees and sworn law enforcement officers. Thus, illegal airline discrimination belongs to both public and private discrimination categories.

A. Airline Discrimination/ Airport Profiling

A disturbing pattern emerged in the months following September 11 as airline crews and security began to remove passengers of Middle Eastern ethnicity and other people of color from their flights after boarding but before take-off, because some members of the crew or another passenger felt "uncomfortable" with them on board. Once back in the jetway or gate area, security typically would inform the passen-

ger that, “the crew does not feel safe with you onboard,” the only articulated reason for the removal being a “feeling” of discomfort on the part of someone else on the plane. In most cases, this discomfort was attributed to the passenger’s name or perceived ethnicity, since all passengers had, before boarding, successfully passed through at least three levels of security including the Computer Assisted Passenger Screening System (CAPSS) and the FBI watch list (for more information on the CAPSS system, see previous editions of ADC’s *Reports on Hate Crimes and Discrimination against Arab Americans*). In some cases, the removed passenger had a common Arabic name similar to one on the FBI Wanted List. In other cases, concern was based merely upon appearance and involved persons with perceived origins in Middle Eastern countries. Some actually had origins as far afield as India, the Philippines and Guyana.

These acts of discrimination on the part of airline crew members continued unabated for months despite clear statements by the U.S. Department of Transportation (DOT) and the Federal Aviation Administration (FAA) that basing a decision to remove passengers from a flight solely on their ethnicity, national origin, gender, or religion is “not only immoral, but illegal.” While airline captains have broad discretion to remove passengers from a flight, the law is clear in forbidding any airline official, including a flight captain, from removing any passengers based solely upon protected categories such as these.

There is an obvious lack of guidance and specific instructions for crews in dealing with such situations from both the airline industry and the FAA. While pilots are told not to illegally discriminate, they are not given adequate guidance on how to deal with such circumstances, which were unknown before the period covered in this Report. Under the present circumstances, professional airline pilots are left to act as law enforcement officers, psychologists, and attorneys all at once. While pilots should be respected as professionals trained in flying and managing an aircraft, they should not be burdened with difficult matters involving the delicate interplay of security and the law without proper guidelines. Several airlines issued strict directives to their employees not to discriminate against passengers in this manner, however, ADC is aware of no instance in which airline employees were disciplined for such actions.

ADC made repeated attempts to enlist the support of the DOT and the airline industry to create guidelines for crews, and safeguards and recourses for passengers in such situations. These efforts were not successful and on June 4, 2002, ADC and the ACLU filed lawsuits against United Airlines, Continental and American Airlines. The ACLU additionally filed suit against Northwest Airlines. In three of the cases, ADC served as co-plaintiffs with the individuals who were discriminated against. Four of the five passengers are U.S. citizens and the fifth is a permanent legal resident; two of the five are of Arab descent.

While details of the incidents vary, the cases share certain key elements: the men are all of Middle Eastern or Asian appearance; they had all passed rigorous security checks and were cleared to board; they were all ejected after passengers or members of the flight crews said that they “felt uncomfortable” with them on board; they were all immediately offered seats on subsequent flights without any further security checks; and the incidents all occurred more than a month after the terrorist attacks of September 11, some as late as New Year’s Eve.

At time of publication of this Report, ADC had received over 80 reports of illegal airline discrimination and denial of service of this kind. Reports continued to come in, but have declined in frequency following the filing of the lawsuits.

On November 16, the Air Transportation Security Act (ATSA) was passed with the aim of improving air transportation security. However, there are multiple problems with ATSA. First, ATSA includes guidance on proper self-defense training for airline crews. Self-defense training without sensitivity training could exacerbate the antagonism shown to Arab-American passengers by flight crews. Furthermore, the broad definition of what constitutes a threat under ATSA leaves much room for illegal discrimination by crewmembers. The lack of consequences for an inaccurate “threat” assessment also encourages illegal discriminatory behavior. Therefore, crew training should include sensitivity and cultural awareness training, language training, and clearer guidelines on what constitutes a threat. The Transportation Security Administration (TSA), which took over airport and airline security from airline companies in Fall 2002, should work in conjunction with civil rights organizations and the United States Department of Justice (DOJ) Civil Rights Division to establish the role that race, ethnicity,

national origin and religion play in determining a threat. The TSA along with airlines should establish a step-by-step procedure to be used once airline employees determine that there is a security threat. There should be a log of all incidents on all airlines to monitor discrimination against Arab-American passengers and hold TSA and airline employees accountable.

Second, ATSA requires that passenger and crew manifests must contain the names of passengers, their passport number and country of issuance if required for travel, U.S. visa number or resident alien number. Furthermore, airlines are required to make their passenger manifests available to the Customs Service and, upon request, information provided may be shared with other federal agencies for national security reasons. This information may then be shared with other agencies, such as the INS, for "national security reasons" which are not defined or limited. This sharing of information with agencies such as the INS could result in the systematic investigation of Arabs based solely on their ethnicity or national origin.

Third, ATSA provides immunity from legal liability for airline employees who capriciously report passengers as a threat. Airline employees are given ill-defined and broad powers to contact law enforcement concerning passengers. This could lead to routine harassment of Arab-American passengers for any behavior that an airline employee decides may be relevant. The standard for an airline employee to lose immunity from legal liability is, in turn, an extremely high standard of reckless disregard for the truth or actual knowledge. Thus, any employee could easily manufacture an excuse to harass and still receive immunity. An airline employee should lose immunity for reporting "suspicious" activity if it is found that no reasonable person would think that there was such a threat.

Finally, to improve ATSA training programs and security plans must thoroughly address civil rights issues and provide airline crew members guidance on what factors other than race and ethnicity indicate a passenger might be a threat. The standards for hiring and retaining security personnel at airports must abide by federal civil rights laws, and those hired must be properly trained in defining and detecting security threats not based on race, national origin, religion, or ethnicity. Those hired must be provided with guidelines that all security employees must follow all laws and regulations

that prohibit illegal discrimination. Actions must be taken against those who violate civil rights laws. Cultural and linguistic sensitivity training programs should be included for all levels of both airport security personnel and airline employees. Furthermore, attorneys with the Equal Employment Opportunity Commission (EEOC) and DOJ Civil Rights Division should be consulted in amending the hiring and training policies.

I. Airline Discrimination Case Summaries (Removals)

Unless otherwise noted or indicated, these cases were reported directly to ADC.

AirTran

September 18 - Savannah International Airport, GA: Authorities boarded an AirTran Airways flight from Savannah to Atlanta and removed a passenger, allegedly because the passenger's name was similar to one on the FBI watch list. After questioning, the passenger was cleared and allowed to depart on a later flight.

Alaska Airlines

September 15 - Portland International Airport, OR: A Bosnian wheelchair-bound passenger was removed from his Alaska Airlines flight because a flight attendant did not feel comfortable with him on board. He had been cleared by security before an earlier flight, which he then missed because of the lengthy checks. After scheduling and boarding this second flight, he was removed at the insistence of the flight attendant, who reported that he was acting strangely and nervously.

America West Airlines

January 30 - Detroit Metro Airport, MI: A traveler was prevented from boarding an America West flight to Seattle with a one-way ticket. He and his friends had arrived early at the check-in counter, where an attendant became alarmed at his appearance and one-way ticket. She called her supervisors who arrived and questioned the traveler and his friends regarding his nationality, driver's license, request for immigration status, green card and the registration of the vehicle

that had brought him to the airport. Four additional airport police and three National Guard servicemen also approached the traveler and surrounded him while onlookers at the airport grew concerned. A detective was also present and produced three files on each of the individuals questioned. The traveler was instructed not to speak any Arabic. After two hours of questioning by America West Airlines personnel and law enforcement officials, who also searched the traveler's bags, the traveler was turned over to the FBI. By this point, his flight had already departed and his ticket was taken from him and stamped "canceled." FBI agents then questioned him. The entire ordeal lasted approximately seven hours.

February 8 - Orlando International Airport, FL:

An Arab-American family attempted to board an America West Airlines flight to Seattle, Washington, after their family vacation. America West ground staff at the check-in counter treated the father of the family rudely. An attendant ignored him while other passengers who had arrived after him were served before him. After the family had checked in, they made their way to the gate where they were searched. The young daughter of the family vomited, but the staff did not volunteer to help. Instead, they continued their search. After all other passengers had boarded, the family was cleared and allowed to board. Once they had taken their places on the plane, they were removed by a ground staff member. Apparently the employee had overheard the father of the family objecting to the treatment they had received earlier at the check-in counter. She shouted at them as they were removed from the plane and told them that they would not be compensated for missing the flight. The airline offered to schedule the family on a later flight, but this flight was longer and would not arrive in Seattle until after 10:00 p.m. Concerned for their sick daughter, the family opted for a flight the following day. The airline refused to pay the family's overnight accommodation.

American Airlines

September 15 - Boston Logan International Airport, MA:

An American of Italian descent boarded his American Airlines (AA) flight to Los Angeles. Prior to takeoff, an airline employee, approximately five state policemen and several unidentified personnel escorted him from the plane. They immediately started questioning him about an altercation they alleged he had earlier at the check-in counter. In separate questioning, another officer alleged that the altercation had taken place at the

security checkpoint. They finally informed the passenger that AA refused to allow him on board.

September 19 - Fiumicino Airport, Rome, Italy:

A traveler boarding an American Airlines flight from Rome, Italy, to Chicago, Illinois, was singled out by AA security and Rome police. The officials had him empty his luggage to be searched and re-pack it himself. Afterwards, as he tried to board the plane, AA agents and Rome airport police refused, explaining that the pilot did not feel comfortable with him aboard.

September 21 - Seattle Tacoma International Airport, WA:

An Iranian-American part-time American Airlines employee was returning home from a business trip to Seattle. He had passed through security checks without incident and boarded his flight to Dallas. Before take off, a flight attendant approached him and requested that he gather his belongings and follow him. The passenger asked for a reason but was ignored. When he asked if he would miss the flight, the AA attendant responded that, "yes," he would. When stepping off the plane into the jet way, there was another passenger of obvious Middle Eastern ethnicity waiting. The two men were then led to a room where authorities explained to them that, "the pilot does not feel safe with you guys on board and we have notified the FBI to come here and question you." Three Seattle Airport police officers questioned them and ran a background check, including an interrogation on the two passengers' religion, citizenship and families. They were permitted to board another AA flight to Dallas. An apologetic stewardess later told them that the pilot of the second flight was asked by an agent if he felt comfortable flying with "two Middle Eastern men." When the Iranian-American AA employee related the story to his AA supervisor the next day, he was told that his part-time position with the company would be in jeopardy should he speak publicly about the experience.

September 29 - Heathrow Airport, London, England:

A Pakistani American was detained at Heathrow Airport in London before his flight to the United States. While at the check-in counter, an AA security agent took him aside and searched his luggage. Two British police officers placed him under arrest and took him to Victoria Police Station where he was detained for nearly seven hours. AA allowed him on another flight the next day, but not before subjecting him to the same luggage and body search as the previous day.

October 31 - Baltimore Washington International Airport, MD: An Arab-American traveler was boarding an American Airlines flight to Chicago, Illinois, when he was removed and re-scheduled for a later flight. He had passed through regular security screening and, while in the gateway leading to the plane, he looked at a lady next to him and politely insisted, "Go ahead, ma'am," giving her permission to walk in front of him. She responded with a dirty look and did not move. Shortly thereafter, he turned to see her talking to a security agent. The agent approached the Arab-American traveler minutes later in the plane and said, "Can you get off the flight, please and follow me?" He was told that the woman had reported that he had been "acting strange." He was then scheduled on a later flight.

November 3 - Raleigh/Durham International Airport, NC: A traveler on an American Airlines flight from Wichita Falls stopped in Raleigh for a brief layover when he was taken aside by a police officer and asked to produce identification. Soon he was surrounded by three additional police officers. They told him that an AA customer service representative alleged that the traveler had passed a note to airport security in Wichita Falls, which read, "Do not search my bags." The traveler was shocked to hear the allegation and denied any such communication took place. He asked for proof of the letter and was rebuffed by AA staff and not answered. He was denied passage onto his connecting flight.

November 5 - Boston Logan International Airport, MA: An Arab-American passenger scheduled to fly from Boston to Los Angeles International Airport was singled out during the boarding process and forbidden by an AA manager to enter the aircraft. The manager explained to him, "One of the passengers is not comfortable flying with you."

December 25 - Baltimore Washington International Airport, MD: An Arab-American member of President Bush's Secret Service security detail was originally scheduled to accompany the President aboard Air Force One to Crawford, Texas. He was placed on a commercial flight because of a change in the President's schedule. Once seated on his flight, the secret service agent was confronted by airline security personnel and asked to exit the plane and submit to additional security checks. The agent had a gun, for which he had previously submitted all the necessary documentation. After a delay of one hour and fifteen minutes, during which the AA

pilot, airline officials, and airport police questioned the Secret Service agent, he was ordered to be removed from the flight despite the fact that he had offered to have the Secret Service verify his identity.

Continental Airlines

December 31 - Newark International Airport, NJ: An Arab-American traveler, whose wife works for Continental Airlines, settled aboard a flight to Tampa, Florida, after having passed through security and being selected for a random search of his carry-on luggage. Since the flight was undersold, airline personnel permitted him to be seated in first class. A man of apparent Asian origin, also seated in first class, was speaking to his Indian-American acquaintance. A woman holding a poodle in her arms walked through first class three times, sizing up the three passengers. The Arab-American passenger then overheard her alert the captain that the "brown skinned men are behaving suspiciously," pointing at the three men. A short time later, a Continental gate official approached the three men in first class and escorted them off the plane. Back at the airport, the men were told that they could not re-board the flight. They were also told that the captain had asked that they be arrested. The gate agents were very apologetic and embarrassed; they worked vigorously to arrange alternate arrangements for the men to reach Tampa. The men were rescheduled for a flight to Orlando. Upon arrival at the new gate, the doors had already closed. A Continental agent rushed over, radioed the cockpit of the flight to Orlando, and explained the situation. The gates were then re-opened and the three men boarded. From there, they flew to Orlando and were offered car service to Tampa International Airport. The luggage of one passenger arrived in Tampa several days later. He opened it to find his computer, which had been painstakingly wrapped in bubble wrap, opened, unscrewed and damaged.

Delta Airlines

September 17 - San Antonio International Airport, TX: A 32-year-old businessman of Pakistani descent was aboard a Delta Airlines flight, trying to get to his brother's wedding in Pakistan. He was ushered off the plane by the pilot who said that he and his crew were "not safe flying with you." (*The American Prospect*, 11/19/01)

September 21 - Cincinnati Northern Kentucky International Airport, OH:

Four Jordanian travelers were stopped by security guards as they tried to board a Delta Airlines flight to

Las Vegas. They were escorted into a room where a representative told them, "We got complaints from the crew, and the captain said you can't get on the flight." The group was eventually put on another flight to Las Vegas, but the long delays set their arrival time back to 1:00 a.m. (*The Columbus Dispatch*, 9/28/01)

October 22 - Orlando International Airport, FL:

Four Hispanic businessmen were escorted off a Delta flight after passengers alerted airline staff that the men appeared to be Middle Eastern. The men were checked against the FBI watch list and cleared. They were able to board a later flight. (*The Orlando Sentinel*, 10/23/01)

Northwest Airlines

September 20 - Minneapolis/Saint Paul International Airport, MN:

Three Iraqi natives were stopped from boarding their flight home to Salt Lake City and questioned at the gate. Northwest officials said that they regretted the incident, but that they were bound by unspecified FAA rules. The men were told they were prevented from boarding because some of the passengers and crew were upset.

September 24 - Columbus International Airport, OH:

A Somali woman was told she could not board a Northwest Airlines flight to San Francisco and that she would have to come back the next day and speak to a supervisor. (*The Columbus Dispatch*, 9/28/01)

September 25 - Columbus International Airport, OH:

Another Somali woman and her 10-year-old daughter were turned away from a 6:30 p.m. Northwest flight to San Diego. The women were told that there was not enough time to go through all the security protocols, although they had arrived two hours before takeoff. Other passengers arriving at the same time boarded the plane without delay. Northwest officials informed the women that they could take a later flight, but would be charged an additional \$180 to change their reservations. After the Columbus chapter of a Muslim-American group intervened on the women's behalf, Northwest issued the women two new tickets with no extra fees. (*The Columbus Dispatch*, 9/28/01)

October 23 - San Francisco International Airport, CA:

An MBA student of South Asian descent arrived at San Francisco International Airport with enough time to pass through security and wait to board his flight to Detroit. Twenty minutes before his scheduled

departure time, he heard his name called over the public address system. He spoke with a Northwest agent and supervisor and, upon their request, produced his identification again. Two Northwest security guards and four police officers appeared, as well as two FBI agents. The Northwest agent explained that the pilot was alarmed by a "phonetic similarity" between the student's last name and a list. When the student expressed concern about missing the flight, the Northwest agent told him, "If we do find something, you're not going anywhere, buddy." While the security guards searched the student's person and belongings, the FBI agents ran a background check with his identification. After a half hour, the student was cleared and headed back to the gate where his fellow travelers had nearly finished boarding. Following the last of them to the gate, a Northwest agent suddenly closed the door before him with the explanation, "I'm sorry, sir. This won't make sense to you, but you can't fly with us." The agents worked to make other travel arrangements for the passenger and told him, "Look, we're trying to find another way for you to get home. You can take that or you can find your own way home." The student was booked on a flight with US Airways that day. (See also Airport Security Racial Profiling Case Summaries, October 23 - San Francisco International Airport, CA)

December 25 - Minneapolis/St. Paul International Airport, MN:

Passengers of a Northwest Airlines flight from Minneapolis, Minnesota, to San Jose, California, boarded 40 minutes later than their scheduled time and waited an additional 45 minutes for the ground crew to de-ice the plane. Finally, when the process was complete, the captain announced that there were "computer system problems" which required the plane to return to the gate. By this time, many of the passengers were frustrated as the departure time had been repeatedly delayed. Upon its return to the gate, the plane door opened and a man from the cockpit walked out. He returned with two Northwest Airlines personnel and they convened in the cockpit briefly. When the cockpit door next opened, one of the Northwest security personnel emerged and walked down the aisle to where a Pakistani-American Muslim passenger was seated. He told the passenger to accompany him off the plane and take his belongings with him. Once the men had returned to the airport, the flight was cleared for take off. Northwest Airlines checked and cleared the passenger's identification and explained to him that either the captain or the flight attendants

apparently believed he looked “nervous” and was “looking around” too much for their comfort during the long delay. Northwest booked the passenger on a flight for the next morning and covered his hotel stay in Minneapolis for the night.

Southwest Airlines

November 24 - Nashville International Airport, TN:

An Arab-American university faculty assistant was traveling home to Madison, Wisconsin, when airport security singled him out and requested additional luggage searches. The passenger was outraged and asked to speak to a manager. A manager appeared but refused to answer the passenger’s questions. Security arrived, telling the passenger to “shut up” and threatening to arrest him. Before boarding, a Southwest agent told him that he was not allowed to travel with Southwest, but could request a refund.

Sun Country Airlines

October 28 - Minneapolis/St. Paul International Airport, MN:

Sun Country airline security blocked three Arab-American women from boarding their flight to New York City after overhearing them quietly praying before general boarding. Apparently, the employees became alarmed at hearing one of the women say the word “Allah” during her prayer. Without investigation as to whether any danger existed or other justification, security forcefully and loudly denied them the right to board. Just before this incident, the three women had left the terminal to smoke cigarettes, and had returned through security without incident.

United Airlines

September 17 - Logan International Airport, Boston, MA:

An Indian American, scheduled to fly on a United Airlines flight from Boston to Los Angeles, was approached by flight attendants, who asked him to get off the plane. The attendants explained that a fellow passenger felt as though the Indian American was staring at her and she was not comfortable with him on board. United Airlines put the Indian-American passenger on another flight to Los Angeles four hours later. (*Weekend All Things Considered* - NPR, 9/23/01)

September 20 - Chicago, IL:

An Egyptian-American traveler, who had fallen asleep before takeoff on his flight to Los Angeles, was awakened up by three flight attendants standing over him. Mentioning a luggage problem, they asked the passenger

to follow them off the plane, adding that he was to bring all of his carry-on belongings as well. The passenger, concerned and nervous at this point, refused to bring his belongings and insisted that he be permitted to return after clearing the alleged luggage issue. The flight attendants repeated their request and the passenger panicked, grabbed his phone and attempted to place a call. A marshal grabbed him and took him off the plane. He was told that he would not be allowed on the plane because the crew did not feel comfortable with him on board. After a five-hour wait while United Airlines attempted to retrieve his luggage, he was escorted out of the airport, without his luggage, to a hotel by a police officer. He was reassigned to another United Airlines flight the next day and told that his luggage had been sent off on a different flight the previous evening.

September 21 - Dulles International Airport, Washington, DC:

A United Airlines flight headed to London was delayed nearly four hours after a Saudi pilot sought to fly in the cockpit jump seat, a courtesy normally extended to pilots flying on other airlines. The United Airlines pilot refused and returned to the gate. The Saudi pilot, along with two other men, were then detained and questioned by the FBI and INS for three hours. Finally, the FBI cleared the pilot and released him. (*The Pittsburgh Post-Gazette*, 9/24/01)

September 22 - Tampa International Airport, FL:

An Egyptian American was kept off his flight to Egypt. During boarding, a voice on the intercom asked him to report to the ticket counter. A United employee told the man that the pilot was refusing to let him on the flight. (*The Pittsburgh Post-Gazette*, 9/24/01)

September 22 - San Francisco International Airport, CA:

During boarding before a flight to Philadelphia, a United Airlines representative pulled aside a Pakistani-American passenger and told him that the pilot did not want him aboard. Apparently, a flight crew member grew nervous after seeing him speak to another passenger and felt they had “suspicious communications.” The Pakistani passenger, afraid that there would be problems on account of his appearance, said he had made an extra effort to behave unobtrusively at the airport. (*The Boston Globe*, 11/11/01)

September 23 - Charles de Gaulle Airport, France:

United Airlines employees singled out an American citizen of Algerian descent as he attempted to board his

flight from Paris to Washington, D.C. He was detained, handcuffed, arrested, and strip-searched at Charles de Gaulle airport by United Airlines agents. He missed his flight as a result.

September 25 - Phoenix Sky Harbor International Airport, AZ: Three passengers of Arab descent were removed from a United Airlines flight to Chicago. After the plane they boarded was evacuated, allegedly for mechanical problems, the three men were not allowed to re-board along with the other passengers. (*The Chicago Tribune*, 10/4/01)

September 26 - Los Angeles International Airport, CA: A group of six passengers of Indian ethnicity were questioned on board a United Airlines flight heading from Los Angeles to Washington Dulles International Airport. The men were taken to the back of the plane where the pilot questioned them. After an hour, the FBI and INS arrived and interrogated the passengers. Three passengers left the plane because they felt uncomfortable.

October 9 - Boston Logan International Airport, MA: A Pakistani-American engineer, returning home from a business trip, settled into his assigned seat after boarding and began to read a newspaper. A United Airlines security agent approached him and asked that he step outside the aircraft for some additional security questions. Back in the airport, he was met by state police and FBI agents. During the twenty minutes of interrogation that ensued, the passenger was able to provide his passport and answer questions regarding his immigration status. Finally, the FBI agents handed him back his paperwork and permitted him to return to the flight. Back on the plane, he was again approached by United Airlines security personnel, who requested that he disembark a second and final time. Apparently, the pilot and flight crew refused to allow him to fly with them. He was rescheduled for another flight three hours later.

October 21 - Chicago O'Hare International Airport, IL: An Indian citizen heard his name summoned over the plane's intercom as passengers settled into their seats on their United Airlines flight to San Jose. He responded and was escorted off the flight before take-off by several police officers. The officers interrogated him, reviewed his identification and cleared him. However, instead of returning him to his flight, United Airlines representatives led him to the check-in counter and began making other travel arrangements for him. Unit-

ed Airlines arranged to fly the traveler to San Jose in first class the next morning and offered him \$200 in vouchers. The next day, he was able to fly without incident and United Airlines personnel apologized for the previous evening.

February 14 - Chicago O'Hare International Airport, IL: A newlywed Jordanian-American couple was delayed from boarding their flight after agents at the check-in counter deemed their luggage too weighty. After settling the matter, they were late for their flight and asked the United Airlines ground staff to call the gate so see if the flight was still open for boarding. They were told that the gate would be kept open for them and that they should run to catch it. When they arrived at the gate, the United Airlines attendant saw that the woman was wearing a hijab and closed the gate before them. The couple was not allowed to board, and then had to find a hotel for the evening as they were told the next flight was the following morning. United Airlines did not make the arrangements and did not pay for the hotel.

US Airways

September 17 - Orlando International Airport, FL: Two businessmen from Pakistan boarded a flight after successfully passing through airport security and proper check-in. After 45 minutes of waiting for takeoff, security officers and US Airways representatives boarded the plane and requested that the two men leave because the captain did not feel comfortable with them aboard. The two men disembarked, and were told by the representatives that it was up to each pilot to determine whether passengers could board or not.

September 24 - Toronto Airport, Canada: An Indian Canadian was removed from the plane after boarding a US Airways flight from Toronto to Las Vegas. On the plane, when employees had asked her whether her name was "Mrs. Attah," she ignored the slight mispronunciation and indicated affirmatively. After realizing the nature of the questioning, she corrected the pronunciation. She was escorted to the front of the plane, questioned and removed from the plane. She was questioned further in the airport and told that her name was high profile for being "Middle Eastern."

October 5 and 8 - Washington Dulles International Airport, Washington, DC: The pilot and flight crew of a US Airways flight to Pittsburgh denied travel to four men, one Arab-American

who works for the FAA, his roommate and two friends, whom they had happened to run into at the Washington Dulles International Airport. Before take-off, the Arab-American passenger used the plane's restroom and his roommate did the same afterwards. A flight attendant found it suspicious that both men used the same restroom, yet she did not hear the toilet flush. She approached them and requested to see their boarding passes. A short time later, she returned with a US Airways agent and asked the two men to leave the plane. Their friends were approached and escorted off the plane afterwards. The Arab-American passenger showed security his US passport and FAA identification and the men were then re-booked on a United Airlines flight. When he returned to Washington Dulles on October 8, he was met at the gate by airport officers and five national guardsmen with machine guns. An officer approached him, calling him by name, and told him that a US Airways pilot had asked security "to check on him." Security took his US passport and his FAA identification and returned after 30 minutes, apologized and released him.

November 12 - Reagan National Airport, Washington, DC: An Arab-American passenger on a US Airways flight from Washington, D.C., to Charlotte, North Carolina, was escorted off the plane after fellow travelers complained to a flight attendant. He passed through security checks again before being permitted to take the flight.

Virgin Atlantic Airlines

October - Logan International Airport, Boston, MA: An Indian medical doctor scheduled for a flight to London was asked by security to leave the plane. Apparently, somebody reported to security that he seemed to be walking too much and too close to the gate area before boarding.

2. Airport Security Racial Profiling Case Summaries

September - O'Hare International Airport, Chicago, IL: A Jewish-American businessman, en route to Hartford, Connecticut, was pulled aside by a ticket clerk and told

that the pilot didn't want him on his flight. (*The San Francisco Chronicle*, 9/28/01)

September 17 - San Francisco International Airport, CA: The Yemeni Honorary Consul in San Francisco, Mansoor Ismael, and five others in his diplomatic entourage were handcuffed and detained briefly by police at San Francisco International Airport. A Delta Airlines pilot and a ticket agent had found it suspicious that Ismael was carrying all of the party's six passports. (*The San Francisco Chronicle*, 9/28/01)

September 25 - Detroit International Airport, MI: A Yemeni American was approached by US marshals at Detroit International Airport while he waited for his aunt's flight to arrive from Yemen. The officers suddenly began to search him in public, without explanation. Eventually, the officers stopped after they were satisfied that the man posed no threat.

October 10 - Los Angeles International Airport, CA: A Muslim-American businessman was singled out before his flight from Los Angeles to Tampa, Florida, seemingly because of his name and appearance. After he had passed through the security check and was boarding, an airline attendant approached him with questions about his boarding pass and identity. The traveler responded to all of his questions and then asked the reason behind the interrogation, wondering if he had been chosen because of his ethnicity. "Maybe you were acting suspiciously or maybe (because of) the way you look," the employee responded. An uncomfortable flight then ensued for the passenger, as his fellow travelers had witnessed the earlier scene and afterwards kept a close eye on him. They watched him as he got up to use the bathroom and studied him as he walked down the aisle to return to his seat.

October 10 - Reagan National Airport, Washington, DC: A United Airlines supervisor responded with hostility towards a Palestinian-American businessman's concern. After the businessman boarded the plane, he realized that his assigned seat was in coach, although he had paid for a business-class seat. He brought this to the attention of a flight attendant, who then alerted a supervisor. The supervisor responded angrily, insisting, "This is all you're going to get; do you have a problem with it?" Two United employees apologized for the incident and offered the passenger a ticket voucher. (*The Chicago Sun Times*, 10/12/01)

October 12 - McCarran International Airport, Las Vegas, NV: A traveler on a flight to Minneapolis was seated on a Champion Air flight before takeoff when he was approached by the airline staff. They escorted him back to the airport and conducted security checks on him again. He was humiliated and singled out.

October 22 - Albuquerque, NM:

A Sikh man was stopped by the Southwest ground crew before his flight to Los Angeles and asked to remove his turban and fly without it. He responded by telling the agents that he would not bare his head since his religion forbade him from removing his turban. The agents repeated the order, insisting that he do as he was told. They told him that he must fly without the turban but could retrieve it once the flight landed in Los Angeles. In addition, he was told that, if he had a complaint, he should call customer service. Ignoring his repeated requests for privacy, agents conducted a turban and hair search in full view of his fellow passengers. According to the Sikh man's testimony, after the incident, security waved him through without searching his carry-on bags. Upon arrival in Los Angeles, the passenger complained to Southwest ground crews, who apologized for the incident. The captain of the flight also extended his apologies for the incident. (*India-West*, 10/26/01)

October 23 - San Francisco International Airport, CA:

An MBA student of South Asian descent was turned away from his scheduled flight with Northwest Airlines, (see October 23-San Francisco International Airport, CA, page 24) and was subsequently booked on US Airways. When he arrived at the boarding gate, he was stopped and searched because of a block on his name resulting from the earlier incident with Northwest. The agents could not issue him a boarding pass until the block was removed, even though he had been checked by the FBI for a second time before this flight. Finally, a supervisor intervened and escorted him onto the flight. Two months later, the passenger, scheduled to fly during his Thanksgiving break, was alarmed to see that the block on his name remained, thus leading to the same series of FBI checks, interviews and delays before his flight.

October 24 - McCarran International Airport, Las Vegas, NV:

An Arab-American doctor was singled out before his flight to Pittsburgh, Pennsylvania. His bag was searched and Las Vegas Airport security refused to allow him to help re-pack the items. The security personnel were

rough and careless with his belongings and damaged his electric razor and CDs.

November 7 - Chicago, IL:

A 22-year-old Muslim-American woman was asked to remove her hijab even after passing through the metal detector without setting off the alarm. A screener ran a metal detecting hand wand over her boots, pants, and sweater, again detecting nothing to set it off. Yet, the security, as well as one national guardsman, requested again that she remove her head covering. In a compromise, the woman was escorted into a private room with female security personnel, where she agreed to remove her hijab. The security guards unzipped and felt beneath all layers of her clothing and ran fingers through her hair. (*The Washington Times*, 1/18/02)

December 18 - Baltimore Washington International Airport, MD:

A 17-year-old Muslim-American high school student from Virginia was passing through security when suddenly an airport security guard stopped her. "Hey, you need to take that off," the guard called out, referring to her hijab. "Why do I have to takeoff my head cover?" the girl asked, when suddenly nearby military personnel approached her. The sight of the guards in camouflage, carrying combat rifles intimidated the frightened teenager and she quickly took off her hijab. A Muslim airport employee rushed to her assistance upon witnessing the scene. The employee informed the guard that it was wrong to force the student to remove her headscarf in public. (CAIR, 1/8/2002)

January 1 - Miami International Airport, FL:

An Arab-American passenger en route to Washington, D.C., passed through security checks, submitted his boarding pass and stood in line in the jetway during general boarding. Two airport police officers approached him and requested that he exit the jetway and follow them. While they returned to the airport, the passenger asked for the reasons behind his removal. The two officers told him that the AA pilot requested that he be "checked out" because he had an "Arabic name." Three FBI agents appeared and questioned him about his identity. Finally, the agents allowed him to return to the flight. Although the flight was scheduled for departure at 3:15 p.m., it finally took off at 7:30 p.m. because of mechanical difficulties.

February 4 - Schiphol International Airport, Amsterdam, the Netherlands:

A Palestinian-American female traveler was returning to

the United States after her wedding in Jordan. In Amsterdam, she was pulled aside by Northwest agents and interrogated about her two previous trips to the Middle East. She was then escorted downstairs to an isolated room. She was made to remove her shoes and three security agents searched her bags. Guards opened every container in her bag including lipstick and mascara tubes. Each time something Middle East-related was discovered, a Palestinian flag for example, the guards allegedly asked, "Oh, so you're really into Palestine?" or "You're really into this 'Islamic stuff?'" They attached security stickers to her bags, re-packed them and allowed her to return to the gate. She rushed back upstairs to board her flight. However, near the gate, a different set of guards stopped her, re-opened her bags, and searched them. This second search was conducted in front of her fellow passengers.

B. Public Discrimination/Civil Liberties Issues

I. New Discriminatory Immigration Policies

Among the subjects of greatest concern to the Arab-American community in the wake of September 11, are a new set of government policies regarding immigration and immigration law enforcement. Taken together, these policies amount to the reintroduction of ethnic and national origin discrimination into the American immigration system for the first time in many decades. These policies include measures which discriminate against Arabs and Muslims with regard to alien registration, visa screening procedures, tracking foreign nationals already in the

country, selectively deporting Middle Eastern so-called "absconders," and secretly detaining and deporting persons for minor visa violations, often without due process.

a) Alien Registration

Drawing on existing but rarely enforced legislation dating from the late 1940s, the Department of Justice announced that all foreign nationals from a list of five countries, mostly Arab, as well as other noncitizens, would need to engage in a new process of alien registration. The registration would involve fingerprinting and photographing at the point of entry into the United States and a requirement to keep the authorities apprised of one's movements on a regular basis. The countries listed for universal alien registration are the five Middle Eastern countries already on the State Department list of state sponsors of terrorism: Iran, Iraq, Syria, Libya and Sudan. Nationals of these countries entering the United States, as well as those already in the United States, are required to submit to automatic alien registration procedures. None of these onerous security requirements automatically apply to nationals of any other country, although directives to focus attention on young men from a number of other Arab and Muslim states, including but not limited to Egypt, Yemen, Saudi Arabia and Pakistan, have also been issued. The government has also announced that it intends to register any foreign national deemed to be "suspicious," including at the discretion of any individual immigration officer.

Perhaps even more than the other measures outlined in this section, universal alien registration based on national origin constitutes the most blatant form of national origin discrimination in U.S. immigration policies for many decades. By connecting the dots, so to speak, by examining these policies together — alien registration, the detentions, the investigations, the absconders and the new visa screening rules — a pattern of coherent and systematic discrimination begins to emerge. Essentially, the United States has recast its immigration system to involve two completely different standards — one for Arabs and other Muslims, particularly young males, and another for everyone else. The thinking behind these practices is clear and consistent: Arabs and Muslims, especially young Arab men, are now considered by the government to be, by definition, suspicious, potentially

dangerous and of interest to the authorities. Moreover, any time the government itself is seen to be acting in an inherently discriminatory manner, it tends to authorize others in society to discriminate as well and reinforces prejudices that produce various forms of discrimination and even hate crimes. In short, the government, when speaking out against anti-Arab discrimination, is caught in a position of telling its citizens, in effect, "do as I say, not as I do."

b) Secret Detentions, Hearings and Deportations

One of the earliest examples of a new and discriminatory approach to immigration law enforcement following the September 11 attacks was the secret detention, in facilities around the country, of hundreds of men, mostly Arab or Muslim. The total number of detainees is not known, although the government at one point claimed that the figure was approximately 1,200 persons. It is important to note that the overwhelming majority of these individuals were not accused or even suspected of involvement in any form of terrorism, or having knowledge of any form of terrorism. They were simply Arab or Muslim men picked up after September 11 who are in some manner, including extremely trivial ways, out of status. Other foreign nationals with similar technical visa problems have not been incarcerated in this draconian manner nor deported for trivial reasons. The case of the Pakistani man, Ansar Mahmood, whose unjust deportation is based on nothing more than helping some fellow immigrants who are out of status find housing, illustrates how harsh and unfair these deportations can be. In another instance, a Palestinian man was arrested and slated for deportation for not reporting a change of address to the INS within ten days, an otherwise completely unenforced provision of immigration law.

Moreover, although the government claims to have released or deported all but 73 of the detainees, ADC has no way of knowing how many people have been held and are still being held under such circumstances, since the government will not release this basic information. In October 2001, ADC filed a formal request with the DOJ under the Freedom of Information Act (FOIA), requesting the disclosure of information on the detainees. Although the government released some information on the

detainees, the information provided was incomplete and did not satisfy the FOIA request. In December 2001, ADC joined 18 other civil and human rights organizations, including the ACLU, Amnesty International USA and the Center for Constitutional Rights, in a lawsuit against the DOJ, again requesting basic information on the detainees. On August 2, 2002, Federal District Court Judge Gladys Kessler ordered the government to comply with the request and release the names of the detainees, providing for possible secrecy on a case-by-case basis with judicial review. The government has refused to comply with this order and is appealing. Until all the names are released, we will never be sure just how many people were arrested, how many were deported or released, and how many remain in detention. One thing we do know, however, is that in many cases these men would never have been jailed if they had a different ethnicity or religious affiliation, and would not have been jailed under the same circumstances before the September 11 attacks.

Once behind bars, detainees might wait anywhere from several hours to several months before learning the reason behind their arrest or being allowed to contact an attorney. Immigration officials are allowed a "reasonable time period" to formally charge detainees with an immigration violation. However, the duration of this "reasonable time period" remains undefined, and thus scores of immigrants have been imprisoned for weeks before charges were brought against them. The *Washington Post* reported that two Pakistani immigrants who were arrested in October waited 49 days before being charged with overstaying their visas. An Israeli national was held for 66 days before being charged with illegally entering the country. According to some documents released by the INS this demonstrates how widespread disregard for due process was in the course of these detentions, especially for those individuals labeled "special interest detainees." Out of 718 so-called "special interest" detainees being held on immigration violations, 317 were held without charge for more than 48 hours. In 36 of those cases, individuals were held for 28 days or more before being charged. Thirteen people were held for more than 40 days without charge and nine were held for more than 50 days. One Saudi individual was held for no less than 119 days without being charged.

A report released in March 2002 by Amnesty International alleged that "a significant number of

detainees continue to be deprived of certain basic rights guaranteed under international law." ADC has received reports of detainees held in filthy, high security cells, some in solitary confinement, while others are placed in areas crowded with hostile criminals. Immigration attorney and ADC spokesperson Denyse Sabagh pointed out in her testimony before Congress, "When they talk about detention, what do they mean? It means jail. Anything could happen in jail. People were really upset over what happened, so guess who they take it out on? They take it out on these people who have been arrested because of a cloud of suspicion." Additionally, bonds for minor visa violations are usually at the level of \$2,500 and clients can leave jail within a few days. During the sweep, bonds, when allowed, ranged from \$9,000 to \$15,000.

Recent immigration legislation has taken power away from immigration judges and, instead, given the final approval for the release of an individual to the Attorney General. In certain cases where an individual is ordered deported by an immigration judge, the individual may undergo a background check and must wait for clearance from the FBI. Without clearance, the individual remains detained. However, even after he is cleared by the FBI, or when FBI officers have informed the client or their lawyers that the agency has no interest in their case, the INS will still not release the detainee without an official clearance from the DOJ. Delays are long and, in some cases, the detainees will have deportation orders, travel documents and open-ended tickets to their homeland in order, but remain in jail waiting for clearance.

The secret detentions were combined with secret hearings, immigration procedures that remained closed to the public and press. The DOJ admits that it has held at least 600 secret hearings since September 11, 2001. An unknown number of individuals have been deported following their secret detention and secret hearings. In one instance, the government chartered a plane and performed a mass deportation of 132 men to Pakistan.

On March 26, 2002, New Jersey Superior Court Judge Arthur D'Italia, ruled that county jail authorities could not keep secret the names of the individuals detained on immigration charge, saying that secret arrests are "odious to a democracy." He warned that law enforcers must not compromise civil rights, even in the state of emergency brought about by the events of September

11. This was the first such ruling in the nation concerning detainees and it was immediately appealed and stayed.

Another well-known case involving rulings against secret hearings began when Rabih Hadad, a Muslim community leader in Detroit, was arrested by three INS agents in December 2001 and detained for overstaying his visa. On the day of his arrest, U.S. government officials also froze the assets of an Islamic charity he co-founded, because it was "suspected of supporting and funding terrorist groups." The charity denied the allegation, and the government did not charge Hadad with any crime. However, he remains detained without any credible evidence that would support the need for his detention and without granting him public hearings. On February 12, his wife and three of their non-citizen children were asked to appear in a Detroit Immigration court to begin removal proceedings. On April 3, 2002, Judge Nancy G. Edmunds ruled, in a consolidated lawsuit involving Hadad and local civil rights and media groups, that "the subtext [of this case] is all about the government's right to suspend certain personal liberties in the pursuit of national security." This ruling was the first federal decision arguing the constitutionality of the government's policy of holding secret immigration hearings. "It is important for the public, particularly individuals who feel that they are being targeted by the government as a result of the terrorist attacks of September 11, to know that even during these sensitive times the government is adhering to immigration procedures and respecting individuals' rights," Edmunds wrote.

In the same case, on August 26, 2002, the sixth U.S. Circuit Court of Appeals also held that secret immigration hearings violate constitutional First Amendment and due process rights. "The public's interests are best served by open proceedings. A true democracy is one that operates on faith — faith that government officials are forthcoming and honest, and faith that informed citizens will arrive at logical conclusions," the court ruled. It declared that, "this is a vital reciprocity that America should not discard in these troubling times. Without question, the events of September 11, 2001, left an indelible mark on our nation, but we as a people are united in the wake of the destruction to demonstrate to the world that we are a country deeply committed to preserving the rights and freedoms guaranteed by our democracy."

However, in a separate case, on October 7, 2002, the 3rd U.S. Circuit Court of Appeals reversed a lower court ruling and said that the Attorney General has the right to close immigration hearings for reasons of national security. The two-judge majority held that the types of deportation hearings being closed were “extremely narrow” and that the Attorney General is in a better position than immigration judges to determine their importance to national security. “Even minor pieces of evidence that might appear innocuous to us would provide valuable clues to a person within the terrorist network,” Chief Judge Edward R. Becker wrote. The 3rd Circuit’s decision only applies to immigration hearings in its coverage area — New Jersey, Pennsylvania, Delaware and the Virgin Islands — and not to the Hadad case. Thus the issue of secret hearings remains hotly contested not just between the government and civil libertarians, but between different courts.

ADC has received scores of reports from family members and friends of individuals caught up in this dragnet, detailing various complaints. ADC and other organizations have documented numerous instances in which detainees were not only held without charge but also denied access to counsel.

The following is a small sampling of such reports:

c) Detainee Case Summaries

September 19 - Wiggins, MS:

A 20-year-old Pakistani student was arrested for an expired visa while he was riding an express bus through Mississippi on his way to New York. He was taken to the closest correctional facility where he was locked up with hostile inmates, who harassed him and beat him severely, calling him bin Laden. They stripped him naked, beat him until his eardrum ruptured, broke his tooth and fractured his rib. The student alleged that the guards did not do enough to stop the attacks, which continued for 20 minutes after the victim rang the alarm bell. A week after the assault, he could not hear through his left ear nor eat solid food because his tongue was swollen and he had pain in his jaw.

September 26 - Kendal, FL:

An Arab American contacted ADC on behalf of her cousin’s husband who has been held by immigration authorities for over a week. The man is a student at the University of Florida and recently went to a convention

with his class. Police searched everyone at the building’s entrance and, when they discovered Koran tapes in this student’s car, they immediately brought him to the INS. They have no charges against him, other than an expired visa, but he was detained and his family was forbidden from visiting him.

September 28 - Topeka, KS:

An American married to a Jordanian national was interviewed by agents from the INS and the FBI regarding her husband, for whom she had filed a I-130 petition requesting his permanent resident status. She was persuaded by the agents to revoke her application. The INS agent also questioned the nature of the marriage and warned her of the consequences of having a marriage of convenience for the purpose of gaining permanent resident status for her husband. They also told her she did not need a lawyer present during their visit. The woman is on disability and her husband can no longer work since the petition was revoked. Her husband was detained by INS, released on \$5,000 bond and afterwards faced deportation hearings although he was cleared of any involvement with the events of September 11.

October 30 - Fairfax, VA:

A deputy on duty beat an inmate at the Fairfax Adult Detention Center. The prison refused to give his mother a report about the beating, despite her repeated requests. She reported to ADC that, unlike the other inmates, her son is not allowed to watch TV, use a blanket, and is denied free time.

October - Wayne County, MI:

The wife of an Arab-American man contacted the ADC office in November 2001, explaining that her husband has been held in custody at the Wayne County jail since October 17, 2001, because another individual filed false charges against him. The wife explained that this individual had shot her husband, and her husband had reported the incident to the authorities. For reasons unknown to her, though, her husband was arrested and held. She claimed that her husband is being mistreated, and he is not being given his medication for the gunshot wound. ADC reviewed the case and referred the wife to legal counsel on November 13, 2001.

Human Rights Watch compiled a number of examples of individuals unjustly detained in the course of the post-September 11 sweeps (for more details, see

Human Rights Watch's fine report *Presumption of Guilt: Human Rights Abuses of Post-September 11 Detainees*):

■ On November 1, 2001, two FBI agents went to the workplace of a Palestinian civil engineer in New York City. They informed him that they had received an anonymous tip that he had a gun, which was not true. The engineer suspected that a contractor with a grudge against him sent the tip to the FBI. Five days later, INS agents came to his workplace and arrested him for overstaying his visa. The man's visa had indeed expired but he had applied for an adjustment of status; he was therefore legally in the country. He received a visa extension from the INS office in Vermont while he was detained. He was incarcerated for twenty-two days before being released on bond.

■ On November 25, 2001, after a resident of Torrington, Connecticut, told police that he had heard two "Arabs" talking about anthrax, police officers followed two Pakistani men suspected of having had the conversation at a gas station. The officers arrested the two men and also Ayazuddin Sheerazi, an Indian businessman who was minding the station temporarily for his uncle, the owner, and another man from Pakistan who happened to be there at the time. According to Sheerazi's attorney, the police never offered any reason for arresting Sheerazi or suspecting him of wrongdoing. He told Human Rights Watch, "Torrington is a small place, so they arrested the Arabs in the community." Even though Sheerazi was legally in the country, the INS kept him eighteen days in detention before he was released on bond. (The caller who made the complaint to the police later failed a voluntary polygraph test).

■ Ahmad Abdou El-Khier, an Egyptian national, was picked up on September 13, 2001, after a hotel clerk told police that he appeared "suspicious." El-Khier was initially charged with trespassing in the Maryland hotel where he was staying, then held as a material witness, and finally charged with violating the terms of his visa on a previous visit to the United States. He was deported on November 30, 2001.

■ Mohammed Asrar, a Pakistani convenience store owner in Dallas, Texas, was arrested on September 11, 2001, after a neighbor called the police to report that he was an "Arab" who possessed guns and might be a

terrorist. Asrar was arrested by the FBI at his convenience store and interrogated without an attorney for hours. He was charged with "possession of ammunition while a prohibited person." The fact that he had overstayed his visa rendered him a person prohibited from possessing ammunition. "[The prosecutors] think he's a terrorist, but when I ask them why, they won't tell me," said his court-appointed attorney. The attorney told Human Rights Watch that he believed that innocuous facts, such as Asrar, who is an avid photographer, took pictures of the Atlanta skyline, were seen with suspicion because Asrar is South Asian. "There is no question in my mind that the prosecution of this case and the treatment of my client are unique because of his ethnicity," he said.

■ Two Somali men, Ismael Abdi Hassan and Ahmed Shueib Yusuf, stopped their rental vehicle on November 26, 2001, to kneel in a parking lot and pray in Texas City, Texas. Responding to a call by a "nervous bystander" who reported "suspicious activity," Texas City police approached the men and subsequently arrested them after a search of their car uncovered a knife and a driver's license that appeared to have been altered.

■ Forty Mauritians were arrested in Louisville, Kentucky, apparently because someone had told the police that one of them was taking flying lessons, which turned out to be untrue, and another person said that one of the Mauritians looked like one of the alleged hijackers. Bah Isselou told Human Rights Watch that he and others who were arrested at his home were not told the reason for the arrests or who was arresting them. They were driven to the INS office in Louisville, where they learned they had been arrested by the FBI and the INS. All but four of them were released the next day. On the third or fourth day after their arrest, the four still in custody were informed they had been charged with overstaying their visas.

■ On September 21, 2001, Ahmed Alenany, an Egyptian physician, was approached by a police officer after he had stopped by the roadside in New York City to look at a map. According to Alenany, the police officer questioned why he had stopped in a no-parking zone, asked to see his visa, and discovered it had expired. The police officer also noted two pictures of the World Trade Center in Alenany's car. Alenany was subsequently charged with overstaying his visa even though

he had filed for an extension before it expired, and thus, he was legally in the country. Without the advice of counsel, Alenany agreed to be deported because the judge suggested that pursuing his case would keep him in jail for many weeks. He was detained for more than five months while waiting to be removed from the country, during which time the government presented no evidence linking him to terrorism. He is now free but still faces possible removal from the country.

d) Voluntary Interviews

The government has initiated two rounds of investigations into thousands of young men, again mostly Arab, based on their age, national origin, gender and time and manner of entry into the United States. In November 2001, the government initially sought to interview 5,000 people based on these broad categories, and then an additional 3,000 more in early 2002. The information gathered in this manner is being collected in a national database, which suggests that the whole point of the exercise is to collect and maintain detailed dossiers on people of a certain description — young Arab men. No comparable effort to investigate any similar group of non-citizens in the United States exists.

While technically voluntary, many of the men targeted felt that the interviews were compulsory. In many states, such as Michigan and Washington, law enforcement officials sent letters to hundreds of young Arabs and Muslims, inviting them to submit to the questioning. Elsewhere, in New York and New Jersey, law enforcement officials appeared unexpectedly at people's homes and places of business with the same request.

The program, perceived as an unlawful method of investigation and a form of racial profiling, raised concerns among civil rights groups, including ADC. Although federal terrorism investigators insisted that none of the 8,000 men were suspect and that they had no basis to believe that any of them had knowledge relevant to the investigation, the very nature of the investigation seemed driven by the interviewees' ethnicity, gender and countries of origin. The men targeted were between the ages of 18 to 33, entered the country after January 1, 2000, on nonimmigrant visas, and were mostly Middle Eastern. Questions included inquiries into their political beliefs, the political beliefs of their friends and family, and the locations to which they have

traveled. Investigators also asked whether or not they sympathized with the September 11 hijackers, if they owned guns or have had scientific training.

Investigators were able to contact around half of the individuals on the list and over 90 percent of the men voluntarily submitted to the questioning. A number of law enforcement experts and officials, including several police chiefs, agreed that the interviews constituted an unacceptable form of racial profiling and an unwise use of time, and declined to participate in the program.

Around 20 of the people interviewed were arrested afterwards, most of them charged with minor immigration violations. To date, none of the individuals interviewed was able to offer any information on the September 11 attacks. At best, this nationwide questioning based on such broad criteria proved ineffective and squandered the time and efforts of investigators. At worst, the investigation further drove a wedge of distrust between the Arab-American community and the government. Surprisingly, Attorney General Ashcroft seemed pleased with the investigation, which he claimed, "generated a significant number of leads ... into the September 11 attacks ... fostered new trust between law enforcement" and the Arab and Muslim communities, and helped to "disrupt potential terrorist activities."

As noted above, in spite of its grave concerns regarding this investigation, ADC worked with law enforcement officials around the country in an effort to ensure that the interviews went as smoothly as possible with as little disruption to individual lives as possible. Nonetheless, we cannot agree with the Attorney General that this program fostered any new trust between the government and the Arab-American community. This dragnet profiling directed at Middle Eastern men appears to be based on the fallacy that ethnicity, age and country of origin alone merit an investigatory process. The excessive reliance on race in a criminal investigation, a common problem in law enforcement, is an entirely ineffective investigative method and upstages more solid techniques of suspecting individuals based on more specific and focused criteria.

e) "Absconders"

Another example of ethnic discrimination in immigration law enforcement post-September 11 is the priori-

zation of finding the presumed "Middle Easterners" among the 315,000 approximately "absconders" persons ordered deported but who remain in the country. The move to add the list of absconders to the National Crime Database is part of a broader effort to bring regular police and law enforcement into immigration law enforcement activities that have heretofore been the provenance of the INS. But by adding the 6,000 presumed Middle Easterners to the database first, and others among the 300,000 afterwards, the government is placing a priority on removing a group of absconders based on their presumed ethnicity.

f) Visa Screening Procedures

The new visa screening procedures, whereby males aged 16-45 from Arab states and other Muslim nations will have to answer a special questionnaire in addition to the one required of all applicants and wait an extra 20 days, is another clear policy of discrimination. The overall effect of changes in immigration policy following the September 11 attacks on patterns in immigration and tourism is not yet clear. However, anecdotal evidence suggests that many Arabs and Muslims, particularly young men, are having difficulty obtaining new visas or renewing existing ones. In some instances, students have been unable to return to university graduate degree programs in which they have been involved for many years. Reports also suggest that many Arabs or Muslims may be reluctant to travel to the United States or apply for a visa in the first place due to perceptions of hostility and bias, which in some cases may well be exaggerated. Early evidence of a negative effect of the September 11 attacks on patterns of immigration includes an overall drop in the total number of individuals obtaining entry into the United States via the national visa lottery program, based almost entirely on the withholding of Middle Eastern applicants from consideration in the program. Moreover, the State Department has said that it is scrutinizing all re-entry visa applications from residents of 26 countries. Government officials declined to name the nations on the list; however, it is apparent that applicants from many Middle Eastern, Arab or predominantly Muslim countries are being delayed.

g) International Students

Beginning in January 2003, all postsecondary schools in the nation are required by the INS to track foreigners

studying in the United States via the Student and Exchange Visitor Information System, or SEVIS. The database will include each foreign student's name, age, current address, major or primary course of study and academic standing. If a student changes apartments or majors without telling the government, or if the student's grade-point average drops below a certain level, they can be immediately deported.

Following the first World Trade Center bombing in 1993, which killed six people and injured more than a thousand, Congress authorized a more comprehensive international student tracking system. Nearly a dozen schools across the country were used as testing grounds for the new system, but after 1996 Congress declined to fund the program. In the wake of the September 11 attacks, however, Congress appropriated \$36 million for the project as part of the USA Patriot Act and the INS set January 30, 2003, as the deadline for implementation. Concerns have already been raised by numerous university administrators that, under this system, a student could be deported without appeal, even if it is conclusively shown that they have never broken any of the rules.

h) Other Instances of INS Discrimination

In June 2002, the DOJ issued an internal memo, directing the INS and U.S. Customs to selectively seek out and search all individuals of Yemeni origin including U.S. citizens, but excluding individuals with diplomatic status. This directive applied to both Yemeni Americans and Yemeni nationals. According to the DOJ, the impetus to adopt such procedures is based on evidence obtained by intelligence. The DOJ explained that this was a necessary precaution to "protect the nation from any possible terrorist attack." ADC was given to understand that this directive was time specific and not open-ended. Following the implementation of these new measures, ADC received a number of complaints from individuals who were directly affected. Some of the individuals targeted were removed from planes before departure, even after passing through security, while others were singled out while in line to check in luggage at airports and left stranded for hours waiting for clearance from the INS. There have also been reports that items have been removed from passengers' luggage without explanation. Some individuals were even handcuffed to poles for hours as officials questioned them. ADC believes that this policy is no longer in effect.

2. Additional Civil Liberties Concerns

The following legislation and administrative policies have raised serious concerns about civil liberties in the United States, especially for Arab Americans and immigrants from the Arab and Muslim worlds.

a) USA Patriot Act

The USA Patriot Act, a glossy and, to many of its opponents, intimidating acronym for the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (HR 3162)," was signed into law by President Bush on October 26, 2001. While most aspects of the law are unobjectionable, the Act has caused considerable concern by stretching the definition of terrorism, damaging the principal of judicial review and system of checks and balances between different branches of the government, and providing new and expansive detention and deportation powers. It was passed with virtually no public hearings or debate, and no committee reports. Congressional insiders have stated that unattained goals left over from the sweeping immigration reforms of 1996 were essentially combined and drafted into the 342 page Act. The Act has raised concerns and criticisms from civil libertarians, immigrant groups and others who view some provisions of the law as eroding civil liberties and stripping courts of their authority. The three chief concerns of ADC with the act are:

I. INDEFINITE DETENTION

One of the bill's provisions, Section 412, provides the government with sweeping new powers to detain immigrants and other foreign nationals indefinitely with little or no due process at the discretion of the Attorney General. The provision requires that the Attorney General charge those detained within seven days, rather than the presumably constitutional 48-hour period, with either a criminal offense or an immigration violation. However, there is no requirement that detainees ever be given a trial or a hearing in which the government would have to prove that they are terrorists. The detention would be allowed pursuant to the Attorney General's certification of the alien in finding "reasonable grounds to believe"

that such an individual threatens national security or the community, updated every six months with no ultimate time-limit. This decision will not be subject to judicial review, other than constitutionally available habeas corpus. However, if slated for trial by a military tribunal, the detainee could be held indefinitely, with neither judicial review nor habeas corpus. [See below - Military Tribunals.]

Those immigrants that have immigration status violations, such as visa overstays, but who are found not to be deportable for terrorism-related charges, could potentially face indefinite detention if they have no country to return to, as in the case of Palestinians, or if their country of origin refuses to accept them, as in the case of Iraqis, Cubans and Libyans.

II.) SEARCHES, SEIZURES AND WIRE TAPPING

The law also expands the ability of the government to conduct secret searches, seizures and surveillance with reduced standards of cause and levels of judicial review. Section 213 of the Act, for example, allows for search warrants for law enforcement agencies to conduct searches of a person's home or office without notice and to even delay giving notice for an undefined "reasonable period" after the search is completed ("sneak and peak" practices). In other words, the government could enter a house or office while the occupant is away and search through or even seize property, take photographs, and review electronic communications, all without the occupant's knowledge.

III. GUILT BY ASSOCIATION

The Act broadly stretches the definitions of 'terrorist activity' and 'to engage in terrorist activity' far beyond the bounds set by previous legislation and understandings, spilling over to include otherwise lawful activities. According to the Act, a terrorist activity is defined as a premeditated and politically motivated act of violence against a civilian population that could involve the use of "a weapon or dangerous device (other than for mere personal monetary gain) with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property," even if nobody is injured. In practice, any number of activities could fit under this definition and thus be categorized as terrorist activities. Likewise, the term "engage in terrorist activity" has been extended to include soliciting funds or membership for, or providing material support to, a "terrorist organization." For example, under the new law, a green

card holder who joins a street protest, including an event like the WTO protests, where someone is involved in minor vandalism or anyone breaks a window, could be involved in "terrorist activity." The definition of a 'terrorist organization' has also been expanded beyond recognition. With this formula, a non-citizen who pays the ransom to release an individual kidnapped by a group could be cited for engaging in "terrorist activity."

Section 411 of the Act allows for the detention and deportation of non-citizens, including green card holders, engaged in innocent associational activity. The speech or advocacy need not incite "imminent lawless action," as required by the Supreme Court; instead someone making a controversial speech could be barred from returning to his family after a trip abroad. Individuals who provide lawful assistance to groups that are not even designated by the Secretary of State as terrorist organizations, but instead have engaged in vaguely defined "terrorist activity" sometime in the past, could legally face detention or deportation on account of these associations. There is no general notice listing terrorist organizations and, as explained above, any group that engages in some form of damage or vandalism could be regarded as "terrorist." To avoid deportation, the immigrant is required to show that he or she did not know, and should not have known, that the assistance would "further terrorist activity."

The Act greatly curtails the First Amendment rights of all immigrants, for it leaves the immigrant with few options to protect himself or herself from deportation other than to avoid associations with any number of outspoken groups, foreign and domestic. The Act deprives immigrants of their First Amendment and due process rights in two ways. First, under Section 411, the class of immigrants that can be removed on "terrorism" grounds is expanded as mentioned earlier. Second, it allows great increases in the Attorney General's power to detain any immigrants who are suspected of falling into that class.

b) Attorney-Client Communications Eavesdropping

A Bureau of Prisons regulation issued by Attorney General Ashcroft provides that an individual held in detention no longer has the right to protected confidentiality in conversations with his or her attorney. On October 31, 2001, Attorney General John Ashcroft promulgated reg-

ulations that allowed for government agents to eavesdrop on all communications between attorneys with their clients in federal custody, including clients who have not been charged with any crime. These regulations, which were imposed seemingly offhandedly and without evidence of any internal discussion, appeared in a routine notice in the Federal Register along with several other changes in Bureau of Prisons rules. Ashcroft activated them one day before they were disclosed publicly.

The new regulation clearly violates provisions in the Sixth Amendment, which guarantee the rights of the accused to effective assistance of counsel. If the accused are denied private discussions with their attorneys, then the basic right to be represented by an attorney is meaningless, since an attorney's ability to mount an effective defense under such circumstances is dealt a fatal blow. In many cases, the DOJ itself may be seeking to prosecute an individual and, simultaneously, have access to their protected attorney-client conversations.

The government had already asserted the authority to monitor such communications before the September 11 attacks, but that power was tempered by a requirement that it first make a showing to a judge that such monitoring was necessary. Now, the executive branch has the power to unilaterally make such decisions, without judicial review. The new rule does require the government to notify attorneys and their clients in advance when monitoring will occur, making it unlikely that the government will gain any useful information about terrorist plots. But the rule is likely to significantly infringe on what the Supreme Court has described as "the oldest of the privileges for confidential communications known to the common law," designed "to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice."

The attorney-client privilege is deeply rooted in the American legal system and is among the most fundamental basis for due process and fairness in an adversarial system. The new regulation, on the other hand, presumes the guilt of the detained individual and also the complicity of his or her attorney. It is unclear whether any evidence gathered under such circumstances could be considered admissible at a trial.

However, in at least one case, charges have been brought against an attorney apparently based on eaves-

dropping on attorney-client communications. Lynn Stewart, the attorney who represents Sheikh Omar Abdel Rahman, the Egyptian cleric convicted of inspiring the first World Trade Center bombing in 1993, was herself arrested in 2002 in effect on charges of having breached her obligation not to communicate messages between her client and his followers. This is widely regarded as a test case designed to establish the viability of prosecutions based on eavesdropping of this kind.

c) Military Tribunals

President Bush issued a directive on November 13, 2001, which allows the government to try foreign nationals accused of terrorism-related charges in military tribunals rather than in civilian courts. A military tribunal is a wartime measure, used traditionally to try individuals suspected of violating the laws of war. The directive, entitled "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," allows a military commission to try individuals whom the President "has reason to believe" are 1) members of Al-Qaeda; 2) people involved in acts of international terrorism against the United States; or 3) people who have knowingly harbored such individuals. The directive was issued without a time limit and applies retroactively, spanning far beyond the current crisis in both chronological directions. In effect, such tribunals could be implemented for individuals determined to be "terrorists" based on their actions in the past, before provisions for such tribunals ever existed.

The directive was issued with neither a formal Congressional declaration of war nor Congressional authorization. It allows the Secretary of Defense to appoint panels of three to seven judges and set the tribunals' rules and procedures. An officer from among the panel would be chosen to preside over the proceedings. This officer has the authority to admit or exclude evidence and to close the proceedings to the public and/or press. Witness testimonies or evidence may be accepted without the defendant being able to confront it.

Clearly, the tribunals encroach on judicial and Congressional authority and brush aside the existing and adequate criminal and civil systems of justice. Military tribunals bypass all of the basic protections of the American legal system and constitutional rights of suspects and could not possibly provide a fair trial or afford a reasonable chance for an effective defense. The

Secretary of Defense would determine the level of proof needed for a conviction, and can amend all tribunal procedures as he or she sees fit. The tribunal allows for no judicial review, even by the Supreme Court. It does not guarantee due process for the accused. Defense counsel is chosen by the United States military, not the defendant. In short, the defendant in a military tribunal would not have anything remotely resembling the same protections as a defendant in a civilian criminal case.

A conviction in a military tribunal requires a vote of two thirds of the commission; a death sentence requires a unanimous vote. Sentences are not final until approved by the President or Secretary of Defense. As such, the Executive Branch claims sole authority over the imposition of the death penalty, with no appeal to an independent civilian jury. Defendants also are powerless to appeal their sentences. The entire process, up to and including the execution of a death sentence, may be carried out in total secrecy.

Such measures smack of martial law and are reminiscent of human rights violations that have been routinely deployed by the United States when employed by other nations.

d) Suspension of Constitutional Rights of U.S. Citizens

Like all civil liberties groups, ADC is concerned with the government's assertion that it has the right to unilaterally, and without any form of judicial review or appeal, suspend the constitutional rights of American citizens it deems to be "enemy combatants." At least two men, Jose Padilla and Yaser Hamdi, both undoubtedly citizens of the United States, are being held without charge, without due process and without legal counsel in military prisons on the grounds that they were associated with the Al-Qaeda network. The government has argued before federal appellate court judges that its designation of US citizens as "enemy combatants" with no constitutional rights cannot be challenged in any forum, and that the courts themselves are not competent to rule on this designation. In effect, this means that the government is asserting the power to suspend the constitutional rights of citizens arbitrarily and without appeal. Most of the concerns mentioned above in the context of military tribunals also apply to these extra-constitutional detentions.

e) Use of Law Enforcement for Domestic Intelligence Gathering

On May 30, 2002, Attorney General John Ashcroft announced that the FBI had removed restrictions put in place in the early 1970s which prevented the Bureau from opening investigations on individuals not suspected of any criminal activity. These restrictions were put in place following revelations regarding the use of the FBI and other law-enforcement agencies in the 1950s and '60s to spy on and even disrupt lawful political and religious activities, including the civil rights movement and the movement against the war in Vietnam. In the wake of the September 11 attacks, however, the FBI was back in the business of domestic intelligence gathering. As senior officials put it, counter-terrorism, not law-enforcement or crime prevention as such, became its principal focus. In September 2002, it was announced that the FBI had placed an unspecified number of Arab and Muslim individuals, certainly hundreds and possibly thousands, under permanent intensive scrutiny, following their movements and closely monitoring all their communications, including phone calls and Internet activity. This certainly appears to be the first major application of the FBI's new powers of domestic intelligence gathering not connected to any specific concern of criminal activity.

f) Operation TIPS and "Citizen Vigilance" Programs

Operation TIPS (the Terrorism Information and Prevention System) is a proposed government plan for "citizen vigilance," officially described as "a national system for concerned workers to report suspicious activity." Operation TIPS first came to light in the spring 2002, when a brief description of the program was posted on the Citizens Corps website. Operation TIPS was to be based on recruiting people whose everyday activities put them in daily contact with other Americans in their homes and businesses, for example, telephone repairmen, cable television installers, postal workers, delivery truck drivers, and workers for courier services. In late July, the media reported that the government hoped to enlist one million volunteers within months to test the TIPS reporting system in a pilot program in ten cities. The announced goal was to enlist 11 million civilians to report on the "suspicious activity" of their fellow citizens.

Perhaps no element of the government's national security response to the September 11 attacks came under as

sustained and serious public and political attack as this proposal. Politicians and columnists alike compared the plan to East Germany's Stasi secret police network. To give just one example, on July 17, 2002, the *Boston Globe* described Operation TIPS as "a scheme that Joseph Stalin would have appreciated," a "vile" and "anti-American" idea. Criticism from senior Congressional leaders, both Republican and Democratic, as well as the media, led to the postponement of the implementation of the program until fall 2002. Concerns regarding the program only increased when it became apparent that the DOJ was negotiating with a private company to operate the program, which would clearly do nothing to reassure its critics.

ADC not only shares the concerns that were already expressed in Congress and by the press, it has also noted that the government, while calling for greater "citizen vigilance," in general as well as through Operation TIPS, has made no serious or sustained effort to educate the public as to what would legitimately be considered "suspicious." In a climate of generalized fear and suspicion of Arabs and Muslims, there is every reason to be concerned that any such program is likely to degenerate into a vehicle for systematizing the worst forms of prejudice. Countless cases have already emerged around the country of law enforcement authorities being contacted by concerned individuals on the basis of the perceived ethnicity or religious affiliation of other individuals as the sole basis for suspicion. In the greater Boston area, authorities were summoned by school officials who were in a panic because "Middle Eastern looking men" were seen on school grounds. They turned out to be Turkish visitors. A few days later in the same area, reports of a small group of men quietly engaging in Muslim prayers in the corner of a shopping center prompted an evacuation of the entire area.

Probably the most notorious incident involving questionable "citizen vigilance" and inappropriate law-enforcement response was the extremely high profile 17-hour search of three Muslim medical students on a Florida highway on September 13, 2002. The three men, who were held for 17 hours, were apprehended after Eunice Stone of Cartersville, Georgia, reported to the local police overhearing the three men "laughing at September 11" and discussing what she said appeared to be a terrorist plot at a Shoney's restaurant in Calhoun, Georgia. The three, two American citizens and a foreign national with a valid student visa, were released without

being charged, after the authorities verified their identities and thoroughly searched their cars for explosives, while the whole ordeal was televised nationally. The men told reporters that there was no truth to Ms. Stone's allegations about their conversation and said they believe that her concerns were actually prompted by their Middle Eastern and Muslim appearance. There are several concerns raised by this incident: first, that Ms. Stone's perception that the men were threatening may well have been based on their perceived ethnicity or faith and not their actual conversation; second, that law enforcement and political authorities rushed to judge the incident while the search was still taking place, as evidence that the new system which was working well; third, that the way in which the event was presented by the authorities to the media while the search was ongoing prompted needless anxiety over concerns that proved entirely baseless. This incident once again underscores serious potential problems involved in "citizen vigilance" norms, systems and programs in a cultural climate that involve significant levels of fear and suspicion based on the culture, religion and ethnicity of Arab Americans or those perceived to be Arab Americans.

g) Civil Forfeiture/Seizure of Assets

In numerous instances, the government has been using civil forfeiture procedures and other legal powers to freeze or seize the assets of Islamic charities it accuses of serving as some form of support for terrorist activities. In most cases, the assets have been seized without any criminal charges being filed and with no due process. Civil forfeiture, which has previously been largely restricted to cases involving persons described as "drug kingpins," inverts the burden of proof, forcing the individual to try to prove that the assets were not part of any unlawful activities rather than the government having to prove that they were. Such a case is obviously very difficult to make, and must be done in civil court. Seizing the assets of organizations without bringing any criminal charges against individuals involved or ever having to make a case for the seizure in open court smacks strongly of punishment without due process of any kind. Like many other civil liberties organizations, ADC strongly feels that if the government has evidence of illegal activities that would warrant civil forfeiture, it must, sooner rather than later, bring related criminal charges against individuals to substantiate those accusations. The government should not be allowed to seize assets merely on the

basis of suspicions or unsubstantiated allegations.

In at least one case, criminal charges have in fact been brought against an individual who ran a charity whose assets were seized in such a manner. On October 8, 2002, the leader of a Chicago-based Islamic charity was indicted on conspiracy and racketeering charges which authorities called part of "Al Qaeda's terrorist money pipeline." As this Report went to press, Enaam M. Arnaout faced seven counts in the federal indictment, which allege that his charity, the Benevolence International Foundation, was a financial front for Osama bin Laden's organization. Lawyers for Benevolence International accused the Justice Department of engaging in a politically inspired witch-hunt based on "an amalgamation of falsehoods, of half-truths and of guilt by association." However, in most other cases of post September 11 seizure of assets from Islamic organizations, there is no indication that the government is prepared to substantiate its accusations in a court of law or release the funds. Should the seizures become, in effect, permanent and absent of any criminal charges, a new form of extrajudicial and extraconstitutional punishment by unchallenged government decree will have emerged in United States.

3. Police Misconduct

Overall, ADC is grateful and pleased with police response to the enormous increase in bias crimes following September 11. As noted above, across the nation law enforcement generally responded quickly and dutifully to the new challenge before them. Thanks to local officers, scores of perpetrators were arrested following their bigoted acts and brought to justice. Additionally, police throughout the country provided around the clock protection to local mosques, businesses and organizations, thereby thwarting an untold number of additional crimes. In Washington, D.C., for example, Police Chief Charles Ramsey immediately contacted the national office of ADC, as well as many other local Arab and Muslim organizations, expressed his concern and promptly provided police protection.

However, ADC has received reports of isolated cases of police misconduct in bias cases and other instances in

the wake of September 11, not connected to the broader and deeply troubling issue of the incarceration and treatment of post-September 11 detainees. The following are a sample of case summaries of discriminatory conduct of police officers mistreating Arab Americans, Muslims and those perceived to be such. In many of the following cases, officers ignored proper search and seizure procedures, offered sketchy probable cause or based their reasons for arrest on their own cultural insensitivities rather than on any actual wrongdoing of the suspect.

a) Police Misconduct Case Summaries

September 11 - Saint Clairsville, OH:

A Muslim couple had just stopped at a gas station and were continuing on their way when gun-wielding deputies caught up to them. Apparently, employees at the gas station had found the couple suspicious, called 911 and reported that the two had been wearing masks. The woman wore a hijab, but deputies reported seeing no masks. The man was arrested and charged with misdemeanor counts of falsification, holding an invalid driver's license and failing to wear a seat belt; his bond was set at \$1,000,000. Deputies alleged that the woman had resisted arrest and declared aloud that she was a "warrior of Allah," which she denied. The couple was interrogated by the FBI that evening and cleared of any connection to the terrorist attacks. However, they spent a week in prison, unable to post bond. The woman's teenage son, who was not charged with a crime, spent that week in the local youth detention facility. Finally the couple's bail was lowered and they were released on their own recognizance. In December, a judge dismissed all but one misdemeanor charge filed against the couple. The one charge was based on the woman's alleged "warrior of Allah" comment, which officers insisted that she made. (*The Columbus Dispatch*, 12/30/01)

September 12 - Providence, RI:

A train traveling from Boston to Washington, DC, made an unexpected stop in Providence. Police stormed the train and removed four men. One of the men was Sikh; he carried a Kirpan, a short blunt ceremonial sword religiously mandated by followers of the faith. All of the men were released, except the Sikh man who was arrested for carrying a concealed weapon. A crowd had gathered as the police handcuffed him, shouting, "Kill him," "Burn in hell," and "You killed my brother!" The Sikh man reported that police officers asked him, "Why do

you look like this?" and "How is Osama bin Laden?" Police later strip-searched him and continued to make derogatory comments about his appearance. The Sikh passenger was released that day on personal recognizance, but heavy media coverage continued for days afterwards. (*The Boston Globe*, 11/1/01)

September 13 - Philadelphia, PA:

A lone Pakistani night-shift worker at a convenience store responded to someone's pounding on the front door. The employee opened the door, and was suddenly face to face with a gun-wielding assailant. With his gun pointed at the employee's head, the 23-year-old assailant threatened to kill him, calling him "Arab." The victim managed to call the police, and the assailant fled, accompanied by another man. From a surveillance video, police identified the two men as off-duty police officers. The assailant was charged with reckless endangerment and ethnic intimidation, among other offenses. (*The Philadelphia Inquirer*, 9/13/01)

September 14 - San Bernardino, CA:

A 60-year-old businessman was the victim of police brutality after stopping at a fast food restaurant. In the restaurant parking lot, a passing employee screamed, "He's an Arab. He's an Arab. Get him!" Her cries alerted a police officer inside who then pursued the frightened customer in his squad car. "Get that fucking Arab," the officer allegedly yelled. When the Arab American arrived at his home, he was followed by a mass of squad cars and a helicopter. Police cars rammed into his car; officers shot at him point blank with rubber bullets. One officer broke the man's nose with his baton. The man was taken to the hospital and then to jail. He was charged with assault with a deadly weapon—the weapon in this case being his car. The man received threats from inmates inside the jail.

September 14 - Lusby, MD:

An Indian-American motorist, his two daughters, and his cousin were driving when a Maryland State Police Trooper pulled them over. After ticketing the motorist for the car's broken tail lights, he interrogated the family concerning their country of origin, asking for proof that they were indeed from India. When the family answered that their passports were at home, the officer allegedly accused, "You are lying. You are Arabs involved in terrorism." He ordered them out and had them put their hands on the hood of the car. He searched their car, pulling items out. When he discov-

ered a knife in their toolbox, the officer handcuffed the motorist. Another officer arrived and interrogated the motorist's cousin. The first officer reported that the motorist "wore and carried a butcher knife, a dangerous deadly weapon, concealed upon and about his person." Afterwards, the motorist was taken to the barracks at Prince Frederick County and then to the detention center. He was later released on his personal recognizance.

September 16 - North Brunswick, NJ:

A Pakistani American, the older brother of Waqar Hasan, who was shot and killed a day earlier (see Confirmed Hate Crime Murders, September 15 - Dallas, TX), and his friends, were stopped by police shortly after leaving a fast food restaurant. Apparently, somebody had reported that the group had brought in and abandoned a suspicious package inside the restaurant. When the group insisted that they had come and left the restaurant empty-handed, one police officer reportedly told them, "Yeah, but you guys look like terrorists." After 45 minutes of questioning, the men were cleared and free to leave. (*The Record*, Bergen County, 9/19/01)

September 17 - New York City, NY:

A Muslim American in New York City was spat upon and harassed by passers-by. Afterwards, he reported the incident to two officers on the street. One officer responded at first by laughing and by rubbing a small American flag pinned onto his uniform. Both officers then told the Muslim victim, "your people" should have known about the attacks beforehand and thus, "deserve everything you get." A sergeant arrived on the scene and ordered the two officers to record the report. One of the officers obeyed and wrote down the report, while the second continued to smirk at the victim.

September 21 - New York City, NY:

A Moroccan family was visited by an FBI agent after a NYC police officer alerted the FBI of a "possible terrorist" living at that address. Apparently, a police officer had seen a cartoon on their refrigerator that had included a bomb.

September 24 - Roxbury, MA:

The director of the Somali Women's and Children's Center was denied entrance to her meeting with Massachusetts Attorney General Thomas F. Reilly and members of the local Muslim community. Upon seeing her in her hijab, a security guard initially refused her entry to the building. After some convincing, he later escort-

ed her to the meeting in the conference room. (*The Boston Globe*, 9/27/01)

September 28 - New York City, NY:

A Pakistani-American employee of the World Financial Center, across from the World Trade Center in New York, was singled out by the NYPD to be searched and harassed. Although the employee had an access card to enter the area, the officers cursed at him, searched his belongings and accused him of stealing the card. They interrogated him about his origin and citizenship. In the end, they confiscated his walkie-talkie and I.D.

October - Dearborn, MI:

Three Arab-American Boy Scouts and their Arab-American scoutmaster were pulled over by Michigan State Police who threatened to detain the scoutmaster as a terrorist suspect. (*The Boston Globe*, 10/19/01)

October 3 - Griffin, GA:

A civilian crime analyst working for the police department was asked to resign after he had circulated an e-mail advocating the destruction of the Arab world. The email called for the bombing of Mecca, Saudi Arabia, which would force worshippers to pray "at a crater 25 miles across." (AP, 10/9/01)

October 3 - Undisclosed City, CA:

An Egyptian American was arrested after a woman alleged that he had been making "terrorist threats." The woman had made a delivery at his place of business, turned to him and asked him where he was from. When the business owner replied, "Egypt," the woman allegedly smiled and left without saying another word. The business owner was arrested the next day and suspects that the woman had reported him. He was released on bail.

October 4 - Gwinnett, GA:

An Arab-American motorist was pulled over by a police patrol car following an illegal U-turn. The sergeant approached the car holding his gun. He ordered the motorist out, threatened him and called him a "bin Laden supporter," before searching his car.

October 8 - Alexandria, VA:

An Arab-American motorist and his two Arab passengers were stopped by two city police officers who asked about the verse of the Koran hanging from the car's rear view mirror. One of the officers inquired

about documents and photocopies in the backseat. After asking for everyone's identification cards, he was granted permission to search the car. He took one passenger's identification card and the driver's license, returned to his car and drove off without explanation. The Arab-American motorist called 911. About ten minutes later the officer returned with the explanation that he had received a call and had to leave. According to the driver, the officer did not have his siren or lights on when he drove away.

October 10 - New York City, NY:

An Indian American called a ticket office to purchase Broadway tickets to celebrate his second anniversary. During the exchange, the ticket agent became suspicious as the customer, with a foreign name and accent, requested tickets for a popular show, seats somewhere in the middle. After the exchange, she alerted police that she suspected him to be a suicide bomber. The next evening, when the customer and his seven-month pregnant wife, arrived at the theater's will-call ticket window, they were told that their tickets were available for them elsewhere and were directed to another window. They turned the corner and were suddenly face to face with four police officers. The officers handcuffed, searched and interrogated the husband before releasing him. The theater apologized that night, moved the couple to orchestra seats, refunded their money and offered them tickets to another show. (*The New York Times*, 10/22/01)

October 19 - Sandusky, OH:

A group of three men called 911 from a bar saying, "There's an Arabic guy in the bar with a gun and he says he is not afraid to use it." One caller identified himself as an off-duty officer from another county. The police arrived, handcuffed a Palestinian-American customer and took him outside where there were 10-12 other officers. Then before determining that he did not have a weapon and releasing him, they treated him rudely and roughly.

October 22 - New York City, NY:

A licensed Arab-American coffee vendor was visited by a NYPD lieutenant at his usual coffee cart spot. The officer, without provocation, threatened the vendor, "You have to get out of here and I don't want to see you anymore." He also threatened to ticket the vendor. The vendor had not been doing anything unusual or illegal.

October 27 - Plainsboro, NJ:

Around midnight, four police officers knocked on the door of an Indian-American couple's apartment. The officers allegedly asked questions about the Indian-American man's car. When he stepped outside to show them, the officers reportedly handcuffed him without explanation. The man asked them the reason behind the arrest, and the officers made reference to a telephone conversation the Indian-American man had earlier in the evening. The conversation in question was between the Indian American and a reservation clerk at an airport shuttle service. The man had phoned the company to reserve a seat on a shuttle. The reservation clerk asked him to spell his name and reported that the suspect had spelled it, "D as in destruction, A as in America, S as in Sam." The man insists that he had spelled it "D as in David" not "destruction." The man was charged with one count each of disorderly conduct and harassment. His bond was set at \$25,000. After Mr. Das spent five hours in jail, attorneys for his company arranged to post bail. (*Time*, 12/10/2001)

October 27 - McLean, VA:

Following a domestic dispute between an Arab-American newlywed couple, the police were contacted. Although no charges were filed, the police recommended that they separate for the night. The wife went to spend the night at a family shelter. That evening, the husband drove to the station to report that his wife, while leaving their home, had threatened to kill herself. An officer pushed the husband into a room, closed the door and said, "I can lock you up right now if I want. You better give it up and stop bothering me."

November 8 - Dearborn Heights, MI:

An Arab-American mother and her children were visited by a Dearborn Heights police officer who was investigating an act of vandalism in the neighborhood. The Arab American's neighbors alleged that a man had trespassed into their backyard and broken their car windows. When the Arab-American mother insisted that her family was not involved, the police officer allegedly retorted, "Shut up and get out of this area!" The family had faced many problems of harassment from their neighbors since September.

December 5 - Burbank, IL:

A veiled Muslim woman was driving with suspended plates when she was stopped by a police officer. She showed him her license and all other papers as request-

ed. As he was checking her information, the officer allegedly asked her when Ramadan would be over. The woman answered and was then arrested for her suspended plates. During the arrest, the officer pushed her three times before she got in his car. He also asked her inappropriate questions such as, "What is your hair color" and "is your hair long or short?" which she ignored. The woman was released later that day.

January 24 - Austin, TX:

Around midnight, the police knocked on the door of a Lebanese-American family and arrested the woman of the household. She was not wearing shoes at the time and asked the officers if she could get them. Several police officers walked through the house and rifled through her closet to bring her a pair. The police did not have a search warrant. They handcuffed her in front of her child and father-in-law and interrogated the father-in-law. The woman was then placed in the police car and two female officers began interrogating her using threatening rhetoric; she was not read her Miranda rights. They suggested to the woman that her in-laws were selling narcotics out of their corner store. She was told "off the record" by one officer that she was being accused of recording a false Social Security number on her husband's liquor license. Furthermore, she had not written on the form that her father-in-law was living with her family. However, when she checked the license form, she insisted that the Social Security number was correct. In addition, her father-in-law had arrived from Lebanon on a vacation to stay with her family temporarily. He arrived after the application for the license had already been filed.

4. Federal Bureau of Investigation (FBI) Misconduct

Notwithstanding its serious concerns about civil liberties, ADC is grateful for the overall efforts of the Federal Bureau of Investigation (FBI) in its investigation into both the terrorist attacks of September 11 and bias crimes committed during the ensuing backlash. On September 17, 2001, FBI Director Robert Muller, during a public statement on the Bureau's investigation, remind-

ed the American public, "I want to make it very clear, vigilante attacks and threats against Arab Americans will not be tolerated. We're all saddened by the recent acts of terrorism against our nation. Such acts of retaliation violate federal law and more particularly run counter to the very principles of the quality and freedom upon which our nation is founded. The FBI and the Department of Justice are committed to aggressively investigating and prosecuting violations of the federal hate crime laws."

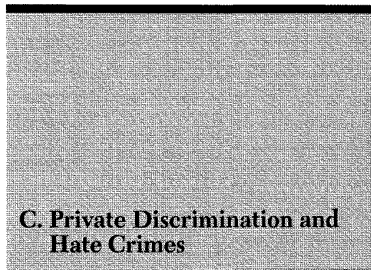
Nonetheless, ADC has received reports of several cases of FBI misconduct during the investigation into the September 11 attacks. The most clear-cut pattern of discrimination involving the FBI and the DOJ, including the INS, is in regard to the sweep of Arab and Muslim foreign nationals in the United States following the September 11 attacks, and the detentions which were examined earlier in this Report.

In November 2001 and March 2002, under the direction of US Attorney General Aschroft, the FBI was tasked with interviewing some 8,000 individuals in the United States. As detailed earlier in this Report, this project was, by its very nature, discriminatory against an entire community and invited abuse. ADC received reports of cases in which FBI agents visited homes unannounced, often at unusual hours. FBI agents visited the former roommate of an Arab American, unannounced, at 4 a.m. Agents in New York dropped in on a man at his place of work, startling his coworkers. In December, a man in New Jersey complained that the FBI visited his home three times in three weeks, asking a wide range of questions. In spite of our strong opposition to this program, ADC across the country tried to work as closely as possible with the law enforcement entities charged with actually carrying out these investigations in order to ensure that they proceed as smoothly as possible and result in as few personal tragedies as possible. In some parts of the country, ADC representatives worked with local law enforcement to develop less intrusive methods of conducting the interviews, including letter-writing campaigns, rather than a program of knocking on doors. In addition, ADC attended hundreds of the interviews as third-party observers.

However, even before the voluntary interviews were assigned, some agents of the FBI targeted the Arab-American and Arab communities with blatant racial discrimination. On September 16, 2001, in Boston, Massachusetts, FBI agents dragged a veiled Saudi

woman down the hallway of a hotel. She was then handcuffed and beaten, resulting in a six-inch scratch across her face. The FBI mistakenly suspected that she was connected to the hijackers because the woman's fiancé's name was similar to Mohammed Atta's. On October 9, 2001, in Bloomington, Indiana, FBI agents came to a home to interview a half Egyptian-American high school student who had taken flying lessons. His mother asked the agent if he was interviewing all Americans who had flying lessons, he replied, "No." So she asked, "Only those with Arab-American names?" The agent allegedly answered in the affirmative.

On July 18, 2002, a member of Michigan's Anti-Terrorism Task Force left offensive slurs stating "Islam is Evil, Christ is King," which he scribbled onto an Islamic calendar, at the home of Mr. Omar Shishani, during a raid by the Task Force. The culprit, a Secret Service agent, was identified. Officials in Michigan announced that the agent was suspended from the service for a six-month period without pay and a transferred from the Detroit office. He was not, however, charged with a crime. The officials emphasized that instances of bias and racism by federal agents are completely unacceptable and will be treated as such.



C. Private Discrimination and Hate Crimes

I. Physical and Psychological Attacks

The atrocities of September 11 provoked a backlash involving a surge of hate crimes against the Arab-American, Muslim, Sikh, South Asian and other communities perceived to be Middle Eastern. In

September 2001, ADC received an unprecedented number of reports from claimants in 41 states and the District of Columbia alleging violent incidents directed at Arab Americans or those perceived to be Arab Americans. ADC defines "violent incidents" as involving either physical violence of some kind or a direct threat of a specific act of violence.

In September 2001 alone, the number of personal attacks on Arabs and Arab Americans reported to ADC exceeded the number of such attacks cited in ADC's two year 1998-2000 *Report on Hate Crimes and Discrimination against Arab Americans* (ADC 2001). In the first nine weeks following the September 11 attacks, ADC confirmed over 700 violent incidents directed at Arab Americans or those perceived to be Arab Americans. In the first nine months of 2002, by contrast, ADC had received 165 reports of violent incidents, 66% of reports received by the ADC legal department alleged physical and psychological attacks. Acts of vandalism and arson equaled 27% of claims; hate mail, threats and bomb threats 22%; beatings and physical attacks 16%; murders investigated as hate crimes 1%. Physical attacks include either battery or destruction of property. Many of the cases of physical attacks included in this report occurred the week of September 11-18, 2001 (54% of battery reports, 67% of vandalism and arson reports, and five of the suspected or confirmed hate crime murders). As shown in the following case summaries, many of these incidents resulted in thousands of dollars worth of damage to mosques, businesses and homes. Others involved grievous bodily harm that resulted in hospitalization and maiming. ADC continues to receive cases of physical attacks, mostly reports of vandalism.

Local convictions include a death sentence in the case of Mark Anthony Stroman, a white supremacist who walked into a succession of convenience stores in the Dallas area, in the days after September 11, and killed a clerk from Pakistan and another from India, and partially blinded a third from Bangladesh. In addition to numerous successful local and state prosecutions, several federal criminal civil rights prosecutions have addressed acts of violence. In Salt Lake City, James Herrick was sentenced to 51 months incarceration on January 7, 2002, after pleading guilty to setting fire to a Pakistani restaurant in Salt Lake City on September 13, 2001. Patrick Cunningham of Seattle, Washington, pled guilty on May 9, 2002, to attempting to set fire to

automobiles and shooting at worshipers at a mosque. Jason and Travis Kitts were charged with committing a federal hate crime in Knoxville, Tennessee. The Kitts brothers physically assaulted an Indian-American resident manager of a motel on September 24, 2001.

Meanwhile, federal charges are pending against several other defendants, alleging that the victims were targeted because of their perceived race, nationality, or religion. Among these are:

- Irving David Rubin, now deceased, and Earl Leslie Krugel, members of the Jewish Defense League, indicted in Los Angeles for conspiracy to bomb a mosque and the California office of United States Representative Darrell Issa.

- Charles D. Franklin indicted on April 17, 2002, for crashing a pick-up truck into a Tallahassee, Florida mosque.

Additionally, as this Report went to press, Robert Goldstein, the Florida podiatrist accused of plotting attacks on Islamic centers across the state was found competent to face criminal charges by a court-appointed psychiatrist. The competency finding clears the way for Goldstein to be indicted by a grand jury. He was arrested August 23, 2002, after Pinellas County sheriff's deputies found an arsenal of high-powered guns, Claymore mines and homemade bombs in his condominium when they responded to a domestic call. Agents subsequently found a typed, three-page "mission template" for a terrorist attack against Muslims in Florida.

Although psychological attacks, such as hate mail, threats and hate speech, occur more frequently than any other type of personal attack, these crimes often are left unreported. Legally, derogatory speech made against any individual or group constitutes a crime only if it directly incites physical violence, either in words or with non-verbal threats (such as a gun or throat-slitting motion with the fingers.) Otherwise, derogatory comments made against the national origin and/or religion of an individual are protected as free speech under the First Amendment of the Constitution. Threatening speech, on the other hand, may be prosecuted as a hate crime under most jurisdictions. In one of the most notable of these cases, Zachary J. Rolnik of Hanover, Massachusetts, pled guilty to making threatening tele-

phone calls to James Zogby, President of the Arab American Institute (AAI). Rolnik pled guilty in federal district court on June 6, 2002, to interfering with Zogby's civil rights and was sentenced to two months in prison and assessed a \$5,000 fine. He admitted placing a telephone call to Zogby in Washington on the morning of September 12, 2001, and leaving a voice mail message in which he threatened to kill him and his children. A similar case involving threats left in voice mail messages to ADC President Ziad Asali, M.D., is under DOJ civil rights investigation as this Report goes to press.

There have been guilty pleas in four other federal cases where threats were made to persons because of their perceived nationality:

- Thomas Iverson pled guilty to telephoning a bomb threat on September 29, 2001, against a Jordanian American liquor store in Beloit, Wisconsin. Iverson was sentenced to 27 months incarceration on April 12, 2002.

- Joe Luis Montez pled guilty to placing telephone calls on September 17, 2001, in Hewitt, Texas, threatening Sikhs employed at a truck stop. Montez was sentenced to 2 years probation and a \$500 fine on January 30, 2002.

- Justin Scott-Priestly Bolen pled guilty on February 6, 2002, to interfering with the housing rights of a Pakistani-American family in Fenton, Michigan, by leaving a threatening message on their answering machine on October 10, 2001. Bolen was sentenced on May 14, 2002, to ten months incarceration.

- Wesley Fritts pled guilty in Madison, Wisconsin, to an anthrax hoax letter mailed to an Arab-American restaurant. Fritts was sentenced to 21 months incarceration on May 13, 2002.

The following are examples of personal attacks against Arab Americans or those perceived to be Arab reported either to ADC or to the media. The samples give only a hint of the untold number of cases left unreported. Not included in this section of the report are physical and psychological attacks that occurred on school campuses (see Educational Discrimination).

a. Physical Case Summaries**I. Vandalism***Fall - Chelmsley Wood, AL:*

A Muslim mother and her two children, ages 17 and 12, were repeatedly harassed and their property damaged by a mob of vandals. Since the September 11 attacks, the family has seen their car fire bombed, their front door kicked in and the tires on another car slashed. They often hear slurs and vulgarity directed at them yelled from outside their home. Officers set up a camera in the family's home to try to protect them, but that did not stop the attacks on their car. (*Birmingham Evening Mail*, 1/11/02)

September - San Francisco, CA:

Vandals defaced Afghan and Iranian restaurants with red liquid intended to look like blood. (*The San Jose Mercury News*, 9/18/01)

September - Baltimore, MD:

Someone spray-painted, "Kill All Arabs Now" across a street in northern Baltimore. (*The Baltimore Sun*, 9/14/01)

September - Starkville, MI:

The Islamic Center of Mississippi in Starkville was pelted with eggs, tomatoes and rocks. (AP, 9/16/01)

September - Matawan, NJ:

A Hindu temple was fire bombed. (*The Cornell Daily Sun*, 9/17/01)

September - Toms River, NJ:

Someone broke a window of a local mosque and left a hostile telephone message on the voice mail. (*The Record*, Bergen County, 9/13/01)

September - New York, NY:

Excrement and anti-Arab graffiti was found on a door in Brooklyn. (*The New York Times*, 9/19/01)

September - Cortland, OH:

Someone set fire to a hedge outside an Indian-American owned gas station. (AP, 9/18/01)

September - Perrysburg, OH:

A sniper shot and shattered a stained glass window, which read "God is Great," in the dome of the Islamic Center of Greater Toledo. (Cox News Service, 9/29/01)

September - Portland, OR:

Muslim worshipers discovered a cardboard sign on the inside of the Rizwan Mosque lying next to a vase of pink roses. The sign had handwritten letters made to look like dripping blood and read, "Islam slaughtered my brother. Christ has cursed you and this House of Ba'al. Leave our nation. You are not welcome." The same sign was glued to the mosque's front door the next morning. (*The Idaho Statesman*, 9/17/01)

September - Houston, TX:

Somebody spray-painted "Kill Arabs" and "Islam die" on an apartment building. (*The Houston Chronicle*, 10/7/01)

September 11 - Fremont, CA:

An Afghan grocery store had its front window smashed when someone tossed bottles and rocks through it. (*The San Francisco Chronicle*, 9/15/01)

September 11 - San Mateo, CA:

During the night, vandals attacked a parked car with a "Free Palestine" bumper sticker. By morning, the sticker had been written over to read, "F*** Palestine" and the body of the car was scratched and vandalized. The car's owner was cut off several times while driving, and motorists made obscene gestures at him. (*The San Francisco Chronicle*, 9/13/01)

September 11 - Lake County, FL:

Sometime during the night, vandals spray-painted the windows of a storefront Muslim worship center with the words, "USA" and "NO Forgiveness" (*News-Sun*, 9/13/01)

September 11 - Tallahassee, FL:

During the night, someone pelted the Islamic Center of Tallahassee with eggs and cantaloupe. (*Florida Flambeau*, 9/17/01)

September 11 - Augusta, GA:

A vandal spray-painted profane messages to Osama bin Laden on a brick sign outside the Islamic center. (*The Augusta Chronicle*, 9/13/01)

September 11 - Beach Park, IL:

Vandals painted "USA" on an Islamic center. (*The Chicago Tribune*, 9/14/01)

September 11 - Chicago, IL:

Graffiti stating "Kill Arabs" was sprayed on several

buildings. (*Washington Report on Middle East Affairs*, 11/30/01)

September 11 - Lexington, KY:

A steel lug nut was thrown through a window of the city's Islamic center. No one was in the building when the incident occurred. (*The Lexington Herald Leader*, 9/13/01)

September 11 - Rockville, MD:

A rug company was set on fire during the night. The Palestinian owner had been renting the building to another Palestinian and an Iranian. The men had reported receiving threatening phone calls earlier in the day.

September 11 - Minneapolis, MN:

Several local Muslims in Minneapolis received threatening phone calls. Trees behind the city's mosque were strung with toilet paper. (*Minneapolis Star Tribune*, 9/13/01)

September 11 - Ashbury, NJ:

A Sikh man reported that his car had been vandalized after someone pelted it with garbage and stones. (AP, 9/12/01)

September 11 - Clifton, NJ:

A man walked into a store owned by a Palestinian and made vulgar remarks about Islam. He told the storeowner to leave the country. Days later, the owner discovered the American flag he had hung outside of the shop was torn and destroyed. Someone had written on his front window in black ink, "Leave this County." He received two threatening phone calls. (*The Record*, Bergen County, 9/20/01)

September 11 - New York, NY:

A Sikh taxi driver reported that people threw bottles at his car. (*Newsday*, 9/16/01)

September 11 - Cleveland, OH:

A bus shelter in west Cleveland was vandalized with anti-Arab graffiti. (*The Cleveland Plain Dealer*, 9/13/01)

September 11 - Cleveland, OH:

A vandal hurled bottles filled with gasoline into the windows of a Sikh temple. (*The Columbus Dispatch*, 9/14/01)

September 11 - Dayton, OH:

Sometime during the night, someone shattered a win-

dow at a convenience store. The owner told police he had received phone calls threatening to burn down his building. (*Dayton Daily News*, 9/14/01)

September 11 - Toledo, OH:

A bullet pierced through the window of the city's mosque. (AP, 9/15/01)

September 11 - Horsham, PA:

A fire broke out at a Syrian-American owned convenience store, causing thousands of dollars in damage. The fire began suspiciously at the back door and spread forward into a storeroom. In response, regular customers and neighbors appeared the next day to express their condolences, some bringing cakes, flowers and gifts. (*The Philadelphia Inquirer*, 11/15/01)

September 11 - Pawtucket, RI:

Anti-Arab graffiti was painted on the two doors of a gas station. The words "Call it racist?" were spray-painted on one door and anti-Arab epithets were written across the other. (*Providence Journal-Bulletin*, 9/13/01)

September 11 - Irving, TX:

Six bullets shattered windows of an Islamic Center. The center, which is part school and part mosque, was empty at the time and no one was injured. The Islamic school cancelled classes because of the incident. (*Dallas News*, 9/14/01)

September 11 - Manassas, VA:

Somebody threw a bottle at a Muslim taxi cab driver who escaped injury but did not report the incident to police. After the bottle incident, the driver was chased through traffic by another car. (*The Alexandria Journal*, 9/13/01)

September 11 - Norfolk, VA:

Sometime during the night, a vandal lobbed bricks through the seven back windows of the Islamic Center of Tidewater at Old Dominion University. No one was inside at the time. (*The Virginian Pilot*, 9/13/01)

September 11 - Sterling, VA:

Someone broke into the All Dulles Area Muslim Society mosque and painted obscene graffiti in the worship hall and on the outside of the building. (Scripps Howard News Service, 9/12/01)

September 11 - Lynnwood, WA:

A wooden sign standing in front of the Masjid Dar al-

Arqam mosque was vandalized with black paint. (*The Seattle Times*, 9/13/01)

September 11 - Milwaukee, WI:

A Sikh taxi driver discovered that his cab's tires had been punctured and his vehicle was covered in oil. (*Milwaukee Journal Sentinel*, 9/20/01)

September 12 - Anaheim, CA:

Three teenagers hurled a skateboard through the window of an Arab-American owned market. Police caught them and their parents apologized. (AP, 9/15/01)

September 12 and 13 - Quartz Hill, CA:

A convenience store owned by a Syrian American was shot at several times on two consecutive nights. The gunman fired two shots at the building on Wednesday night and four more on Thursday night. (*The Daily News of Los Angeles*, 9/15/01)

September 12 - Napa, CA:

A Sikh American fast food restaurant manager found his car vandalized. (*Contra Costa Times*, 9/19/01)

September 12 - Yuba City, CA:

A Hindu American awoke to find "USA" spray-painted across the hood of his car and a religious medallion hanging from his rearview mirror was missing. (*Sacramento Bee*, 9/12/01)

September 12 - San Francisco, CA:

A 47-year-old man lobbed a bag of red liquid, labeled as pig's blood, on the doorstep of an immigration office. Minutes after doing so, the perpetrator called the office from a payphone and told a paralegal that he had left a package "for your brother Osama bin Laden." The perpetrator was captured on surveillance video as he stood in the entryway and was soon picked up by police. (*The San Francisco Chronicle*, 9/20/01)

September 12 - Hernando County, FL:

Someone fired a bullet at a mosque, which was empty at the time and resulted in no injuries. (*Saint Petersburg Times*, 9/14/01)

September 12 - St. Petersburg, FL:

A Palestinian American found his new truck splattered with paint and a threatening note attached. (*Saint Petersburg Times*, 9/23/01)

September 12 - Temple Terrace, FL:

An Arab family's home was defaced with racial slurs. The neighbors were outraged and immediately offered to paint over the graffiti. (AP, 11/24/01)

September 12 - Chicago, IL:

A firebomb was tossed at an Arab-American community center. No injuries were reported. (AP, 9/13/01)

September 12 - Lexington, KY:

Vandals broke a window of the Islamic Center of Lexington. (*Messenger-Inquirer*, 9/14/01)

September 12 - Arabi, LA:

A vehicle pulled to a stop in front of a local mosque and someone shot a pellet which broke the mosque's window. A few worshippers were inside praying when the glass shattered. (*The Times-Picayune*, 9/15/01)

September 12 - Somerset, MA:

Three teenagers lobbed a Molotov cocktail onto the roof of an Indian-American-owned convenience store which they mistook for Arab-owned. Before the store's owner closed for the night, he heard noises behind the building and saw a face peering in through the window. Outside, he was alarmed to see a flame atop the roof. Police responded and arrested two of the teenagers, who were hiding in the woods nearby, and a third teenage accomplice at his home. Damages to the store were estimated at around \$1,000; no one was injured in the incident. (*The Boston Globe*, 9/25/01)

September 12 - Fair Haven, MI:

The windows of a family-owned service station were shot by vandals during the night. (AP, 9/14/01)

September 12 - Collingswood, NJ:

Vandals spray-painted the walls of two Indian-owned businesses with the message, "Leave town." (AP, 9/13/01)

September 12 - Lower Township, NJ:

Someone threw rocks through the window of a Syrian-American owned convenience store. The storeowner had been harassed and threatened by visitors to his store following the terrorist attacks. (AP, 9/13/01)

September 12 - Matawan, NJ:

A Molotov cocktail was thrown at the Shri Yoga Vendanda Ashram Hindu temple. The fire damaged two doors, but no injuries were reported. (AP, 9/13/01)

September 12 - Nesconset, NY:

An arsonist set fire to a Pakistani-American-owned grocery store. (*Newsday*, 9/13/01)

September 12 - Canfield, OH:

A rock was thrown through the window of a Sikh-owned take-out restaurant. (*The Vindicator*, 9/15/01)

September 12 - Cleveland, OH:

The Guru Gobind Singh Sikh Temple was attacked with lit bottles of gasoline. (*The New York Times*, 9/18/01)

September 12 - Dayton, OH:

About 1:20 a.m., police were dispatched to a cellular phone store after receiving reports of a burglar alarm going off. They found the store's display cases shattered and its contents ransacked. They also found anti-Arab graffiti sprayed on the walls in red and black spray paint. The owner's car, parked outside, also had anti-Arab graffiti sprayed on it. (*Dayton Daily News*, 9/14/01)

September 12 - Gladstone, OR:

Someone vandalized a neighborhood street with a racial slur against Arabs. No Arabs live in the neighborhood. The public works department arrived some time later and painted over the vandalism. (*The Oregonian*, 9/22/01)

September 12 - Philadelphia, PA:

A small explosion, caused by what appeared to be powerful firecrackers, shattered the window of a convenience store in Northeast Philadelphia. The attackers left a note that said "Paul Revere Society" on the window of the store, which is run by a Pakistani immigrant. A second convenience store was vandalized by the Paul Revere Society; the explosion left a hole in the storefront. (*The Philadelphia Inquirer*, 9/14/01)

September 12 - Carrollton, TX:

Windows at an Islamic Center were shattered during the night by objects hurled from a vandal's slingshot. (*Austin American Statesman*, 9/14/01)

September 12 and 18- San Antonio, TX:

A truck carrying four passengers pulled into the parking lot of a Middle Eastern grocery store. The truck's driver fired at one of the store's employees who was standing outside. The man ran inside when the gunfire broke out and three bullets shattered the windows of the store. A week later, someone rammed a car into the front door

of the market, bashing it in. No one was injured. The suspect sped off, leaving the scene shortly afterwards. (*San Antonio Express-News*, 9/19/01)

September 12 - Sterling, VA:

Members of the Islamic Community Center gathered at their worship center early to board a chartered bus they had rented. The group had planned to go to a Red Cross center to donate blood. As they arrived at their worship center, they found their hallway spray-painted in thick black letters, several feet tall, spelling out, "Die Pigs" and "Muslims Burn Forever." (*The Washington Post*, 9/13/01)

September 12 - Alexandria, VA:

Windows were broken at an Islamic bookstore. The owner found two bricks on the premises with notes that said, "You come to this country and kill. You must die as well." The other note said, "Arab murderers." A local businessman donated his time and resources to repair the windows. (*The Washington Times*, 2/11/01)

September 12 - Washington, DC:

During the night, someone spray-painted "Deport Arabs" on a bridge. (*The Washington Post*, 9/17/01)

September 12 - Washington, DC:

Vandals defaced a sign that announced the new home of an Islamic community center with profane anti-Muslim messages. (*The Washington Post*, 9/13/01)

September 13 - Undisclosed Location, USA:

An Arab American found that his tire had been punctured during the night by an upholstery nail. The day before, his neighbor had berated him, "You should leave the country. You bombed the buildings."

September 13 - San Francisco, CA:

A 20-year-old man stopped by a small Jordanian-American owned store, poked his head in and asked the owner, "Are you Arab?" The shopkeeper responded affirmatively and told the man, "Have a nice day." The young man muttered, "F***** Islamic" and fled, but not before threatening, "Tomorrow ... you'll see." About 4:00 a.m., as the owner slept in a bed in the back room of the store, a 15-pound brick came flying through the front window, shattering it. (*The San Francisco Chronicle*, 12/23/01)

September 13 - Colorado Springs, CO:

Sikh Americans discovered that their car had been van-

dalized during the night with “Terrorist [sic] on Board” spray-painted across it. The driveway of their home was also painted with the word, “Terrorist.” (AP, 9/18/01)

September 13 - Bradenton, FL:

The front window of an Indian-American owned convenience store was shattered when a vandal threw a fishing sinker through it. (The *Bradenton Herald*, 9/14/01)

September 13 - Hernando County, FL:

A businessman from Costa Rica opened his drive-through beverage store to find trash cans turned over, scorch marks from a fire and graffiti on the walls. The vandals wrote ethnic slurs and obscenities denouncing Arabs and Latinos and included the phrase “Go home.” (Saint *Petersburg Times*, 9/14/01)

September 13 - Midtown, GA:

Someone had spray painted the words, “Get Out!” in red paint on a fence surrounding the Masjid Al-Farooq mosque. (The *Atlanta Journal and Constitution*, 9/15/01)

September 13 - Chicago, IL:

On Chicago’s south side, an Arab American living above his place of business awoke early to find smoke coming from his business on the first floor. Something igniting a fire had been thrown into the building. He immediately called 911 and the fire department responded.

September 13 - Louisville, KY:

A mosque was defaced with graffiti after it received a telephone threat. Some Louisville Muslims were insulted and physically threatened. (Courier *Journal*, Louisville, Kentucky, 9/14/01)

September 13 - Everett, MA:

Vandals shattered the windows of a Greek American owned café with softballs inscribed with pro-American slogans including “God bless America” and “Freedom for all.” The owner said he believes the assailants were targeting a nearby Middle Eastern café and possibly hit the wrong target. (The *Boston Globe*, 9/14/01)

September 13 - Fall River, MA:

Vandals threw a bottle of chlorine at a Pakistani-owned gas station. The bottle did not break. However, according to the station manager, there could potentially have been a massive explosion had the chlorine impacted closer to the gasoline tanks. (Herald *News*, 9/16/01)

September 13 - Quincy, MA:

The windows of a Pakistani-owned convenience store were smashed. (The *Patriot Ledger*, 9/13/01)

September 13 - Quincy, MA:

The words “Support boycott” were spray painted on two windows of another Pakistani-owned convenience store. (The *Patriot Ledger*, 9/13/01)

September 13 - Wollaston, MA:

A witness told police he saw a man smashing a window at an Iranian-owned food market at about 12:20 a.m. (The *Patriot Ledger*, 9/13/01)

September 13 - Weymouth, MA:

A fire was set at a gas station owned by a man from Lebanon. Police believe that a man and a woman doused a pump with gas and set it on fire before running away. (The *Boston Herald*, 9/14/01)

September 13 - Albuquerque, NM:

Sometime during the night, a vandal threw two rocks through the plate-glass window at a rug shop owned by a U.S. citizen of Iranian descent. Police found a note at the scene that read, “Terrorists will not be tolerated.” (The *Albuquerque Journal*, 9/16/01)

September 13 - Charleston, SC:

Vandals spray-painted Stars of David across the outside walls of a mosque. (The *Post and Courier*, Charleston, 9/16/01)

September 13 - Denton, TX:

Someone tossed a Molotov cocktail against the Islamic Society of Denton mosque at approximately 2:30 a.m. No one was inside at the time, and the fire caused only minor damage. (Dallas *News*, 9/14/01)

September 13 - Denton, TX:

A grass fire was ignited at the Muslim Cemetery just outside of the city limits. The fire marshal said it was unlikely that the fire was accidental; however, there were no witnesses and no leads to follow. (Denton *Chronicle-Record*, 9/15/01)

September 13 - Salt Lake City, UT:

A 32-year-old man ignited a fire at a Pakistani-American family’s restaurant by setting two glass jars filled with pillow stuffing and gasoline against the outside wall and lighting them. When the arsonist was arrested at his

home, he told police he had started the blaze because of the owner's ethnicity. "I got upset over what happened and did something very stupid," he admitted while pleading guilty to the civil rights violation. He was sentenced to over four years in prison. (*The Salt Lake Tribune*, 9/27/01)

September 13 - Washington, DC:

An Afghan restaurant in Georgetown was struck by vandals who broke the front window, overturned flowerpots at the entrance and wrote threatening graffiti on the storefront. Among the messages left on the restaurant wall, one read, "You guys destroy my country, we have to destroy you." (*The Washington Times*, 2/11/02)

September 14 - San Jose, CA:

A 31-year-old man ignited a fire on the porch of an Indian-American home. (*The San Jose Mercury News*, 9/28/01)

September 14 - San Jose, CA:

An Indian-American family called police after witnessing a man run out from the side of their home. The side fence of the home, from which the suspect had fled, caught fire before the police arrived. (AP, 9/19/01)

September 14 - Poway, CA:

A man broke a plastic sign at the Islamic Center of North County. (*The San Diego Union-Tribune*, 9/15/01)

September 14 - Evansville, IN:

Police arrested a 28-year-old man on charges of criminal mischief and drunken driving after they found him trying to back his car away from the Islamic Center. The motorist had rammed the building repeatedly at about 1:00 a.m. (AP, 9/15/01)

September 14 - Saint Bernard Parish, LA:

A Muslim-operated convenience store was vandalized when somebody shattered the front window. (*The Times-Picayune*, New Orleans, 9/18/01)

September 14 - Buffalo, NY:

A car belonging to an Arab-American university student, who had an Arabic sign quoting the Koran hanging from his rearview mirror, had its tires slashed.

September 14 - New York, NY:

A man approached the Brooklyn Islamic Center carrying a bottle covered with a smoking wet cloth. Upon seeing the police nearby, he dropped the firebomb and fled.

Police were unable to catch him. (*Newsday*, 9/15/01)

September 14 - SeaTac, WA:

Vandals broke into a mosque during the night and broke a window. The vandals also broke open the mosque's collection boxes, which contained no money. The mosque officials canceled children's religion classes and further heightened security following the incident. (*The Seattle Times*, 9/16/01)

September 15 - Hudson, FL:

Vandals shattered a window at an Indian-American-owned beverage store. The owner also reported harassing comments and threats from teenagers prior to the incident. (*The Tampa Tribune*, 9/18/01)

September 15 - Plymouth, MA:

A pizza shop owned by an Iraqi American suffered a reported \$60,000 in damage from a fire. Prior to the blaze, the owner had received threatening phone calls and discovered a bullet placed on his doorstep. (*The Boston Herald*, 9/17/01)

September 15 - Dearborn, MI:

A powerful firecracker thought to be comprised of a quarter stick of dynamite exploded outside of a local mosque at dawn. (*Toronto Star*, 9/15/01)

September 15 - Kalamazoo, MI:

Vandals lashed out at a gas station owned by an Indian family, spray-painting ethnic slurs on its windows and walls. Scrawled across the store's exterior in yellow, black and red spray paint were messages such as "White Power," "Arab" and vicious slurs about Arabs. (*The Kalamazoo Gazette*, 9/16/01)

September 15 - Parma, OH:

A 29-year-old suburban Cleveland man rammed his Ford Mustang through the front entrance of the Islamic Center of Cleveland, Ohio's largest mosque. Nobody was in the mosque at the time and only the driver was injured, breaking bones in his back and both feet. After smashing through the front entrance, he knocked over three pillars and landed on a fountain. The motorist pleaded guilty to felony charges of burglary, ethnic intimidation and vandalism and was sentenced to five years in prison. (AP, 1/9/02)

September 15 - Allentown, PA:

A brick was thrown through the window of a Muslim

family's home at 4:00 a.m. (*The Morning Call*, Allentown, 9/20/01)

September 15 - Pawtucket, RI:

Vandals hurled a dozen rocks through two plate-glass windows of a Lebanese-American-owned convenience store. Upon hearing of the attack, Rick Roth, a local human rights activist, headed a campaign to raise money to repair the damage, collecting \$1,086 in just ten days. (*The Providence Journal-Bulletin*, 10/18/01)

September 15 - Charleston, SC:

Vandals broke the window of a minivan belonging to a man of Middle Eastern descent. (*The Post and Courier*, 9/18/01)

September 15 - Austin, TX:

Someone lobbed a Molotov cocktail at a Middle Eastern-owned gas station. The device fell short, causing no damages or injuries. (*Austin American Statesman*, 9/18/01)

September 15 - Vancouver, WA:

Vandals spray-painted the word "murderer" on a driveway belonging to a Muslim family, who had just moved into the neighborhood. Someone also put a note that said, "Go home," in the family's newspaper box. (*The Oregonian*, 9/22/01)

September 16 - Clairemont, CA:

A cherry bomb exploded outside of an Islamic center, forcing the 20 worshippers inside praying to evacuate the building. The building had earlier been the target of seven paint-balls. (*The San Diego Union-Tribune*, 9/17/01)

September 16 - Laguna Hills, CA:

Vandals threw eggs at the home of a Muslim American and cracked the windshield of his car. (*The Orange County Register*, 9/19/01)

September 16 - Stony Brook, NY:

Shots were fired at the home of an Indian-American university graduate. (*The San Jose Mercury News*, 9/18/01)

September 16 - James City, VA:

A large plastic jug containing three gallons of gasoline and a partially burned fuse was left by the front gate of the city's mosque overnight. (*Daily Press*, 9/17/01)

September 16 - Seattle, WA:

Vandals broke glass and one of the nozzles of a gas

pump of an Iranian-American-owned grocery store and service station. (*The Seattle Times*, 9/18/01)

September 17, 18, 19 - San Francisco, CA:

For three consecutive mornings, someone scrawled anti-Arab graffiti across the front of an Iraqi-American's grocery store. In addition to the graffiti, garbage was dumped at the store's front door and broken eggs were hurled at and smeared on the front window. Neighbors were outraged by the vandalism and sent the owner a bouquet of flowers. Someone circulated a petition of support for the "good, hardworking people" of the business. The owner and his wife taped the petition to the store's front window. (*The San Francisco Chronicle*, 9/19/01)

September 17 - Encino, CA:

Around \$15,000 worth of damage resulted from a 1:40 a.m. fire set to an Afghani restaurant. The fire, which investigators believe was set with an incendiary device, left the structure of the building sound, but burned and destroyed the furnishings and the roof. (*The Daily News of Los Angeles*, 10/12/01)

September 17 - Bridgeport, CT:

Muslim worshippers arrived for afternoon prayer at their local mosque and discovered that it had been vandalized with threatening graffiti. Their phone wires had also been cut. Vandals defaced the walls with messages such as, "You will all die" and "Tension is increasing." (AP, 9/19/01)

September 17 - New Port Richey, FL:

A native of Trinidad and Tobago found his appliance store covered with threatening graffiti. Vandals scrawled messages across the front and rear buildings of the complex he owns, with threats such as, "I know you're here," "They will pay," and "10,000 for every NYFD, this means you!" (*The Tampa Tribune*, 9/18/01)

September 17 - Buffalo, NY:

An Arab-American's vehicle was set on fire during the night. (*The Buffalo News*, 9/17/01)

September 17 - New York, NY:

The words "Don't support terrorists" were spray-painted in silver letters on the awning of a fast food restaurant. The co-owner had moved to the United States from Afghanistan three years ago. (*New York Daily News*, 9/19/01)

September 17 - Austin, TX:

Vandals in a passing car threw two incendiary devices onto the roof of a mosque. The firebombs did not explode. A neighbor who had witnessed the scene rushed down the street and up a ladder to extinguish the devices with a garden hose. Nobody was injured, and the building wasn't damaged. (*Austin American Statesman*, 9/18/01)

September 17 - Houston, TX:

Federal law enforcement agents and the Houston Fire Department Arson Unit investigated an early-morning blaze at an auto shop in southwest Houston. The business was closed at the time of the fire and no one was injured. The son of the shop owner, a Pakistani Muslim, had received threats a few days prior to the blaze. (*The Houston Chronicle*, 9/18/01)

September 18 - Charlotte, NC:

A Greek-American restaurant employee discovered anti-Arab messages spray-painted on a tractor-trailer parked in the lot behind his work. In addition to the messages, the vandal also had drawn a swastika and had written "KKK." (*The Charlotte Observer*, 9/27/01)

September 18 - Charlotte, NC:

Someone smashed windows and left containers filled with gasoline inside a Persian rug store during the night. Nothing caught fire. (*The Charlotte Observer*, 9/27/01)

September 18 - Cumberland, RI:

State fire investigators detonated an explosive device that was left at a gas station overnight. The station's owners are Lebanese American. (*The Providence Journal-Bulletin*, Providence, 9/19/01)

September 19 - San Jose, CA:

A Molotov cocktail was thrown on the lawn of a Middle Eastern home. (AP, 9/20/01)

September 19 - New York, NY:

Anti-religious graffiti was scrawled upon the sides of a Bangladeshi newspaper office in Queens. (*The New York Post*, 9/24/2001)

September 19 - Port Charlotte, FL:

Vandals struck a Port Charlotte mosque for the second time in a week, torching a roadside planter. The flames burned shrubs and melted a plastic sign.

September 19 - Laurel, MA:

The words "Terrorist murderer" were spray-painted on a car belonging to an Indian immigrant. The car's four tires were slashed and its windshield was shattered.

September 19 - Santa Fe, NM:

Vandals left a racial slur on the plate-glass window of a business owned by a man of Middle Eastern descent. They also threw eggs and scratched the windows of several other businesses close by. (*The Albuquerque Journal*, 9/26/2001)

September 19 - Portland, OR:

A Pakistani man returned to his car after shopping to find that someone had slashed his tires. (*The Seattle Times*, 9/23/01)

September 20 - Sacramento, CA:

A man called a Sikh temple in West Sacramento, ordering them to lower their flag to half-staff. He threatened the Sikh leaders when they would not comply with his demands. The next morning, the man arrived at the temple and barricaded its front entrance with his tractor. He blocked a second gate with a truck and trailer and padlocked it. The man was charged with felony vandalism and trespassing after he jumped into the temple's holy pool. (*LA Weekly*, 9/26/01)

September 20 - Punta Gorda, FL:

Vandals shot at a gas station.

September 20 and October 2- Columbus, OH:

Vandals twice struck an Indian American owned restaurant that serves Pakistani and Indian cuisine. The first incident occurred after hours when a brick crashed through a front window. The second incident took place weeks later, when vandals broke a sign and several windows overnight. The owner replaced the sign, but omitted mention of Pakistani food on the new one. (*The Columbus Dispatch*, 10/5/01)

September 20 - Roanoke, VA:

A fire gutted a house that was being renovated by a 27-year-old Iraqi immigrant. Authorities determined that the fire was not an accident and investigated the incident as a possible hate crime. (AP, 9/20/01)

September 21 - Los Angeles, CA:

A vandal damaged the car of an Iranian family with a baseball bat and hammer while it sat parked in the

driveway. The vandal bashed out the car windows and dented the trunk and fenders. The family members are US citizens, having lived in the US for more than 20 years. (The *Los Angeles Times*, 9/22/01)

September 21 - Minneapolis, MN:

A bicycle seat was hurled through the window of a Pakistani-American-owned tobacco shop. The owner thinks that the bicycle seat was aimed to shatter a ceramic plate hung on the wall with a picture of a mosque. (The *Star Tribune*, 9/30/01)

September 22 - Palo Alto, CA:

A Palestinian American discovered that his car tires were slashed with a knife or other sharp object sometime during the night.

September 22 - Buffalo, NY:

A passing bicyclist smashed two windows of an Arab-owned convenience store. (The *Buffalo News*, 9/24/01)

September 22 - Undisclosed City, NJ:

A Portuguese-American woman, married to a Syrian, found her car vandalized.

September 23 - Alexandria, LA:

Vandals threw a rock through the glass door of a Pakistani-American-owned convenience store. (The *Times-Picayune*, New Orleans, 9/28/01)

September 23 - Detroit, MI:

Arson destroyed a store owned by an Arab American. Fire investigators found gasoline inside the store, in the soil between concrete slabs and on a window ledge. They also discovered a Molotov cocktail, intact and unlit, sitting outside the building. (The *Detroit News*, 9/24/02)

September 23 - Austin, TX:

A Palestinian-American carpet store owner in northwest Austin opened his store to find that it had been destroyed by arson during the night. (The *American Statesman*, 9/25/01)

September 24 - Chicago, IL:

An Assyrian Christian church was set on fire during the night. The fire caused an estimated \$200,000 in damage. (The *Chicago Tribune*, 9/24/01)

September 24 - Denham Springs, LA:

After a false rumor spread that the Iranian and Palestin-

ian American owners of a local restaurant had celebrated after the terrorist attacks, a vandal hurled rocks through the restaurant's windows. (The *Advocate*, Baton Rouge, 9/26/01)

September 26 - Wayne, NJ:

Someone shot three bullets at a sandwich shop owned by a Palestinian American from the Gaza Strip. The shop was closed at the time and no one was injured. The shop's employees had received a threatening phone call on September 12 when an unknown caller asked, "What nationality are you? Are you Syrian?" The employee who answered replied that he was Egyptian. The caller then threatened, "I'll make sure you guys will be leaving here soon." Sometime afterwards, a false rumor spread that the Arab employees had celebrated the terrorist attacks. (The *Record*, Bergen County, 10/3/01)

September 27 - Anaheim, CA:

An arsonist set fire to the Islamic Halal Tandoori Pakistani and Indian Cuisine Restaurant, causing \$150,000 in damage. The blaze was set about 2 a.m. and gutted the front hall of the building. (The *Orange County Register*, 9/28/01)

September 27 - Los Angeles, CA:

The home of a Pakistani family was burned down following a series of phone threats. The family had left to stay at a safer location before the blaze and no one was hurt.

September 27 - San Francisco, CA:

An Iranian-American café owner, who had received regular threatening phone calls since September 11, arrived at his café to find that two of the front windows had been smashed by vandals. (The *San Jose Mercury News*, 9/29/01)

September 27 - East Lansing, MI:

A university professor reported to ADC that the home of a mosque caretaker had been shot at.

September 27 - Brattleboro, VT:

An Indian clothing, furniture and jewelry store was set ablaze during the workday by an unknown arsonist. The fire consumed a rack of clothing, a chest of drawers and fabric that was hung on the store's walls. The store's sprinkler system extinguished the blaze, saving two thirds of the store from damage. (AP, 10/7/01)

September 27 - Fairfax, VA:

A large swastika was burned into the front lawn of a Middle Eastern family's home. (The *Washington Post*, 10/11/01)

September 27 - Vancouver, WA:

Someone set fires and spray-painted Nazi swastikas on four businesses owned by Americans of Iranian and African origin. (The *Vancouver Sun*, 10/5/01)

September 28 - Falls Church, VA:

A 19-year-old man of Middle Eastern descent drove past a pickup truck and shortly thereafter, the truck slammed into the back of his car. When the victim got out of his car, the driver of the truck yelled a racial epithet at him. He rammed the car twice more. The victim returned to his car and drove off, finally ending up on a dead-end street. The pickup truck caught up to him and rammed him on the driver's side of the car. The victim drove off and was not seriously injured. (The *Washington Post*, 10/3/01)

September 29 - Saint Bernard Parish, LA:

Vandals fired paint-balls at a Palestinian-American-owned convenience store, which cracked three windows and splattered the front of the building with orange paint. (The *Times-Picayune*, New Orleans, 10/2/01)

September 30 - Waurika, OK:

A small fire ignited on the roof of a truck stop owned by Sikh Americans. According to both a trucker who witnessed what happened and the truck stop's surveillance camera, a man had thrown a burning object onto the building during the night. Responding firefighters discovered a gasoline can on the roof. Later that afternoon, the Sikh employees received a telephone call saying that a bomb was strapped to the gasoline pumps. The family evacuated the building. The truck stop had been flooded with over 50 threatening and vulgar phone calls on September 11, some threatening to "kill all you Muslims" and "kill everyone up there who's not white." Calls such as these prompted the family to leave Waurika for a few weeks. They had just returned when the arson incident happened days later. (The *Fort Worth Star-Telegram*, 10/2/01)

October 2 - Orange County, FL:

A Pakistani motorist driving on a state road had the back window of his car shot out in a drive-by shooting. (The *Orlando Sentinel*, 10/14/01)

October 13 - Berks County, PA:

Two men were charged with ethnic intimidation after they allegedly threatened three foreign-born gas station workers, poured gasoline on the ground from a pump and threw a match on it. (AP, 10/13/01)

October 13 - Pittsburgh, PA:

A used-car garage owner from Iraq rushed to his garage sometime around 10 p.m. after hearing that it was on fire. Upon his arrival, he saw three firefighters extinguishing the blaze on the roof, finding evidence pointing to arson. Vandals had targeted the garage two weeks before this incident. Someone had spray-painted, "We Hate" across the front. A burglar broke into the office and stole all the keys. Vandals had also slashed tires and stole tools. A compact disc player and six new batteries were also stolen. In the days that followed, cars were also stolen from the lot. (The *Philadelphia Inquirer*, 11/25/01)

October 18 - Goffstown, NH:

An anti-Arab message was spray-painted across a wall that faced the playground of an elementary school. A teacher arriving early discovered the vandalism and called police. The graffiti was quickly covered up, but not before several children had read it. (The *Union Leader*, 10/23/01)

October 20 - Riverside, CA:

Someone threw eggs at the home of a Middle Eastern man. (The *Press-Enterprise*, Riverside, 12/12/01)

October 22 - Goffstown, NH:

Vandals spray-painted, "Burn In Hell" and a racial epithet on an Arab-American's home. (The *Union Leader*, 10/23/01)

October 26 - Davie, FL:

Members of the Sikh community discovered a live pig tethered to a pole on the grounds of their local temple. (The *Sun-Sentinel*, Fort Lauderdale, 10/27/01)

October 30 - Anaheim, CA:

Intruders broke into a Palestinian-American-owned insurance office and spray-painted a swastika and other graffiti on the walls. Employees arriving at the office that morning found the walls marred by the black swastika along with, "Go Home Arab." The vandals also stole a laptop computer and a bag containing customers' checks. Immediately following this incident, neighboring businesspeople brought doughnuts and cof-

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fee to the office and many had called to offer support. This office had been the target of vandals earlier, on September 11. (*The Los Angeles Times*, 11/1/01)

October 31 - Burlington, VT:

A Catholic Iraqi American and his family found their two cars vandalized by BB gun shots. Vandals had also stuck pieces of bologna on one of the cars. Police speculate that the vandals mistook the car's owner for Muslim and scattered the meat as an insult to him and Islamic dietary law. (AP, 11/1/01)

November 2 - Mountlake Terrace, WA:

A 36-year-old man vandalized and attempted to burn down the Omar Al Farooq mosque. The vandal, accompanied by two teen-age boys, ages 17 and 15, smashed windows and set fire to the mosque's window curtain, causing an estimated \$1,500 in damage. A neighbor to the mosque, awakened by his barking dog, rushed to the scene and put out the flames. The suspect was soon caught and charged with felony malicious harassment and attempted arson, while the youth were charged with harassment in Snohomish County Juvenile Court. (*The Seattle Post Intelligencer*, 11/3/01)

November 6 - Madison, WI:

A 21-year-old drunk man was walking down the street when he stopped before the front window of a bar where two Middle Eastern looking men sat. Upon seeing the men, he smashed the bar's window with his hand. A doorman confronted the vandal, who began yelling racial slurs against Arabs. When police later found the assailant, his hand was bloody and he complained that the "Fucking Arabs" were conspiring to blow up bridges in San Francisco. (*Capital Times*, Madison, 11/7/01)

November 17 - Waterbury, CT:

While about 100 worshipers participated in a Ramadan prayer service at the United Muslim Mosque, several rocks, thrown from the outside, suddenly crashed through two windows. (AP, 11/19/01)

November 18 - Palermo, NY:

A Sikh temple was set ablaze by two 18-year-old males accompanied by a 19-year-old woman. The youths later explained that they thought the Gobind Sadan House of Worship was named "Go Bin Laden." They set fire to the building because they figured the people who worshiped there supported the terrorist attacks. (AP, 11/18/01)

November 26 - New Orleans, LA:

A three-alarm fire burned the front dining area of a popular Middle-Eastern restaurant. The rest of the building was damaged by smoke and water. One firefighter suffered minor injuries while responding to the incident. The Palestinian co-owner of the restaurant mentioned he had received threats since September 11. (AP, 11/26/01)

December - Lomita, CA:

Vandals threw bricks through the window of a mosque. (Copley News Service, 12/20/01)

December - Hawthorne, CA:

Vandals threw a brick that shattered the window of a car sat in the parking lot of a mosque. (Copley News Service, 12/20/01)

December 3 - Violet, LA:

Three men in combat fatigues and masks robbed a convenience store, locked the Arab-American manager in a beer cooler and then set fire to the building. The men allegedly addressed the manager with racial epithets during the incident. He managed to escape unharmed from the blaze after forcing his way out of the barricaded cooler. However, the store was severely damaged in the blaze. The store had been the target of vandalism in late September, when vandals fired paint balls that shattered three windows. Around the same time, another store had its window shot with an air rifle. (*The Times-Picayune*, New Orleans, 12/5/01)

December 9 - Concord, CA:

Two teenage males wearing hooded sweatshirts each lobbed a rock through a large window at the Islamic Center of Contra Costa at around 1:15 a.m., when several worshipers were inside praying. The 16- and 14-year-old youths fled but, following a tip, were later arrested by police. (*Contra Costa Times*, 12/21/01)

December 12 - Lindenhurst, NY:

Two men allegedly attacked an Indian-American man and set his business on fire while yelling, "Go back to Afghanistan!" They also robbed his store of jewelry and cash. (*The Daily News*, 12/13/01)

December 27- New York, NY:

A Pakistani reporter for Newsday and her husband were riding in the subway when they spotted some graffiti on the wall which read, "Paki, go home!" They were able to

rub it off with a tissue and water. (*Newsday*, New York, 12/27/01)

December 30 - Columbus, OH:

Vandals broke into and damaged the three-story Islamic Center of Columbus before worshipers arrived for morning prayers. Morning worshipers discovered shredded copies of the Koran scattered across the parking lot and water pipes ripped from the third floor bathrooms. The damaged pipes spewed water into newly punched holes in the floor. Water flowed from the third story down to the lower levels. Vandals also smashed light fixtures in the ceiling. (AP, 12/31/01)

January 3 - Alexandria, SD:

Vandals spray-painted the word "Taliban" on a Hutterite colony sign. (AP, 1/3/02)

January 12 - Ann Arbor, MI:

A university student left his car, which had three pro-Palestinian stickers on it, parked overnight on his college campus. When he returned to retrieve his car the next morning, he discovered it had been vandalized. Two stickers had been torn off and the third was written over with an undecipherable message. Five long scratch marks ran along the side of the car, and the antenna was bent in half. A rearview mirror was also missing.

January 16 - New York, NY:

A vandal poured tar on the front steps of the Islam Mosque in Brooklyn Heights during the night. (*Brooklyn Heights Courier*, 1/21/2002)

February 4 - Caledonia, WI:

A Muslim-American family was at home during the evening, when they suddenly heard a series of pounding noises. The parents of the household went outside to investigate and discovered that someone had thrown eggs at the window of their home, where an American flag was hanging on the inside. The couple called the police and filed a report. A few days prior to this incident, the wife, who wears the hijab, was outside in front of the home. A passing teenager called her a "bitch."

II. Battery

September - Vernon Hills, IL:

A man began harassing an Indian couple. When a wit-

ness stepped in and came to the couple's aid, the attacker turned on him and punched him. The attacker was arrested and charged with the crime. (*The Daily Herald*, IL, 9/16/01)

September - Carol Stream, IL:

A racially motivated fight erupted at a gas station. (*The Daily Herald*, IL, 9/16/01)

September - Detroit, MI:

An Arab-American motorist was attacked while waiting at a traffic light stop. (*The Detroit News*, 9/14/01)

September - Bergen County, NJ:

An Egyptian service station employee quit after one customer stole gas and harassed him and another customer kicked him. (*The Record*, Bergen County, 9/25/01)

September - Richardson TX:

An Indian American told police he was assaulted by a group of men who called him an Arab. (*The Houston Chronicle*, 9/14/01)

September 11 - Los Angeles, CA:

A Fremont Sikh, who works as a truck driver, was beaten up in the Los Angeles area while on duty. (*The Argus*, 9/13/01)

September 11 - Chicago, IL:

Three men attacked and beat a Pakistani cab driver. (*Chicago Tribune*, 9/14/01)

September 11 - Monroe, NJ:

A motorist punched a Muslim service station employee in the face. (AP, 9/13/01)

September 11 - Ardsley, NY:

An Arab-American deli owner was asked if he was Arab by one customer. When he responded affirmatively, the customer cursed and yelled at him. The customer then sprayed the deli owner with pepper spray when he attempted to escort him out of the store.

September 11 - Brooklyn, NY:

A Muslim man in Brooklyn reported that someone in a car threw a tire iron at him. (*Ft. Lauderdale Sun-Sentinel*, 9/14/01)

September 11 - New York, NY:

A group of several men attacked a Muslim cab driver in

Manhattan. The men began by cursing at him, before punching him several times in the back. (*Newsday*, New York, 9/14/01)

September 11 - New York, NY:

A Staten Island teenager, who had lost his grandmother in the World Trade center, entered a Middle Eastern deli and struck an employee across the back with a broom handle. (*Daily News*, 10/24/01)

September 11 - New York, NY:

In Manhattan, a 66-year old Sikh from India visiting his Indian-American son was beaten by three young men who mistook him for an Arab. The attack took place outside of the Sikh Cultural Society, where the victim had gone to pray because of the earlier events of the morning. Afterwards, out on the street, several men in their late teens exited their cars at the sight of him and pounced on him. They beat him for ten minutes before police finally rescued him. (*Newsday*, New York, 9/16/01)

September 11 - Cleveland, OH:

A man rushed into a west side Middle Eastern restaurant, owned by a Palestinian, and beat a customer. (AP, 9/15/01)

September 11 - Covington, OH:

A Muslim woman was attacked while she sat in her car. She was not injured, but according to an administrator at the Islamic Center of Greater Cincinnati, she was "shaken up very badly." (*Cincinnati Post*, 9/12/01)

September 11 - West Chester, OH:

The city's Islamic Center closed down after somebody was attacked in the parking lot and the mosque received several threats. (*The Dayton Daily News*, 9/16/01)

September 11 - Tulsa, OK:

A 29-year-old Pakistani was hospitalized after he was badly beaten and kicked by three men. The attack happened outside of a service station as the victim was visiting a friend who worked there. The victim suffered a broken jaw and lost several teeth during the attack. He underwent treatment at a Tulsa hospital and was released a few days later. (*Tulsa World*, 9/16/01)

September 11 - Milwaukee, WI:

A Sikh man was attacked by two men and sustained minor injuries to his arm and back. (*Milwaukee Journal Sentinel*, 9/20/01)

September 12 - Los Angeles, CA:

Two Spanish-speaking women were harassed and one beaten by a woman in a doctor's office. The woman allegedly yelled, "You foreigners caused all this trouble," before attacking them. (LA Commission on Human Relations)

September 12 - Riverside, CA:

Three officers beat a Palestinian American in a correctional facility.

September 12 - Bridgeport, CT:

A Brazilian waiter was attacked on the street by eight men who taunted him and accused him of being an Arab. The group badly bruised the victim's face and broke his arm. (Deutsche Presse-Agentur, 9/13/01)

September 12 - Chicago, IL:

An Arab American was beaten after he came to the aid of a taxi driver who also was being attacked. (*Washington Report on Middle East Affairs*, 11/30/01)

September 12 - Palos Heights, IL:

A man attacked a Moroccan-American gas station attendant with the blunt end of a 2-foot machete. The victim did not seek treatment at a hospital and his attacker was arrested and charged with a hate crime. (AP, 9/13/01)

September 12 - Gary, IN:

A Yemeni-American gas station owner survived an attack by a gunman wearing a ski mask, who opened fire directly at the employee, firing more than 21 shots from a high-powered assault rifle. The owner was protected by one-inch-thick glass, separating him from the attacker. When the owner crouched on the floor and shielded himself from the falling shards of glass, the gunman exited and attempted to shoot through the outside of the building, against the wall where the owner was huddled. The investigation was turned over to the FBI. (*The Times*, 9/13/01)

September 12 - Omaha, NA:

Someone hurled a soda can at two Muslim women, both wearing hijab as they walked through the parking lot of a Methodist hospital. (*Omaha World-Herald*, 9/13/01)

September 12 - Huntington, NY:

A 75-year-old drunken man tried to run over a 24-year-

old Pakistani mall employee in the parking lot outside her work. While waiting for her husband to pick her up, she noticed a car revving its engine 30 feet away. Suddenly, the car sped towards her and she quickly jumped out of its path. The driver stopped where the woman had been standing and began insulting and threatening her. The frightened victim ducked into a nearby store, with her attacker following her. "Your people and country are destroying my country. I'll kill you," he threatened. Security guards caught the attacker and called police. (AP, 9/13/01)

September 12 - New York, NY:

Five teenagers stopped in front of a small Arab-owned candy store in East Harlem and asked the owner, who stood in the doorway, "Do you feel sorry for America?" Without waiting for a response, one teen punched the storeowner, sending him reeling backwards onto the floor. The blow caused the storeowner to bleed and his dentures to break in half. Bystanders helped the Arab-American to his feet and tried unsuccessfully to catch the assailants, who had fled. (The Daily News, 9/13/01)

September 12 - New York, NY:

In Richmond Hill, Queens, a 66-year-old Sikh was shot with a pellet gun and chased down by three white teens who battered him with a baseball bat. He was hospitalized overnight with head, back and wrist injuries. (The Daily News, 9/14/01)

September 13 - San Clemente, CA:

According to an Iranian auto-shop owner, a man uttered a bomb threat before punching him. (The Orange County Register, 9/15/01)

September 13 - Clarkston, GA:

Four men cornered and assaulted a 22-year-old Christian Sudanese man who was walking home after 10 p.m. The group of attackers stepped out in front of him and began accusing him of the terrorist attacks. The men threatened, "You killed our people in New York. We want to kill you tonight." They shoved him against a wall and tried to stab him, slicing a hole in his shirtsleeve instead. Finally, when another Sudanese man rushed over to his friend's rescue, the four men fled. (The Atlanta Journal and Constitution, 9/13/01)

September 13 - Staten Island, NY:

An Arab-American pedestrian was crossing the road when he saw a car approaching. He looked over to see

the driver of the car shaking his fist and pointing his finger at him threateningly. Suddenly, the car sped up and nearly struck him. The pedestrian was able to dart out of the way in time. (New York Daily News, 9/23/01)

September 13 - Philadelphia, PA:

According to a police report, a passenger in a taxi broke the Muslim driver's arm. (The Plain Dealer, 9/15/01)

September 13 - Farwest, WA:

A Sikh cab driver was stopped by a 21-year-old intoxicated man who had hailed his cab. Once inside, the intoxicated passenger started screaming at him, accusing him of being a terrorist. The passenger yelled, "You have no right to attack our country," and grasped the driver around the neck, choking him. The driver pulled over and exited the car, but the attacker punched him in his face, ripped off his turban and a fistful of hair from his beard. The attacker then fled, but the driver waved down a passing police officer who soon caught up with him. (The Seattle Times, 9/15/01)

September 14 - Los Angeles, CA:

A young Iranian woman exiting a restaurant with a friend was followed by another female customer. The customer asked the woman if she was an Arab before punching her in the eye. (LA Commission on Human Relations)

September 14 - San Francisco, CA:

An Australian software engineer was stabbed in the chest by someone who allegedly thought his friend, a man of Indian and Hispanic heritage, was an Arab. The men say the stabbing took place when they were passed by a group while crossing the street. A scuffle ensued when the engineer was punched or bumped by one of the men. The suspect called the two men racial epithets and said, "We don't like Arabs" before wounding the engineer. (The San Jose Mercury News, 9/19/01)

September 14 - San Jose, CA:

A Muslim student was forcibly elbowed out of the line in a coffee shop by a man who then told the clerk, "I'm an American, serve me first." (San Jose State Univ. Daily Spartan, 9/14/01)

September 14, 21, 27 - Germantown, MD:

A 16-year-old girl was physically attacked by a group of unknown young adults on the campus of Montgomery College, Maryland. This was the first of three hate

crimes targeting the student and her family. On September 21, her family was out driving when unknown assailants threw a firecracker in front of their car. On September 28, vandals smashed the rear window of a minivan while it was parked in front of their home.

September 14 - Broken Arrow, OK:
A knife-wielding assailant cut an Indian American at a convenience store. (*Tulsa World*, 9/16/01)

September 14 - Tulsa, OK:
A food store employee was attacked while leaving his apartment. Three people jumped on him, knocked him down, covered his eyes and beat him. After addressing him with an expletive, the men threatened, "We are going to cut you like you cut our people." Before his eyes were covered, he saw that one of the attackers had a knife-like object. The victim was hospitalized and treated for multiple lacerations. (*Tulsa World*, 9/16/01)

September 14 - Falls Church, VA:
A 50-year-old motorist chased a 33-year-old Afghani deliveryman after learning that he was Afghani. It began when the motorist pulled up alongside the victim's delivery truck and motioned for him to roll down his window. He asked the deliveryman his ethnicity. When the deliveryman responded Afghani, the attacker began to threaten and pursue him. The delivery truck pulled into a shopping center parking lot, where the attacker soon followed. The 350-pound motorist approached the van and began punching its 160-pound driver. Witnesses nearby screamed for the attacker to stop and one woman threw herself in between the two men. "Why are you telling me to leave? Why didn't you tell him to leave? This is my country. You should tell him to leave," the attacker shouted. (*The Washington Post*, 1/18/01)

September 15 - Albany, NY:
A drunken mob attacked two Middle Eastern looking college students outside of a bar. Both students were punched in the face. (*The New York Times*, 9/19/01)

September 15 - Houston, TX:
A group of nine men attacked, harassed, and beat a Hispanic man as he left a nightclub in southeast Houston. The group shouted racial epithets and comments about Osama bin Laden as they assaulted their victim. (*The Houston Chronicle*, 12/14/01)

September 16 - National City, CA:
A Somali woman and her child were attacked by a driver who allegedly shouted, "That's for what you did last week!" Neither the child nor the mother was physically injured. (*The San Diego Union-Tribune*, 9/23/01)

September 16 - Brooksville, FL:
A Muslim woman was out driving her car when another driver attempted to run her off the road (*Saint Petersburg Times*, 9/16/01)

September 16 - Chicago, IL:
A Moroccan taxi driver was driving a customer home at about 2:00 a.m. when several motorcyclists sped past him. The cab came to a bend in the road, where the cyclists were waiting. They blocked the taxi driver, forcing him to stop. One of the cyclists approached the cab and flashed a badge. With profanity and insults, he ordered the driver out of the vehicle. In the back seat, the customer warned the driver that the men looked suspicious and told him to stay. Suddenly, the men began pounding on the driver's side window; one eventually broke it with a glass bottle. Shards of glass fell around the driver, cutting his arm. The men reached into the cab, grasped the driver's neck and attacked him, punching him in the head and uttering ethnic epithets. The passenger pleaded with the assailants to stop as another cabdriver slowed down to call 911, as did another passerby. (*The Chicago Tribune*, 11/25/01)

September 16 - Boston, MA:
A 24-year-old Saudi Arabian university student was leaving a nightclub around 2:30 a.m. when a group of men suddenly attacked him. Several onlookers rushed to help the student, but the attackers managed to stab him once in the back and twice in the arm. The victim was in stable condition immediately after the attack, but his attackers fled. (*The Daily Free Press*, 9/25/01)

September 16 - Eagan, MN:
An Indian-American woman left a grocery store followed by three teenage boys. One of them pushed her against her car. When she turned, another punched her in the stomach and then elbowed her in the back. As they left, they said, "This is what you people deserve." (*The Star Tribune, Minneapolis*, 10/2/01)

September 16 - Hamilton, NJ:
A man shouted ethnic slurs at an Arab-American man and his son, demanding their money and threatening them

with a knife. The victim used his cane to keep the attacker away and eventually he got control of the weapon. Police responded and arrested the perpetrator. (AP, 9/19/01)

September 16 - New York, NY:

An Arab-American man was attacked in the bathroom of a supermarket by one of the store's employees. The teenage attacker called the man an "Arab terrorist" before slamming his head into the steel door of the men's room. The victim was knocked unconscious for a brief time and, when he left the lavatory, his assailant and several other employees sitting at a break-room table laughed at him and refused him any aid. Other employees later apologized to the man for the incident. Officers charged the assailant with second-degree assault as a hate crime and aggravated harassment. (The Buffalo News, 9/17/01)

September 16 - Cumberland, RI:

A pregnant Muslim woman wearing a hijab was using a pay phone when a car pulled up alongside her. Someone in the car threw a rock at her, hitting her foot. When she turned around to face the car, the passenger, a young woman of about 20, threw another rock at her, this time missing. (The Providence Journal-Bulletin, 9/18/01)

September 16 - Memphis, TN:

A Muslim woman was badly beaten on her way to worship. (The Dallas Morning News, 9/18/01)

September 17 - San Gabriel, CA:

A Muslim woman dressed in traditional clothing was attacked while grocery shopping. Another woman began beating her while yelling, "America is only for white people." The victim was taken to the emergency room. (LA Commission on Human Relations)

September 17 - Wilmington, DE:

A 25-year-old man was charged with a hate crime after he and a 22-year-old friend fled a liquor store with several bottles of alcohol. When the Middle Eastern manager of the store attempted to stop the pair, the thief allegedly yelled, "Bin Laden, you're gonna pay for it," before striking him. (AP, 9/19/01)

September 17 - New York, NY:

In Washington Heights, a 35-year-old man told police that a man had spit in his face after making anti-Arab remarks. (New York Daily News, 9/19/01)

September 18 - New York, NY:

Someone threw stones through the windshields of cabs in Manhattan's Central Park, apparently targeting dark-skinned drivers. (Time, 10/1/01)

September 18 - San Mateo, CA:

A gasoline bomb was thrown through the window of a Sikh family's home, hitting a 3-year-old on the head. The bomb did not explode. (LA Weekly, 9/26/01)

September 18 - New York, NY:

At a Laundromat in Brooklyn, a stranger kicked a Palestinian-American mother and called her a terrorist. (New York Daily News, 9/21/01)

September 19 - Fairhaven, MA:

An Arab-American family was harassed and assaulted by its neighbors. A friend of the neighbors hit the Arab-American father with a baseball bat. The father was taken to the emergency room following the incident. The tires of the son's car were slashed. The family was followed and harassed with racial slurs such as, "Hey, you f***** Arab terrorist, you bombed the World Trade Center."

September 19 - Teaneck, NJ:

An Arab-American man was hanging an American flag on his car in the parking lot near his work when a woman approached him and asked if he was "Arab." He answered, "Yes, why?" to which she responded, "Because I was in the department store buying a rope to hang myself before you kill me." The man ignored her and returned to his task. He had his back turned when she assaulted him with her fist and her keys. He turned around and slapped her on the face and she walked away.

September 19 - New York, NY:

A 30-year-old Muslim man was approached by a group of six to eight men who shouted anti-Arab insults and pelted him with stones. The victim was not injured and the attackers soon fled. (New York Daily News, 9/21/01)

September 19 - Westbury, NY:

A 42-year-old man was charged with a bias crime after assaulting a gas-station attendant. Police said the assailant punched the attendant in the head after questioning him about his ethnicity. (The New York Post, 9/21/01)

September 19 - Pittsburgh, PA:

A 43-year-old man charged at and beat a 22-year-old

Pakistani-born university student. The student was walking home from classes when he was alarmed to see a stranger charging after him, his arms already swinging. As he punched and kicked the student, the attacker yelled "Are you from Afghanistan?" and "I'm gonna kill you!" A nearby female student was pushed aside as she tried to intervene. Finally, a nearby construction worker managed to stop the attacker, who then fled. The attacker was soon arrested and charged with ethnic intimidation, making threats, and assault. (AP, 10/13/01)

September 20 - Fort Worth, TX:

Two Ethiopian men were stabbed by a white man wearing dark sunglasses while they strolled through the Fort Worth Botanic Garden. The attacker apparently walked up to the visitors and, without saying a word, stabbed each man once before running away. The two men were hospitalized. (The Fort Worth Star-Telegram, 9/22/01)

September 21 - San Jose, CA:

A 45-year-old man was arrested after attacking a 21-year-old Indian-American convenience store clerk. The assailant first asked the clerk his ethnicity. When the victim responded that he was from India, the irrational assailant loudly insisted that the clerk was lying and was in reality from Afghanistan. He punched the clerk several times and left the store. (AP, 9/26/01)

September 21 - Holden, MA:

A 20-year-old man stopped at a traffic light and looked over to see a driver he perceived to be Middle Eastern in the van beside him. He got out of his car and pulled the driver out of his. The assailant punched and yelled at the van driver, striking several times before the driver fought back. He then punched and spat at the two police officers that responded. Later on, he destroyed property in the police booking room. (The Boston Herald/AP, 10/1/01)

September 21 - Albuquerque, NM:

A Palestinian gas station owner was standing with his brother-in-law and a customer outside his business when a car carrying two men stopped in front of them. Three shots were fired at them from the car but the men escaped injury.

September 21 - Dallas, TX:

A gunman shot and wounded a Bangladeshi immigrant at a gas station. (See Confirmed Hate Crime Murders, September 15 - and October 4 - Dallas, TX.) The same

gunman, Mark Anthony Stroman, shot and killed two Dallas-area immigrants and was sentenced to death April 4, 2002. (Reuters, 4/4/02)

September 21 - Houston, TX:

A 30-year-old political refugee from Iraq was returning home at approximately midnight when he was threatened and injured by a gunman. As he opened his car door, the victim was approached by a young black man who greeted him in Arabic and asked him for a cigarette. The victim gave him one and offered him his lighter. Suddenly, the attacker drew out a handgun and pointed it to the victim's head. When the victim offered money, the gunman said, "I don't want your money. Your people killed my people. You are from the Middle East." The victim grabbed for the gun and was shot in the left hip in the struggle. The gunman fled the scene on foot. (The Houston Chronicle, 10/7/01)

September 22 - Palo Alto, CA:

Three teenagers walked past a pizzeria and one of them made an obscene gesture at the Afghani-American owner inside. The owner stepped outside to confront the teens on the sidewalk and find out the reason behind the insult. One of them cursed at him and another pushed him to the ground, where he scraped his elbow. The three continued on their way and were not picked up by the police. In the days that followed, a bunch of flowers and a letter of support were left at the pizzeria. (AP, 9/29/01)

September 22, October 6 and 15 - Ashton, MD:

An Arab-American homemaker was attacked and her property vandalized by a female neighbor. The neighbor spread feces across the Arab American's porch three times, pelted the home with dead plants, and doused the Arab American with liquid. The victim called 911 and the police arrived, took details and left. Upon their departure, the neighbor doused the Arab-American woman again, this time with liquid bleach, which burned the victim's skin and discolored her clothes. Earlier in October, the victim's husband found two nails underneath the tires of both his and his wife's cars. His antenna was also bent and toothpicks were broken in the keyhole of his mailbox. Prior to all of this, in September, the couple found feces covering the door handle of one car and a long scratch on the side of the car.

September 22 - New York, NY:

Three men attacked a Sikh customer while he was waiting in line in a Queens doughnut shop. The three

attackers ran towards him, one punched him in the mouth, while another pinned his hands behind his back. The third picked up a chair and struck the victim's head, back and stomach until the victim bled. (*Newsday*, New York, 9/24/01)

September 27 - Knoxville, TN:

The U.S. Attorney's office in the Eastern District of Tennessee filed a criminal complaint against two men after they allegedly brutally assaulted two motel managers of Indian descent. (U.S. Department of Justice, Civil Rights Division, 1/16/02)

September 28 - Los Angeles, CA:

A 20-year-old Los Angeles man and his 34-year-old uncle beat a 47-year-old Mexican immigrant in his home, thinking he was Arab. The two first repeatedly bumped their pickup truck into the victim's car and yelled insults as they followed him to his home. The pair then chased him to front door, broke in after him and beat him up in front of his wife and his daughter while shouting insults against Arabs. After the men were arrested and as they sat handcuffed in the police car, one shouted, "It's all about this Iraq bombing (expletive) and that's what this (expletive) is ...It's about the American flag. Revenge will come down the road. I lost two relatives. This (expletive) that happened tonight is going to start happening all over the valley." The two men were sentenced to four years in prison. (*The Daily News of Los Angeles*, 11/27/01)

September 28 - New York, NY:

A Yemeni man was badly beaten in the Bronx while working at his newsstand. Three local men allegedly yelled, "You Arabs get out of my neighborhood — we hate Arabs! This is a war!" before dragging him outside and hitting him in the head with a bottle. (*Daily News*, New York, 9/30/01)

September 28 - Falls Church, VA:

An unknown attacker struck a Muslim woman in the head with a baseball bat. She struggled to get to the local mosque to take refuge. Although mosque officials urged her to contact the police and report the attack, she refused, citing her uncertain immigration status. (*The Washington Post*, 9/28/01)

September 29 - Belmont, MD:

An eyewitness contacted ADC after the Greek owners of a convenience store were believed to be Arabs and attacked. The police were contacted.

September 30 - Industry, CA:

Two Arab customers in a bar were beaten by a group of four bouncers. One of the customers had been arguing with the bartender over the bill. The bouncers attacked him and broke his nose and arm, calling him a terrorist as they beat him. The victim's cousin put his hands up, indicating that he did not want trouble and asked, "Are you gonna beat me?" The bouncers turned on him, breaking his ribs and bruising his eye. Afterwards, the bouncers were arrested.

September 30 - San Diego, CA:

A car driven by a Sikh woman was idling at a red light when two men on a motorcycle pulled up beside her, yanked open her door and shouted, "This is what you get for what you've done to us!" and, "I'm going to slash your throat!" She raised her elbows to protect her neck and hunched over. She was slashed in the head at least twice before the men, hearing a car approach, sped off. She was treated in the emergency room and released that day. (*The San Diego Union-Tribune*, 10/5/01)

September 30 - Seattle, WA:

A drunk 24-year-old man and 23-year-old woman from California were riding in a taxi driven by an Indian American. The man yelled at the driver and asked, "Who are you, Osama bin Laden?" He then threatened the driver, called him a terrorist and yelled, "We're going to kill you all wherever you are." At that, he began punching the driver several times in the head, which caused the driver to lose control and run the taxi up onto a curb. The woman hit the driver in the face with her purse. (AP, 10/3/01)

October 3 - Noroco, CA:

An Arab-American businessman was beaten by two men in ski masks while he was closing his store. They shoved him to the back of the store, finally pushing his face into a mirror. They beat him, calling him "sand nigger." The two men then chained him as he tried to escape. They sprayed his face with black spray paint, saying they could "make him a nigger." They poured fire starter fluid on him and threw liter bottles at him until he lost consciousness.

October 6 - Topeka, KS:

Three unidentified men attacked a 21-year-old student from Bangladesh at a convenience store. (AP, 10/8/01)

October 8 - Hyannis, MA:

A 31-year-old man attacked two convenience store

clerks from Pakistan. The suspect walked into the store, approached the two clerks and asked them if they were from Pakistan. The two men responded affirmatively, which enraged the suspect even more. He allegedly began cursing, accusing them of "almost killing" his family and attacking his country. The clerks tried calming the frantic man and one managed to lead him out of the store. Once outside, the man punched the clerk, sending him falling to the ground. He kicked him repeatedly as the second clerk rushed outside to stop the attack. Police responded and arrested the man, who was drunk at the time. (*Cape Cod Times*, 10/10/01)

October 9 - Los Angeles, CA:

While a Sikh in traditional clothing was out on an evening walk close to his home, four men attacked, beat and punched him. The Norwalk police were called and reported the incident as a robbery because the attackers ripped the man's clothes and took his wallet. However, according to the victim, the attackers yelled "terrorist" as they beat him.

October 12 - San Jose, CA:

A pregnant Yemeni woman wearing a hijab and a long dress was beaten by a group of teenagers. She was hospitalized and remained in guarded condition until she delivered her baby. (*The San Jose Mercury News*, 10/26/01)

October 12 - New York, NY:

An Egyptian-American honor student and senior at a Queens high school was on his way to meet his friends and play basketball when he was attacked by a gang. The gang chased him, shouting anti-Arab curses and threats. The student ran to a parked taxi nearby, opened the door and slid inside. However, the gang caught hold of him and pulled him outside before the taxi could escape. While gang members held him down, one attacker rammed a broomstick into his left eye, gouging it out. The youth was hospitalized and required a glass eye. (*New York Daily News*, 12/23/01)

October 15 and 16 - Manchester, NH:

A 43-year-old woman bumped and elbowed her Muslim neighbor while the two women passed in the stairwell of their apartment building. The victim fell, bruising her elbow and hip. On the previous day, the woman approached her Muslim neighbor, pushed up against her and harassed her with insults and epithets, calling her "Middle East Trash" and "terrorist." Later that

evening, the woman's 18-year-old daughter threatened to punch the Muslim woman and "tear (her) apart." The woman was arrested, but released on bail. She allegedly taunted her neighbor again on March 23 when the two accidentally met while shopping. The woman was given a two-to five-year suspended sentence on a misdemeanor assault charge. (AP, 4/10/02)

October 19 - WA:

An Indian-American motel owner was struck unconscious by a 60-year-old man. The assailant had stormed into the motel's lobby and threatened the employee once before. He returned weeks later and shouted, "You still here? Go to Allah!" before hitting his victim twice on the head with a wood and metal cane. The victim required nine stitches. (AP, 10/20/01)

October 20 - San Diego, CA:

An Afghani taxi driver, who had lived in the United States for over 20 years, was attacked by a doctor visiting from Oklahoma. The row began when the doctor and his colleague asked the driver his ethnicity. When he answered Afghani, the group began to bicker and argue. Finally, the attacker clasped the victim's throat in an attempt to strangle him, before striking him about three times in the head. (*Tulsa World*, 1/23/02)

October 20 - WA:

A 23-year-old Sikh was crossing the street about 8 p.m. when he was hit in the head from behind and knocked to the ground. He refused medical attention. (*The Baltimore Sun*, 10/23/01)

October 21 - Anaheim, CA:

A 27-year-old Indian physical therapist was mistaken for a Middle Easterner and assaulted while celebrating his birthday at a karaoke bar. The victim was leaving the bar at about 1 a.m. with a group of his friends and family when several men picked a fight with him. Witnesses heard at least two people yell racial slurs about "Middle Easterners." The man suffered a shattered jaw and was released from the hospital two days later after undergoing surgery to have his mouth wired shut. (*The Los Angeles Times*, 10/23/01)

October 21 - New York, NY:

A Pakistani-American reporter stepped out of a Pakistani-owned grocery store in Manhattan and was soon approached by three men. One of the three sized

him up and said, "You look like Osama bin Laden. Are you from Pakistan?" When the victim responded affirmatively, the three men pounced on him, punched and kicked him, knocking out his front teeth and beating him unconscious. (*The New York Times*, 10/24/01)

October 22 - Shrewsbury, MA:

A woman wearing Muslim garb reported to police that she was struck by a soda can thrown from a passing vehicle. (*Telegram and Gazette*, 10/23/01)

October 23 - Dumfries, VA:

A 42-year-old mother and her 19-year-old son were arrested and charged with hate-related felonies and counts of misdemeanor, assault and battery after they attacked two Afghan-American teenage brothers, ages 16 and 17. They had taunted and threatened the teenagers for over a month. The son and a group of his friends approached the two youths and began taunting and hitting them. The mother then entered the fight and hit the 17-year-old youth in the head. Both boys escaped into a neighbor's home, and neither was seriously injured. (*The Washington Post*, 10/25/01)

October 30 - Grand Forks, ND:

A 26-year-old man attacked and punched a Saudi Arabian student unconscious in a local bar. The assailant later explained to police that he feared the student might be in Grand Forks training for a future terrorist attack. (*Grand Forks Herald*, 12/19/01)

November 1 - Prince William, VA:

A 27-year-old and his 25-year-old friend were charged with a hate crime after assaulting a 46-year-old Pakistani taxi driver. The driver had picked up the two men and, during the ride to a nearby motel, the two passengers yelled and cursed at him. Upon their arrival, the frightened driver exited his car and tried to flee, but the pair caught hold of him and began beating him in the motel parking lot. (*The Daily Press*, 11/4/01)

November 3 - Los Angeles, CA:

An Afghani-American woman was pushed and harassed by her two male neighbors as she walked from her car to her house. When the police arrived to take a report, the two men told the officers that the woman had been making terrorist threats.

November 6 - Denver, CO:

A 35-year-old Middle Eastern man ran into two male

acquaintances while he was out walking during the evening. One of the men attacked him with a soda can, knocking him to the ground. The victim heard one of the two yelling obscenities and racial slurs, ordering him to "Go back to your country..." The second assailant kicked the victim in the ribs and threw soft drink cans at his head. Although the victim recognized the pair, he did not know either man's name. (*Rocky Mountain News*, Denver, 11/9/01)

November 10 and September 13 - San Antonio, TX:

Two people in ski masks robbed and beat the female owner of a small Persian restaurant, leaving behind racial slurs on the walls. The attackers forced open a back door. One of them bound the victim's hands and legs with duct tape and beat her to the ground. Meanwhile, the second attacker sprayed hate messages on the walls. The two stole about \$500 before leaving the restaurant. (*San Antonio Express-News*, 11/14/01) The restaurant had been the target of an act of vandalism on September 13, when the front door and a window were shattered by a slingshot. (*The Houston Chronicle*, 9/14/01)

November 15 - Lakewood, NJ:

A Muslim man was beaten with a baseball bat and cut with a knife by two men as he stepped outside of a shopping plaza. He believes that his attackers were the same two Orthodox Jews who hurled religious insults at him a month before the attacks. (AP, 11/17/01)

November 18 - San Diego, CA:

A 30-year-old man attacked a 33-year-old Jordanian service station clerk. The assailant, who had guzzled a dozen beers before entering the service station, asked the clerk his nationality. At the clerk's answer, the assailant pulled out a screwdriver and threatened to kill him. He struck the clerk's head and attempted to stab him. The assailant was soon found, arrested, and later pleaded guilty to battery with a hate crime allegation. He was sentenced to a six-year prison term. (AP, 12/8/02)

December 7 - Lindsay, CA:

A 49-year-old immigrant from Yemen was wounded by a gunshot as he and a coworker were locking up the grocery store in which they worked. A bullet burst through the glass of the front door and struck the employee in the right shoulder. Neither man saw who fired the shot. Police said there were no witnesses and no indication of

an attempted robbery. Furthermore, the store owner recalled no problems with anyone and can think of no motive for the shooting. (The *San Francisco Chronicle*, 12/8/01)

December 8 - Valencia, CA:

A Sikh liquor store shopkeeper was severely beaten by two men. The men first entered the store and asked the victim, "Are you Osama bin Laden?" He tried to explain that he was a Sikh and had no association with bin Laden. The men struck him repeatedly with metal poles, causing serious head injuries. The shopkeeper managed to escape his attackers after pushing a shelf over on top of them, knocking them down. (The *Daily News of Los Angeles*, 12/21/01)

December 13 - Los Angeles, CA:

Federal prosecutors charged the Jewish Defense League's chairman, Irving David Rubin, and a league member, Earl Leslie Krugel, in a plot to set off pipe bombs at King Fahd mosque in Los Angeles and at the office of Representative Darrell Issa (R-CA) whose grandfather was Lebanese. In secretly taped conversations, Krugel said he wanted the bombing to provide a "wake-up call" to the Muslim community by attacking one of their "filthy mosques," and if someone got killed, "c'est la vie." The tapes also record Rubin saying he wanted to "hunt down" Palestinians to prove that the Jewish Defense League was "still alive in a militant way." F.B.I. agents searched Krugel's home and garage, where they found several pounds of explosive powder, fuses, pipes and end caps for making bombs. (The *New York Times*, 12/13/01)

NOTE: The Jewish Defense League is also considered the suspect in the October 11, 1985 murder of Alex Odeh, West Coast Regional Director of the ADC. At the time this Report went to press Irv Rubin had committed suicide while in jail and Krugel is awaiting trial.

December 13 - Augusta, GA:

A Sikh medical student had just completed exams and went to a restaurant to celebrate with five fellow students. Outside of the restaurant, a man grabbed him around the neck. (The *Augusta Chronicle*, 12/18/01)

December 16 - Champaign, IL:

A Muslim Tunisian-American university student was beaten by a mob of several men. Participants in the attack restrained the student's brother and friends who were with him at the time. The student was beaten by

at least six men, one of whom broke his nose with a blunt object. (The *News-Gazette*, 12/20/01)

III. Confirmed Hate Crime Murders

September 15 - Mesa, AZ:

49-year-old Indian Sikh, Balbir Singh Sodhi, was shot while planting flowers outside his Chevron station. His murderer, 42-year-old Frank Roque, had spent the day drinking and raving about how he wanted to kill the "rag heads" responsible for the terrorist attacks four days earlier. After being kicked out of a bar, Roque went on a shooting rampage. He first shot and killed Sodhi, and afterwards fired on the home of an Afghan family. He then shot several times at a Lebanese-American clerk who escaped injury. During his arrest he yelled, "I am a patriot!" and "I stand for America all the way!" The DOJ investigated the slaying as a hate crime murder.

September 15 - Dallas, TX:

46-year-old Pakistani Muslim Waqar Hasan was shot in the face while cooking hamburgers in his grocery store. 32-year-old Mark Anthony Stroman, confessed on a Dallas radio program to having committed the murder, saying that he had killed Hasan and another man (see below) and shot a third out of revenge for the terrorist attacks (see also September 21 - Dallas, TX) During the interview, Stroman confessed that he wanted to "retaliate against local Arab Americans or whatever you want to call them." He also added that he "did what every American wanted to do but didn't. They didn't have the nerve." (AP, 2/16/02) The DOJ investigated the slaying as a hate crime murder. Stroman was convicted and sentenced to death.

September 19 - Lincoln Park, MI:

A 45-year-old U.S. citizen, Mr. Ali Almansoop, originally from Yemen, was shot to death while fleeing his attacker. The victim was asleep with his girlfriend when her ex-boyfriend, Brent Seever, 38, broke into her apartment, dragged him out of bed and, according to his own police confession and the girlfriend's statements, threatened, "I'm going to kill you for what happened in N.Y. and D.C." The victim fled outside and, as he was running, he was shot in the back. The DOJ investigated the slaying as a hate crime murder.

October 4 - Mesquite, TX:

Vasudev Patel, a 49-year-old Indian gas station owner,

was shot to death during an armed robbery. His killer, Mark Anthony Stroman (see above), initially explained that the killing resulted from the robbery, but later gave a conflicting explanation, telling police that he was motivated by vengeance for the terrorist attacks. Stroman alleged that he had lost a relative in the World Trade Center. A security camera recorded the armed man walking into the station, ordering the owner to give him all of the money before shooting him. Stroman then attempted to open the cash register and failed. He then fled without taking any of the money. (The *Dallas Morning News*, 11/3/01) On April 4, 2002, Mark Anthony Stroman was sentenced to death for this slaying. (Also see above, September 15 - Dallas, TX, and September 21 - Dallas, TX) (Reuters, 4/4/02)

IV. Suspected Hate Crime Murders

September 15 - San Gabriel, CA:
Egyptian-American grocery store owner Adel Karas, 48, was shot to death while at work. After a confrontation between the owner and two customers, the two men shot him and sped off in a Honda driven by a third man, leaving the money in the cash register intact. (AP, 10/10/01) The DOJ investigated the slaying as a hate crime murder.

September 17 - Haines City, FL:
45-year-old Indian-American businessman, Jayantilal Patel was found gagged, bound and beaten at the motel he owned and operated. A month later, police arrested Patel's murderers, Sean Russell, 23 and Kimberly Williams, 20. The pair confessed to killing Patel, stealing his money and fleeing in his car. (The *Washington Post*, 1/30/02) The DOJ investigated the slaying as a hate crime murder.

September 18 - Ceres, CA:
The body of Surjit Singh Samra, a 69-year old Sikh, was discovered two days after he had left his home for an evening walk. His body was found beneath about five feet of water in a nearby irrigation canal. Samra still was clothed, but his turban and glasses were missing. His wallet was in his pocket, money still intact. An autopsy determined the man had drowned and there was no significant trauma that suggested foul play. However, Samra's family suspects he was the victim of a hate crime and pushed into the water. (*Modesto Bee*, 10/18/01)

September 29 - Reedley, CA:
A 50-year-old Arab-American store employee, Abdo Ali Ahmed, was shot several times and killed while at work in the late afternoon. Witnesses told detectives that they saw four males speed from the store in a white four-door sedan. No money or merchandise was stolen. The employee had received threats since mid-September. (The *Fresno Bee*, 10/2/01) The DOJ investigated the slaying as a hate crime murder.

October 3 - Los Angeles, CA:
A 53-year-old Palestinian-born clothing salesman, Abdullah Mohammed Nimer, was killed in Los Angeles while making his door-to-door rounds. There are no known witnesses, but Mr. Nimer's family is convinced that the killing was a hate crime. Neither money nor goods were stolen. (AP, 10/9/01) The DOJ investigated the slaying as a hate crime murder.

October 14 - Minneapolis, MN:
A 65-year-old Somali man, Ali Warsame Ali, was beaten unconscious while waiting at a bus stop. He later died in the hospital. His son believes the assault was the result of a recent article in the Minneapolis's *Star Tribune*, which reported that local Somalis might have inadvertently donated to an organization now linked to Osama bin Laden. (*Pioneer Press*) The DOJ investigated the slaying as a hate crime murder.

October 17 - Los Angeles, CA:
A Syrian-born liquor store owner, Ramez Younan, was shot to death behind his cash register. Police said they had no suspects and no clear motive for the shooting. No money was stolen from the cash register. Alerted by an anonymous 911 call about 9:50 p.m. LAPD found Younan's body but no witnesses. (The *Daily News of Los Angeles*, 10/19/01)

b. Psychological Case Summaries

Undisclosed Date - Royal Palm Beach, FL:
A man of Middle Eastern ethnicity was shopping in a grocery store when a woman approached him, spit in his face and said, "You all should be shot." (The *Miami Herald*, 11/11/01)

September - Mobile, AL:
A Muslim woman in traditional dress was harassed in a grocery store parking lot. (The *Mobile Register*, 9/15/01)

September - Gardena, CA:

A convenience store employee received an anonymous call from someone threatening to blow up his store. (Copley News Service, 12/20/01)

September - Hawthorne, CA:

The Islamic Center of Hawthorne received many threats on their answering machine, including one in which the caller warned, "We'll wait until we bury our dead, and then we'll bury you!" (New Times Los Angeles, 9/20/01)

September - Los Angeles, CA:

An unknown assailant ripped the hijab off the head of a Muslim woman, threatened her and pointed a gun to her face. (New Times Los Angeles, 9/20/01)

September - Hartford, CT:

A group of men stood outside of a mosque holding up a sign which read, "Kill all Arabs and Muslims" (The Hartford Courant, 9/14/01)

September - Washington, DC:

Two Muslim women in hijabs were spat upon while they rode the Metro. (The Plain Dealer, 9/15/01)

September - Boise, ID:

The city's mosque received threatening phone calls. Two men stood in the road by the mosque waving a sign that said "Nuke Islam." (The Idaho Statesman, 9/17/01)

September - Bradenton, FL:

An Arab-American-owned gas station received a phone call in which the caller asked if the station's surveillance cameras were working. He then asked if the owner was "from the Middle East." (The Bradenton Herald, 9/14/01)

September - Temple Terrace, FL:

A teenager entered a Muslim-owned store shouting, "Is Osama bin Laden in here?" He then began flipping over chairs. (Saint Petersburg Times, 10/6/01)

September - Augusta, GA:

A Pakistani motorist, driving with her 8-month-old child, reported that two teenage motorists in a Jeep were tailgating behind her. When she let them pass, they swerved in front of her and blocked her path. She reportedly backed up and drove around them, but the Jeep followed her. The teenagers made gun gestures

with their fingers, aiming imaginary pistols at her car. They allegedly called her names and yelled, "Go back to your country, wherever you came from." (The Augusta Chronicle, 9/16/01)

September - Savannah, GA:

A Sikh driver was alarmed by another driver who sped toward him as though he were going to strike him, then screeched to a stop at the last minute. Then the driver tailgated the Sikh motorist for a distance. (The Augusta Chronicle, 9/16/01)

September - Bradley Beach, NJ:

A resident put a sign on his front lawn that read, "Death to Islam." (The Record, Bergen County, 9/19/01)

September - Clifton, NJ:

Someone called the offices of the Movement of Islam and said, "You better get out of the U.S. before this weekend because it's coming." (The Record, Bergen County, 9/19/01)

September - Clifton, NJ:

A sign reading "Kill All Arabs, Nuke Arabs, No Arabs allowed," was posted in a public place. (The Record, Bergen County, 9/19/01)

September - Keyport, NJ:

A man reportedly entered a gas station and asked the clerk whether he was Pakistani or Afghani. The clerk answered neither, that he was Indian. "Good, because if you were Pakistani or Afghani I would have killed you," the man allegedly threatened, lifting up a corner on his shirt to show the clerk a knife tucked in his belt. Hours later, six males came to the store and attempted to lure the attendant outside. (AP, 9/18/01)

September - Coram, NY:

Two males, ages 19 and 15, were arrested after allegedly threatening and cursing a 27-year-old man from Turkey. The suspects reportedly yelled at him to "Go back to your country, you Muslim." (Newsday, New York, 9/23/01)

September - New York, NY:

A Muslim community center in Queens found a flier tacked to the door, vowing "We'll Get Even." (The Saint Petersburg Times, 9/13/01)

September - Cleveland, OH:

The voicemail of a mosque recorded a threatening mes-

sage in which the caller said, "I am not going to stop until I have executed at least ten Muslims. You have no right to be in this country." (*The NewsHour with Jim Lehrer*, 9/26/2001)

September - Pryor, OK:

A gas station owned by a Pakistani was the target of numerous calls and in-store threats. (*Tulsa World*, 9/16/01)

September - Whitehall Township, PA:

A carload of people parked near the front entrance of a mosque and shouted derogatory remarks and threats at worshippers coming and going. The mosque had also received a threatening phone call. (*The Morning Call*, Allentown, 9/15/01)

September - Houston, TX:

A Pakistani-American dry cleaning business owner received a letter, which threatened to kill him and to burn down his business. The letter made anti-Muslim statements as well. (*The Houston Chronicle*, 9/14/01)

September - Houston, TX:

An anonymous caller threatened an Iranian man that he would come to his workplace and shoot him. (*The Houston Chronicle*, 10/7/01)

September - Wichita Falls, TX:

Vandals smashed the window of a Mediterranean sandwich shop. When the owner arrived, he discovered a hammer inside, beside a note that read, "Go back home Iranian Muslims or you will die." (*Fort Worth Star-Telegram*, 10/2/01)

September - New London, VA:

An Islamic center received death threats. (*The Advocate*, 9/14/01)

September - Ronoake, VA:

An Arab-American family was harassed and intimidated throughout the month. The mother was blocked from entering her apartment complex by a group of young men. Fist-sized rocks were thrown through the 2-year-old daughter's open bedroom window. Their two cars were vandalized with scratches and dents. The mother again was blocked from entering the apartment building and hit with a basketball. Rocks were again thrown through their windows, almost hitting their daughter.

September 11 - Birmingham, AL:

Several women dressed in hijabs were harassed and spat upon hours following the terrorist attacks. (AP, 9/13/01)

September 11 - Phoenix, AZ:

Anonymous callers told Phoenix police they planned to attack Middle Eastern businesses. (*The Arizona Republic*, 9/12/01)

September 11 - Tempe, AZ:

Someone phoned a bomb threat to the city's Islamic cultural center. (*The Arizona Republic*, 9/12/01)

September 11 - Fremont, CA:

A Sikh temple received several threatening phone calls. (*The Argus*, 9/13/01)

September 11 - Los Angeles, CA:

The Islamic Center of Southern California was evacuated after receiving several threats which vowed vengeance for the attacks. (*City News Service of Los Angeles*, 9/12/01)

September 11 - San Francisco, CA:

A woman answered a threatening phone call to the Islamic Center of San Francisco in which a calm voice threatened that "there was a bullet waiting" for her head, and another for the head of her child. (*The San Francisco Chronicle*, 1/11/02)

September 11 - San Jose, CA:

An Islamic group received calls threatening the lives of all Muslims. One caller threatened, "You ruined the country and you will all die!" (*The San Francisco Chronicle*, 9/13/01)

September 11 - Colorado Springs, CO:

A carpet layer was working at the Islamic Society of Colorado Springs, the city's only mosque, when four men entered. The men cursed at the worker and threatened to return and burn the mosque down. The Islamic Center's voice mail contained profane messages and more threats. (AP, 9/12/01)

September 11 - Cooper City, FL:

A man armed with a baseball bat confronted a cleaning crew at Nur-Ul-Islam mosque and academy. When police arrested him he explained that he intended to use the bat to scare the mosque leaders so that they

"would tell the congregation not to bomb New York."
(*The Miami Herald*, 9/13/01)

September 11 - Duval, FL:

The Islamic Center of Northeast Florida closed during the afternoon after receiving a threatening phone call. (*The Florida Times-Union*, 9/12/01)

September 11 - Fort Pierce, FL:

The city's Islamic center and mosque received many bomb threats on the answering machine. One caller threatened, "Get out. We are going to blow this place!" (*The Palm Beach Post*, 9/16/01)

September 11 - Gainesville, FL:

Two bomb threats were called into the city's Islamic center. (*Gainesville Sun*, 9/12/01)

September 11 - Kissimmee, FL:

A 55-year-old man allegedly yelled racial slurs and threatened to blow up a gas station owned by an Indian American. The man appeared at the station several times in one day, each time threatening the attendant. A police officer arrived in the evening, saw the assailant with a knife and noticed a slashed gas hose. The officer arrested the man. (*The Orlando Sentinel*, 10/5/01)

September 11 - Jacksonville, FL:

A chain of Middle Eastern cafés and grocery stores received several threatening phone calls. One caller first asked what kind of food was served, and then asked if the hijackers ate the same type. The caller then threatened, "OK, we're going to come and kill everybody today," before hanging up. (*Florida Times-Union*, 9/13/01)

September 11 - Pembroke Pines, FL:

The Dar al Uloom Institute, one of the largest mosques in South Florida, received several telephone threats. The Muslim school children were sent home for the day. Police and security were called upon to protect the building. (*Knight-Ridder*, 9/12/01)

September 11 - Vero Beach, FL:

The Vero Beach Islamic Center received several bomb threats. Several members of the mosque were also verbally harassed. (*Vero Beach Press Journal*, 9/14/01)

September 11 - Boise, ID:

Someone called the Islamic Center of Boise and threat-

ened to burn it down. Another caller warned Muslims to leave Boise. (*The Idaho Statesman*, 9/13/01)

September 11 - Idaho Falls, ID:

A man called the *Idaho Post Register* and told them he would kill the next "Arab" he saw. (*Idaho Falls Post Register*, 9/13/01)

September 11 - Bridgeview, IL:

Between 300 to 500 people gathered for a pro-American demonstration, which quickly turned into an angry march towards the mosque in Bridgeview. "I'm proud to be American and I hate Arabs and I always have," declared one teenaged protester during the demonstration. More than 100 police officers responded and kept the crowd from getting too close to the building. At least 15 people were arrested, mostly for disorderly conduct. (*The Chicago Tribune*, 9/14/01)

September 11 - Burbank, IL:

Someone posted several signs on telephone poles that read, "Kill all Arab terrorists." (*The Chicago Tribune*, 9/12/01)

September 11 - Chicago, IL:

An Arab American and three of his colleagues were closing their office when a middle-aged man drove by and called out, "We're going to make sure you guys are going to get yours!" (AP, 9/12/01)

September 11 - Des Plaines, IL:

The Islamic Society of Des Plaines received a death threat shortly after the terrorist attacks. (*Chicago Daily Herald*, 9/13/01)

September 11 - Peoria, IL:

A telephoned bomb threat interrupted noontime prayer service at the Islamic Center of Peoria. (*The Peoria Journal Star*, 9/12/01)

September 11 - Cedar Rapids, IO:

Trespassers harassed and cursed at Muslim worshipers in the parking lot of the city's mosque, trying to initiate fights. (*Daily Iowan*, 9/13/01)

September 11 - Columbia, MD:

While waiting at a traffic light, a motorist stuck his head out of his car window and yelled over to the next car at a Muslim woman wearing a hijab, "You better hide." (*The Baltimore Sun*, 9/14/01)

September 11 - Dearborn, MI:

Two men parked their car outside of an Arab-American-owned supermarket to yell threats and racial slurs at the Arab-American customers. (The *Detroit News*, 9/13/01)

September 11 - Detroit, MI:

A 46-year-old man in California sent threatening e-mails to five Detroit area leaders of the Arab Community Center for Economic and Social Services (ACCESS). The man was arrested, charged with one count of ethnic intimidation, and sentenced to a week of community service working with ACCESS. The man later admitted, "The experience has been real good. They're great." One ACCESS leader, who had received one of his e-mails, said, "He seemed like a nice man. It's hard to imagine such a hateful thing coming from him." (*Detroit Free Press*, 1/31/01)

September 11 - Minneapolis, MN:

The Muslim owner of a Middle Eastern deli and bakery answered a call in which the caller threatened, "You f***** Muslim people. You're all going to die today. Why don't you go back to your own country?" The caller phoned back several times before the owner called the police. In the days that followed, neighbors called the deli to express their support, and some stopped by with flowers. (*Minnesota Daily* via *University Wire*, 9/13/01)

September 11 - Kansas City, MO:

After receiving several threatening phone calls, the owner of a Palestinian-American restaurant called the police. (*Kansas City Star*, 9/13/01)

September 11 - Saint Louis, MO:

Hours after the terrorist attacks, bomb threats were called into a mosque in west Saint Louis County. (The *Saint Louis Dispatch*, 9/14/01)

September 11 - Springfield, MO:

The Islamic Center of Springfield received threatening phone calls. (*Springfield News-Leader*, 9/12/01)

September 11 - Omaha, NB:

The Islamic center in Omaha received four threats by phone and e-mail. (*Omaha World-Herald*, 9/13/01)

September 11 - Las Cruces, NM:

The city's mosque was harassed by people in cars honking horns while threats were left on the mosque's

answering machine. A passing motorist tossed a wooden cross into the mosque parking lot. (The *Albuquerque Journal*, 9/24/01)

September 11 - Clifton, NJ:

A woman threatened a man by waving a stick or pipe at him outside a donut shop. She called him an immigrant and blamed him for the terrorist attacks. (The *Record*, Bergen County, 9/20/01)

September 11 - Hammonton, NJ:

A 42-year-old man placed a series of threatening phone calls during the night to a taxi cab company threatening to blow the business up and kill any Arab drivers who worked there. Police arrested the suspect at his home after tracking him down using caller ID. (The *Philadelphia Inquirer*, 9/20/01)

September 11 - Paterson, NJ:

A carload of flag waving teenagers drove through an Arab neighborhood and shouted, "We're going to bomb you when you sleep!" (*New York Daily News*, 9/14/01)

September 11 - Paterson, NJ:

A Latino woman cursed and harassed a Turkish woman who wore a hijab. (AP, 9/12/01)

September 11 - Lindendale, NY:

A 38-year-old man caused a disturbance at a convenience store owned by a Palestinian. The man was asked to leave by the owner, but continued to curse at the owner because of his nationality. Police were called, and the man was charged with trespassing and disorderly conduct. (The *News-Times*, 9/12/01)

September 11 - New York, NY:

Two Muslim women wearing hijabs were pushing baby strollers when suddenly they were surrounded by a group of angry teenagers who harassed them with threats and racial slurs. A man came to their defense and dispersed the crowd. (*New York Daily News*, 9/12/01)

September 11 - New York, NY:

A Sikh American took a taxi to the World Trade Center and witnessed the second plane as it slammed into the South Tower. He and hundreds around him fled as the rubble from the crash showered down on the streets below. After distancing himself from the building, he

caught the attention of two young men in the crowd who shouted at him, "Take that turban off!" The Sikh crossed over to the opposite side of the street. The men crossed as well and repeated their order, "You terrorist, take that f***** turban off!" The Sikh man broke into a run again and the men chased after him. He managed to outrun them and ducked into the subway to escape. (*Newsday*, New York, 9/13/01)

September 11 - Ronkonkoma, NY:

A 29-year-old man entered a gas station and asked the Indian cashier for cigarettes. After he was told the price, the man allegedly made an anti-Arab threat and pointed a black pellet gun at the cashier. Police arrested the man shortly thereafter and found in his possession the pellet gun, two shotguns, a rifle and ammunition. (*The New York Post*, 9/13/01)

September 11 - Greensboro, NC:

Two men were arrested for making threats against a local Islamic center. (*News and Record*, 9/14/01)

September 11 - Raleigh, NC:

The Islamic Association of Raleigh received several telephone bomb threats. (*Chapel Hill Herald*, 9/15/01)

September 11 - Cleveland, OH:

After hearing the news of the attacks, a Palestinian couple pulled over near the Cleveland Hopkins International Airport to watch the evacuation of a jet on the runway a few hundred feet away. Nearby construction workers approached the couple and verbally accosted them. One worker alerted a passing park ranger and a fight was averted. The workers later told police they had heard the Palestinian man make a remark about detonating a bomb on the plane and that they needed to stop him. (*The Cleveland Plain Dealer*, 9/12/01)

September 11 - Covington, OH:

A small group of teenagers stood outside a grocery store chanting and yelling, "Kill her, kill her, kill the Arab" through the door at the Moroccan-American co-owner. The teens fled afterwards. (*The Cincinnati Post*, 9/14/01)

September 11 - Cincinnati, OH:

A 39-year-old man was arrested after placing two threatening phone calls to the Islamic Center of Greater Cincinnati. The threatening calls resulted in the closure of the school and cancellation of the center's worship services for the day. (AP, 9/11/01)

September 11 - Portland, OR:

A Catholic charity received threatening phone calls directed at the agency's refugee and resettlement program. (*Portland Press Herald*, 9/13/01)

September 11 - Portland, OR:

A city parking attendant was threatened by a man shouting, "Leave here or I will kill you now." The attendant called the police who arrived and questioned the man. The man then denied the threat. (*Portland Press Herald*, 9/13/01)

September 11 - Allentown, PA:

The manager of a convenience store said someone was passing out threatening fliers in front of his store advocating the death of all Arabs. One of the handouts was left in the store's copy machine. The flier reads, "kill all Arabs, boycott all the 7-elevens and Dunkin' Donuts [sic] and slash all Arab taxi cab" The last few words were cut off. (*The Morning Call*, 9/13/01)

September 11 - Allentown, PA:

A mosque cancelled its services after receiving harassing voice and e-mail messages. (*The Morning Call*, 9/14/01)

September 11 - Fort Worth, TX:

An anonymous caller threatened the city's mosque, "If you want war, you've got it." (*The Fort Worth Star-Telegram*, 9/12/01)

September 11 - Richardson, TX:

Police provided protection to the Holy Land Foundation following several death threats the center had received. (*The Houston Chronicle*, 9/14/01)

September 11 - Undisclosed City, VA:

A Virginia resident answered a knock on her apartment door to find a male neighbor on her doorstep. The man asked her if she was Muslim. When she answered affirmatively, the neighbor started cursing at her, yelling, "You pigs! We should send you back to your country." The victim's husband contacted ADC and the apartment manager, but did not report this incident to the police.

September 11 - Alexandria, VA:

The Muslim American Society of Alexandria received several telephone threats before closing early, at the advice of the police. (Scripps Howard News Service, 9/12/01)

September 11 - Falls Church, VA:

Police were called to protect the local mosque after a motorist pulled over alongside the building and began shouting threats at Muslim leaders inside. (Scripps Howard News Service, 9/12/01)

September 11 - Manassas, VA:

Several hate messages were left on the answering machine of a local mosque. (AP, 9/12/01)

September 11 - Norwalk, VA:

The Islamic Center of Fairfield County received threatening telephone calls. (The Advocate, 9/14/01)

September 11 - Undisclosed City, WA:

A dispatcher at a Washington State taxi cab company received phone calls saying, "Tell your Muslim drivers not to drive today," among other threats. (The Seattle Times, 9/14/01)

September 11 - Seattle, WA:

Police arrested a 40-year-old man after he threatened to burn down the Southwest Islamic Center. He walked into the mosque and refused to take off his shoes. When asked to leave, the man pushed the mosque's leader in the chest. (The Seattle Times, 9/14/01)

September 11 - Vancouver, WA:

Callers left threatening messages on the voice mail of the Islamic Society of Southwest Washington. (The Oregonian, 9/14/01)

September 11 - Racine, WI:

A 40-year-old man screamed at and threatened an Indian convenience store employee. He began by asking the employee whether he knew people involved in the terrorist attacks earlier that morning and if it was a conspiracy to raise gasoline prices. Although the employee responded that he was from India, the man ignored him and continued to intimidate him, ordering him to go back to his own country. Another customer stepped up in the employee's defense and ordered the disruptive man to leave. Witnesses recorded his license plate number, which led to his arrest later. (AP, 10/16/01)

September 11 - Laramie, WY:

An American-born Muslim woman and her children were intimidated and chased while they were out shopping. A crowd gathered around them and yelled in their face, "Go back to your country!" (AP, 9/13/01)

September 11 to 14 - Seattle, WA:

The Islamic Idriss Mosque received several death threats. One caller threatened, "We will kill you like sheep." (The Seattle Post Intelligencer, 9/15/01)

September 12 - Undisclosed Location, USA:

An Arab-American student received threatening phone calls, ordering her to "tell what (she) knows" or else she would be found and killed.

September 12 - Los Angeles, CA:

A man got into an argument with an Iranian driver while on the road. He allegedly yelled racial threats and waved a gun at the Iranian driver and passenger. He was charged with making a criminal threat, violating civil rights and exhibiting a firearm. (The Bulletin's Frontrunner, 10/1/01)

September 12 - Denver, CO:

The Colorado Islamic Center received threatening phone calls.

September 12 - Hartford, CT:

An Afghani restaurant received a threatening phone call. The caller warned the restaurant owner, who has lived in the United States for 12 years, to "Get out of America." (The Hartford Courant, 9/14/01)

September 12 - Cooper City, FL:

Police arrested a man sitting in his pickup truck outside of a local mosque. The suspect carried paint-pellet guns and knives. (The Miami Herald, 9/13/01)

September 12 - New Port Richey, FL:

Someone scrawled a threat and a crudely drawn skull-and-crossbones on a white piece of paper and attached it to the door of an Indian-owned store. The sign read, "Leave this country, or you will die." (The Saint Petersburg Times, 9/15/01)

September 12 - Orange County, FL:

A member of the Islamic Society of Central Florida said she was followed by a man in a pickup truck as she drove away from a mosque in east Orange County. She made turns, U-turns, and did everything she could to shake him off. Only when she returned to the mosque did the man drive off. (The Orlando Sentinel, 9/13/01)

September 12 - Augusta, GA:

A motel clerk received three calls while at work from a

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man asking "if the Muslims were there." She responded that Indians owned the motel and there were no Muslims. The caller insisted that Muslims owned it and he demanded to speak with them. He warned her to evacuate the customers and threatened to bomb the motel. (The *Augusta Chronicle*, 9/14/01)

September 12 - Atlanta, GA:

An Indian-American motorist was harassed by another driver who first got her attention by honking his horn repeatedly. When she looked over at him, he yelled obscenities and flipped up his middle finger. The man followed the victim for some distance, continuing with his insults and obscenities. At one point, he pulled in front of her car and braked suddenly, drove a little more and braked again. He stuck his middle finger at her once more before driving away. (The *Atlanta Journal and Constitution*, 9/17/01)

September 12 - Dearborn, MI:

An Arab-American social services center received an anonymous e-mail which said, "A good Arab is a dead one buried in pigskin," as well as threatening phone calls and a bomb threat. (The *Denver Post*, 12/9/01)

September 12 - Forest Park, MO:

The Palestinian-American owner of a market called police after someone entered his store and threatened him. (The *Saint Louis Post-Dispatch*, 9/13/01)

September 12 - Atlantic City, NJ:

A 42-year-old man called a taxi cab company and threatened to blow up its headquarters unless it took all of its drivers off the road. He was arrested. (AP, 9/13/01)

September 12 - Bradley Beach, NJ:

Someone posted a sign in a yard that read, "Death to Islam." (AP, 9/13/01)

September 12 - Lawrence Township, NJ:

A man threatened to kill a gas station attendant. (AP, 9/13/01)

September 12 - Marlboro Township, NJ:

A man painted a message inciting violence against Arabs on his car and drove around town. The message, which read, "Death to the Sand Nigger" constitutes vulgar protected speech and the car's owner will not be prosecuted. (AP, 9/13/01)

September 12 - New York, NY:

The Arab manager of a candy and grocery store in upper Manhattan was confronted by an angry group of ten people who had burst into his store shouting, "You guys did it!" among other accusations. (The *New York Times*, 9/12/01)

September 12 - New York, NY:

Two men drove a car through Brooklyn with a sign taped to the rear window that read, "Kill all Palestinians." (The *New York Post*, 9/13/01)

September 12 - New York, NY:

The Arab American Family Service Center received several threatening calls, one saying, "You should all die for what you've done to my country." (The *New York Times*, 9/13/01)

September 12 - Syracuse, NY:

At around 6 p.m., an unidentified woman called in a bomb threat to the Islamic Society of Central New York. The woman threatened, "We should put a bomb in through your front door and eliminate all of you. Bomb every Islamic society. Allah is a pig. He doesn't exist. Have a nice day." (*Syracuse U. Daily Orange*, 9/17/01)

September 12 - Edmond, OK:

A group of individuals pulled their car into the parking lot of the local mosque and began shouting vulgarities and insults. (*Edmond Sun*, 9/14/01)

September 12 - Eugene, OR:

A man was arrested for making a threatening call to the Islamic Cultural Center of Eugene. (The *Oregonian*, 9/14/01)

September 12 - Lawrence, PA:

A 26-year-old man called a Middle Eastern gas station employee and threatened to kill him because of the terrorist attacks. The police responded, tracked the caller's number and eventually arrested the suspect. After the arrest, police also charged the caller with an unlawful weapon possession charge after he told them about the pistol in his car. (The *Times*, New Jersey, 10/3/01)

September 12 - Pawtucket, RI:

A convenience store clerk received a phone call at work at about 2 p.m. The caller, who did not leave a name, threatened, "You're going to die, Arab." (*Providence Journal-Bulletin*, 9/13/01)

September 12 - Waverly, TN:

Two Arab-American clinic workers received threatening phone calls telling them, "Go home and get out of our country" and calling them "foreign fags." Their daughter in Atlanta, Georgia, also received threatening phone calls.

September 12 - Austin, TX:

An Arab-American realtor received anonymous threats by telephone, ordering him to "Leave this country or else!"

September 12 - Seattle, WA:

Police responded to calls from motorists on the West Seattle Freeway, reporting that a handmade sign carrying a death threat against Palestinians was hanging from a footbridge. (*The Seattle Times*, 9/14/01)

September 13 - Los Angeles, CA:

A sign that read, "Kill all towel heads," was found in the Los Angeles Hall of Records elevator. (LA Commission on Human Relations)

September 13 - San Gabriel, CA:

Two carloads of young men confronted a 21-year-old Latino man as he drove home from work. The cars attempted to box in the Latino man's vehicle, forcing him to exit the highway and stop. Both cars followed, stopped and seven men jumped out. Thinking he was being robbed, the Latino man handed over his wallet, but the men pulled him out of the car and threw him on the ground. Five of the men had semiautomatic weapons that they pointed at his head. Another had a revolver. They asked him if he was "Arabic" or from Afghanistan. The man spoke Spanish well enough to convince them he was not an Arab. (*San Gabriel Valley Tribune*, 9/19/01)

September 13 - Bridgeview, IL:

Between 500 to 700 demonstrators gathered near a high school for a pro-American rally. One teenager, wrapped in an American flag, circled the crowd on his bicycle while shouting, "Kill the Arabs." Other demonstrators shouted insults at passing cars of motorists and passengers who appeared to be Arab. Three people were arrested. (*The Chicago Tribune*, 9/14/01)

September 13 - Chicago, IL:

A man walked into a Arab-American-owned food store and approached the owner with a bag in his hands, claiming to have a bomb and threatening to "blow up this store like you Arabs blew up the World Trade Cen-

ter." The man was arrested and charged with a hate crime, assault and disorderly conduct.

September 13 - Dearborn, MI:

The director of an Arab-American community center was driving home from a press conference when he was suddenly chased by a car load of men who threatened him. (*Dayton Daily News*, 9/30/01)

September 13 - Saint Louis, MO:

Clerks at a convenience store were flooded by telephone threats after a caller to a local radio station alleged they were celebrating the terrorist attacks. A Red Cross worker, after making a purchase, threatened to shoot them if the allegations were true. (*The Saint Louis Post-Dispatch*, 9/14/01)

September 13 - Enon, OH:

A resident painted a sign on the side of his garage calling for violence against Muslims. The man also propped up guns against his garage. Police got the man to remove the guns, but he refused to paint over the sign. (AP, 9/15/01)

September 13 - Tulsa, OK:

A man from Yemen was followed by a motorist in a pickup truck while he was out driving. The truck cut in front of him and attempted to force him off the road. The truck driver made an obscene gesture toward him as he passed. (*Tulsa World*, 9/16/01)

September 13 - Philadelphia, PA:

A 52-year-old man threatened a Moroccan-American passenger on a public bus. When a third passenger tried to intervene, the attacker pulled out a knife. Police picked him up and, as they led him to the squad car, the attacker yelled, "Did you see the news? Let me kill the Pakistani!" (*The Philadelphia Inquirer*, 9/14/01)

September 13 - Falls Church, VA:

The Dar al-Hijrah Islamic Center received many threats against their faculty and mosque, resulting in the cancellation of Friday's prayer services and classes. (*Washington Post*, 9/13/01)

September 13 - Hampton, VA:

A woman was arrested for threatening to bomb a mosque. "Listen, I am making plans to bomb the mosque in Hampton," the woman e-mailed her co-

worker. The co-worker contacted the police within 30 minutes. (*Daily Press*, 9/17/01)

September 13 - Hampton, VA:

The spokesperson for the city's Islamic center said he received a threatening phone call shortly after midnight. She picked up the phone to hear a male voice threaten, "Prepare to Die." (*Daily Press*, 9/17/01)

September 13 - Washington, D.C.:

The Islamic Center received bomb threats. Massachusetts Avenue, where the center is located, was closed down as a result of the threats.

September 13 - Everett, WA:

A 41-year-old man spit at a Middle Eastern looking 28-year-old woman while she sat in her car. According to police, the man walked out into the middle of the road and stopped the woman's car. He pounded on it before spitting at her. (*The Seattle Times*, 9/15/01)

September 13 - Seattle, WA:

A 53-year-old man was charged with first-degree assault and attempted arson after going to the Islamic Idriss Mosque and dousing cars in the parking lot with gasoline. When the cars' owners came out of the mosque and confronted him, he pulled out a gun. He aimed at the worshipers and fired a single shot into the ground. The assailant then fled to his car and sped straight into a telephone pole, breaking his ankle. (AP, 9/30/01)

September 14 - Fullerton, CA:

A Sikh couple who own an ice cream truck were busy selling ice cream when they were approached by a 31-year-old man carrying a baseball bat. The man threatened them, mistaking them for Afghans, and chased them with the bat. He was arrested and charged with a hate crime. (*The Los Angeles Times*, 10/19/01)

September 14 - San Diego, CA:

A caller to a Middle Eastern grocery store asked the owner if he sold rat poison. "I wish you did so I can poison you," the caller then threatened. (*The San Diego Union-Tribune*, 9/15/01)

September 14 - Moreno Valley, CA:

Police arrested a 49-year-old man on suspicion of making terrorist threats to a radio station. The caller is accused of leaving a message on the station's answering machine, threatening to damage the tower. Police

believe the threat was connected to a program on the station called "Islamic Perspective," which airs Sunday mornings. (*The Press-Enterprise*, Riverside, 9/18/01)

September 14 - Atlanta, GA:

An Arab-American resident received a frightening message on her home answering machine. A voice threatened, "We know where you are and we can get you."

September 14 - Martinez, GA:

Before Friday prayers at the Islamic Society of Augusta's mosque, a man pulled up by the front door and handed worshipers a copy of an editorial from the Miami Herald, which was directed at the terrorists. "Give this to your pastor. This is what we're going to do to you," the man threatened. A Richmond County sheriff's deputy was then assigned to park outside the mosque during the prayer service. (*The Augusta Chronicle*, 9/16/01)

September 14 - Lexington, KY:

A man put up a sign in a neighborhood reading, "Arabs are Murderers." The neighborhood association had asked him to take it down and he refused. Two Arab Americans live in the neighborhood.

September 14 - New Orleans, LA:

A psychiatrist said someone phoned in a bomb threat to his office. (*The Times-Picayune*, New Orleans, 9/20/01)

September 14 - Oxford, MA:

The Lebanese owner of a service station received threats against him and his business. (*The Boston Herald*, 9/17/01)

September 14 - Bay Ridge, NY:

A man threatened and cursed at worshipers in the Islamic Society of Bay Ridge. He came to the front door, claiming to be an off-duty firefighter, and blamed the death of 12 of his firefighter friends on the Muslims worshipping at the mosque. (*Newsday*, 9/15/01)

September 14 - Long Island, NY:

An Islamic center was evacuated after receiving a bomb threat. (*New York Times*, 9/23/01)

September 14 - New York, NY:

In Brooklyn, a motorist blocked the path of a cab driver who appeared to be of Middle Eastern descent. "Get out of the car, Arab," the motorist shouted as he

pounded on the car. "You are going to die, you Muslim." (*New York Daily News*, 9/15/01)

September 14 - Portland, OR:

Two customers in an Iraqi-owned convenience store were asked to produce identification when they attempted to buy beer. The two men became angry and threatened to blow up both the clerk's homeland and the convenience store as well. Fearing for his life, the clerk closed early and went home. (*The Oregonian*, 9/22/01)

September 14 - Salem, OR:

A sign which read, "Towell [sic] Heads Go-Home!" was left outside a convenience store owned by an American citizen from India. (*The Statesman Journal*, 9/14/01)

September 14 - Allentown, PA:

A mosque canceled services after receiving several harassing voice mail and e-mail messages, including one that threatened to "blow up" the mosque. (*The Morning Call*, Allentown, 9/15/01)

September 14 - Houston, TX:

A man claiming to have a knife entered a convenience store and harassed its owner, an immigrant from Bangladesh. The man threatened to set fire to the store. The owner quickly pushed a hidden button behind the counter to alert police, who responded and arrested the man. (*The Houston Chronicle*, 1/16/02)

September 15 - Aurora, CO:

A Muslim man heard eight shots fired outside his home. He called the police, suspicious of a stranger standing on his sidewalk wearing a raincoat, and ski mask, seemingly keeping a post-midnight vigil. The victim explained, "He was acting suspiciously, like he was trying to pull something from under the raincoat, staring back and forth and looking at the house."

September 15 - Boston, MA:

Someone reported to ADC seeing a car painted with the message, "Death to All Islam."

September 15 - Seattle, WA:

A car carrying three men pulled up alongside a Somali Muslim woman in a grocery store parking lot. The men made obscene gestures and called her names. When the woman pleaded to be left alone, the men got out of the car and continued to harass her. They yelled that they hated her religion and that all Muslims should be

deported from the United States. One of the men then pulled out a four-inch knife and cut the bottom of the woman's dress. She then ran back into the store to safety. (*The Seattle Times*, 9/18/01)

September 16 - Orland Park, IL:

An Arab family of four was traveling by car when a motorist drove alongside their car and began to scream obscenities regarding the tragedies in New York and Washington. The motorist was close behind them and began swerving as if he were trying to hit the family's vehicle. The family was able to turn off onto a side road, but was reluctant to turn in the motorist's license plate number for fear of future harassment.

September 16 - Long Island, NY:

An American-born Muslim was walking with a friend when a car drove past them. The driver and passengers imitated guns with their hands and made threatening gestures. They harassed and threatened him before speeding off. (*Newsday*, 9/23/01)

September 16 - West Babylon, NJ:

A man was arrested and charged with possessing a homemade metal pipe bomb and other explosive material and threatening to use them. He showed his friends the metal pipe bomb and said he "planned to use the bomb to get an Arab." His friends took the bomb and called the police. (*The Record*, Bergen County, 9/17/01)

September 16 - Eugene, OR:

A 54-year old woman yelled racial slurs and harassed two Sikhs visiting from Washington at a roadside rest stop. The two men were drinking tea when the woman approached them. One greeted her with a hello and she responded by yelling and calling them terrorists. She grabbed the turban of the older of the two men and tried to pull it off his head. In the scuffle, she knocked over their tea and pushed the second Sikh. When nearby witnesses confronted the woman, she fled in her car. One of the two victims called the police from his cell phone and the woman was soon arrested. She was charged with second-degree intimidation and harassment and later sentenced to spend 30 days in jail. (*The Deseret News*, Salt Lake City, 12/16/01)

September 16 - Erie, PA:

A teenager answered an evening call to the Islamic Cultural Center in Erie. The caller stated, "I want justice because you bombed the buildings in New York." When

the teenager asked the caller to identify himself, he responded that his name was not important and then said, “The important thing is, you’re going to die, I’m going to kill you all.” The caller then hung up. (*Erie Times-News*, 9/17/01)

September 16 - Seattle, WA:

An East African home-improvement store employee was pushing a train of shopping carts through the parking lot of his workplace when suddenly a car carrying two men pulled up alongside him. Both men yelled and swore at the worker, then threatened to shoot him. (*The Seattle Times*, 9/18/2001)

September 16 - Milwaukee, WI:

A dark-haired Caucasian taxi driver was yelled at and called an “Arab (expletive)” by a passenger. The passenger then allegedly threatened physical violence against the driver. (*Milwaukee Journal Sentinel*, 9/20/01)

September 17 - New York, NY:

In the Ridgewood area of Queens, a Jordanian newsstand worker reported that a man had threatened to kill him. (*New York Daily News*, 9/19/01)

September 17 - Charlottesville, VA:

An Arab-American physician was verbally assaulted by an upstairs neighbor. The neighbor stood on his balcony and shouted obscenities and threats to the victim in the parking lot.

September 18 - Bristol, CT:

A man threatened to blow up a restaurant run by an Arab American. (AP, 9/20/01)

September 18 - Deerfield Beach, FL:

Ku Klux Klan business cards were placed under the windshield wiper of an Egyptian man’s car. (*The Sun-Sentinel*, Fort Lauderdale, 9/21/2001)

September 18 - Saint Petersburg, FL:

An Iranian-American couple received a postcard addressed to “Sand Niggers.” The reverse of the postcard read, “Our white Christian God will wipe your kind from the face of the earth,” and warned the couple to leave or else they would be killed. The family moved two days later. (*Saint Petersburg Times*, 9/23/01)

September 18 - Sunrise, FL:

A gang of men in a jeep chased the principal of an

Islamic school, who was driving home with his sister and three children. The jeep began following them with the driver yelling, “Where’s my gun? Let me take care of them.” (*The Sun-Sentinel*, Fort Lauderdale, 9/21/01)

September 18 - Las Vegas, NV:

A man carrying cans of spray paint was escorted from the Islamic Cultural Center grounds in Las Vegas. As the man left, he threatened the center’s employees that he would be “back to reclaim the neighborhood.” The center had received several threatening phone calls, about six of which they reported to police. (*Las Vegas Review-Journal*, 9/18/01)

September 18 - Cleburne, TX:

A white male pulled his pick-up truck into a local gas station alongside the Pakistani-American owner, who was out cleaning the grounds. The driver stuck his head out the window and addressed the employee with an expletive, demanding to know where he was from. The owner’s answer enraged the driver, who then threatened him, “I’m giving you to Friday to go back to where you are from, or I will come back and shoot you!” The employee called police and resumed his work. Later that evening, while helping a customer, the owner heard a horn honking and he turned to see that the pick-up truck had returned. This time, the driver waived a gun in the direction of the store. The owner ducked, called the police, and the gunman sped away. (*The Cleburne Times Review*, 9/24/01)

September 19 - New York, NY:

A package arrived at the Afghan Mission of the UN office containing written quotes of Osama bin Laden and a dried pig’s ear. (*The New York Post*, 9/24/01)

September 19 - New York, NY:

Two residents of Arab descent reported receiving threatening letters in the mail. (*New York Daily News*, 9/21/01)

September 19 - New York, NY:

Threatening expletive-laden messages were left on the Bronx Muslim Center voice mail throughout the week. One hissed, “You [sic] better watch your back, Muslim.”

September 21 - Bellflower, CA:

A 38-year-old Canadian man entered a gas station and asked the attendant where he was from. When the

employee answered Jerusalem, the man allegedly vowed to bomb Israel and blow up the attendant. The man then left and returned with an ammunition canister with the words 'mortar shells' printed on the side. The attendant and other witnesses fled the gas station. The man was sentenced to one year in jail and three years probation. (AP, 2/23/02)

September 23 - Huntington Beach, CA:

A 77-year-old Iranian man and his 74-year-old wife were taking an evening walk near their home when suddenly, a passing car made an abrupt U-turn, stopping in front of them. The driver demanded to know where they were from. When they told him, he began to yell, ordering them to cross the street or else he would kill them. A neighbor who witnessed the incident drove the Iranian couple to their son's home nearby. (The Los Angeles Times, 10/19/01)

September 23 - New York, NY:

A threatening message was left on the answering machine of a television station. The caller warned, "F***** Arabs, I know where you live and I'm going to murder you ... get out of my f***** country."

September 24 - Irvine, CA:

An unidentified hostile caller repeatedly called the home of an Arab American, harassing the residents about phone bill particulars. The caller, never once identifying himself, demanded, "Why is your international phone bill so high? Who is responsible for the bill? Who are you calling?"

September 25 - Pullman, WA:

Two university students, one from the West Bank and the second from the United Arab Emirates, were harassed by a passerby. One student was speaking Arabic on his cell phone when the passerby ripped the phone out of his hand and threw it on the pavement. "Speak in English next time," the man allegedly said. (The New York Times, 9/27/01)

September 26 - Long Island, NY:

A motorist contacted ADC after reading a sign posted on the window of a passing North Patchogue Fire Department vehicle, driven by a senior NPPD official in uniform. The sign was framed with American flags and announced in large typed letters, "LET'S KILL ALL THE RACTOPS & TURBANHEADS, LET GOD SORT IT OUT."

September 26 - Boca Raton, FL:

A 40-year-old Palestinian American noticed a motorist flashing his high beams behind him while driving home from evening prayers at a nearby mosque. Upon arriving home, he stepped out of the car and was suddenly pushed back inside by a stranger with a gun. The assailant pressed his weapon against the man's chest and threatened, "If I see you in the mosque tomorrow you're dead meat." Another man stood behind the victim's car and also pointed a handgun at him. After making their threats, the assailants climbed back into their truck and sped off with two American flags flapping on their tailgate. (New Times Broward-Palm Beach, 10/25/01)

September 28 - Cambridge, MA:

A Muslim Harvard University graduate student wearing a hijab was on her way to worship service when she was verbally and physically harassed. Four white males reportedly said, "What are you doing here? Go home to your own country," and tried to take off her hijab. (Harvard University Wire, 10/1/01)

September 28 - Des Moines, IO:

Owners of a Bosnian bar and restaurant say intruders smashed windows and threw bottles in an incident that apparently targeted Muslim customers. Several assailants, wielding a BB gun, hammers and a bat, assaulted a woman in the parking lot behind the business and then came inside, shouting obscene remarks about Bosnians and Muslims. (The Des Moines Register, 10/2/01)

September 29 - Bergen County, NJ:

An arrow was shot through the second-story window of an Arab-American home. (The Record, New Jersey 10/3/01)

September 29 - Beloit, MN:

A 44-year-old man called a Jordanian-American-owned liquor store and threatened to blow up the building and kill the owner's family if he did not move out of Beloit within 24 hours. 911 received a call from the same man, again threatening to bomb the store. The store's owner reported that the man also dressed up in military fatigues and rode his bicycle in front of the store, telling customers that the owner had ties to the terrorist attacks. (Milwaukee Journal Sentinel, 10/2/01)

September 29 and October 4 - Baltimore, MD:

A Sikh-American pizza delivery man was passing

through the parking lot of his restaurant when a stranger threatened and cursed at him. Police responded but made no arrests. Later that day, the stranger returned and sprayed the employee with pepper spray. When co-workers tried to restrain him, he sprayed them as well. The police and ambulance arrived. The Sikh employee filed a complaint on September 29, but was himself arrested on October 4 with charges of second-degree assault. The attacker alleged that the employee had threatened to kill him.

October - Fenton, MI:

A 19-year-old man left a threatening message on the answering machine of a Pakistani American he had never met. The caller found the name and number by flipping through the phone book and singling out the name because it appeared to be Arab. After dialing the number, the caller left a profane threat to kill the Pakistani American. The caller was soon arrested and pleaded guilty to the crime. (AP, 2/8/02)

October 1 - Ontario, CA:

A Molotov cocktail was thrown at the hotel room of a man of Middle Eastern descent. The victim was inside his first-floor room when someone threw a glass container at his window that had a wick and was filled with flammable liquid. He was not hurt. (The *Press-Enterprise*, Riverside, 10/12/01)

October 1 - Minneapolis, MN:

A Palestinian-born businessman found a mutilated squirrel and a threatening note in his mailbox. His office has also been receiving hate mail addressed to him.

October 2 - Bloomington, IN:

A Muslim-American woman who wears a hijab was having breakfast with a friend at a diner. They were seated at a window when a car drove by and a naked young man jumped out. The man ran to the window next to the women and rubbed his bare buttocks against the glass.

October 3 - Cleveland, OH:

Two men visited an Arab American at his place of business identifying themselves as salesmen. They asked if he was from Afghanistan and threatened to kick him if he was. The men were arrested.

October 3 - Washington, D.C.:

A Turkish family living in a former mosque had several rocks thrown against their front door and the windows of

their home. A man asking questions about the family approached guests leaving their home. The stranger introduced himself as "Osama bin Laden" before walking away.

October 3 - Virginia:

A Virginia resident received a threatening phone call in which the caller first made fun of his name, then asked to speak to his wife. The caller then threatened, "You're going to die."

October 10 - Parsippany, NJ:

A Sikh motorist was harassed by gestures and verbal abuse while driving on the highway. A motorist in a white Toyota Camry drove around him, braked suddenly, drove alongside him and veered into his lane almost running him off the road, the whole time cursing and making threatening gestures. The motorist then threw a full cup of coffee at the Sikh's windshield before speeding off.

October 12 - Racine, WI:

A 49-year-old man walked into a convenience store and began yelling at its Sikh cashier. He threatened to cut the employee's head off, spit on the floor and insisted that the clerk was "the Taliban." A witness followed the assailant out of the store and copied down his license plate number. When police caught up to him, they discovered that he had also been driving drunk and without a license. He insulted the police officers and spit on them. (AP, 11/2/2001)

October 13 - Undisclosed Location, USA:

An Arab couple received an envelope in the mail, containing a small American flag and a note that read, "Muslims not welcome in America. How you fanatics lie. Murderers here is money to return to the muslim [sic] world." Also enclosed was one Saudi Riyal.

October 17 and November 6 - Janesville, WI:

A 30-year-old man sent fake anthrax through the mail with threats and anti-religious references. The first, in October, was addressed to a restaurant from which he had been ejected. The second was sent to a U.S. Air Force recruiting station. The man was prosecuted federally for the crime. (*Milwaukee Journal Sentinel*, 11/10/01)

October 20 - New York, NY:

A taxi-cab driver was waiting in traffic when a motorist beside him screamed, "You f***** terrorist, what are

you doing in my f***** country?" The motorist threw coins at the taxi, pulled his car over to the side, approached the taxi and kicked and smashed the driver's side window. He screamed, "You f***** terrorist" before returning to his car and driving away.

October 22 - New York, NY:

An Arab-American coffee vendor, licensed to sell in a Manhattan building, was visited by the building owner who started to curse and harass him, allegedly threatening "to blow (him) up." The vendor ignored the threat. The next morning, the building owner entered the building to see the vendor at his usual spot. He again screamed and cursed at the vendor, this time telling him that "Arabs blew up downtown!" He then posted fake construction signs that prevented the vendor from working there. Later on, two NYPD police officers and a detective visited the vendor. When he explained his position, the officers offered no help.

October 24 - Chicago, IL:

The vice president of an Arab-American organization received a threatening e-mail warning him, "You'd better have eyes behind your f***** Islamic, anti-American lowlife head, because when you're least expecting it (like on a dark, cold night in the campus parking lot)...I'm gonna bash your f***** brains in."

November 12 - Trenton, MI:

A 20-year-old man was arrested after allegedly harassing a Palestinian-American Muslim woman. He was arrested and charged with ethnic intimidation. (*The Detroit News*, 11/14/01)

November 15 - New Orleans, LO:

Police arrested a 39-year-old wheelchair-bound man who arrived at the Masjid Abu Bakr Al Siddique mosque with two guns concealed in a bag, saying he had a message for Osama bin Laden. 40 to 60 people were in the mosque attending a prayer service at the time and were shaken up by the incident. Police found a loaded shotgun and a rifle in the man's bag. He was charged with two counts of illegally carrying a concealed weapon. (AP, 11/16/01)

December 4 - Hewitt, TX:

A man pleaded guilty to having phoned a local truck stop and making a bomb threat against its Sikh workers. (Department of Justice, Civil Rights Division, 1/16/02)

2. Hate Speech Received by ADC

In the aftermath of September 11, ADC, along with other Arab-American and Muslim organizations, was inundated with hostile and racist anti-Arab hate mail, some of it very threatening. This disturbing experience was shared by many organizations, businesses and groups with titles containing variations of the words Arab, Arabic, Middle Eastern, Islamic or Muslim. A woman, living in the United States for over twenty years and listed in the phone book as an "Arabic Translator" reported receiving threatening phone calls. Students with Middle Eastern names reported receiving hate messages from Internet addresses seemingly created with the sole purpose of sending such anonymous e-mail

Anonymous hate speech of this kind was initially the most widespread and prevalent aspect of the anti-Arab backlash. Mosques, businesses, organizations and individuals across the country were targeted.

The following is a sample of e-mails received by the ADC national office in Washington, DC, during the week immediately following the September 11 terrorist attacks.

September 11

- "Your anti American rhetoric is the reason for this terrorist attack. The blood of the innocent American lives is on your hand. Shame on you!!!"
- ROT IN HELL FOREVER
- "You f***** ARABS go to hell. You will pay..."
- "Which side are you on? On the American side or on the Arab Islamic terror side? ...being an American...is more than living here and (having) a green card..."
- "Cowards, the next time you talk to Mr. bin Laden please extend my invitation for a pork BBQ. We can use his towel head covering for a tablecloth. We can share ribs, backs, and hindquarters. They are fantastic cooked over an open fire, like 105 floors above ground.

If you can attend, please bring your wives, sons and daughters. For after dinner entertainment we will blowup a kindergarten, nursing homes, elementary schools, office buildings, and other innocent people he would enjoy killing. Thanks in advance.”

- “GODF*****DAMNYOU”
- “I now enjoy watching Arabs and Muslims die”
- “...I’ll be sure to ‘feel your pain’ when it’s proven that your butt buddy, Osama bin Laden had something to do with this and good, red blooded Americans start dancing all over your hind ends. Think you guys can come over here and attack us, huh?...(Eat Me.)”
- “F***** SAND NIGGER...YOUR MOTHER HAS TESTICLES AND FATHER F***** YOU IN THE MOUTH...F***** ARABS SHOULD DIE.... PALESTINIANS, JEWS, ARABS, ALL PERSIANS, YOU’RE ALL F***** DOCS!!!! THE US IS GOING TO TURN YOUR LAND INTO GLASS!!!! SEE YOU IN HELL.”
- “Please Die. I hope the US “nukes” the Middle East then the world will be a better place.”
- “Somebody must pay!!!!”
- “Too-Hell_with_You F*** YOU ARABS. All you people can do is drive cabs, work at 7/11, and blow up s*** you f***** camel ball licking sand niggers.”
- “F***** Arabs go to hell. You will pay.”
- “YOU ROTTEN BASTARD!!!!!!!!!!!!!!!!!!!!!!”
- “You should start acting like Americans and not terrorists.”
- “You are either American or Arab. Arab American is an oxymoron.”
- “...If Arabs were wiped off the face of the earth, I wouldn’t really care. It’s not the media, it’s the animal-like BLIND hatred that your race is even capable of having, and the cowardly way they carry out their hatred.”
- “YOU SHOULD ALL DIE YOUR [sic] DOING GREAT WORK. YOUR PEOPLE CAN NOT FACE

AMERICANS IN A CONVENTIONAL WAR SO YOU DO THESE THINGS. I HOPE ORGANIZATIONS IN THIS COUNTRY DO THE SAME THINGS TO YOU. DIE MOTHER F*****.”

- “I am usually a level headed person, but now I believe your organization should shut down, and I will refrain from going to any Arab owned businesses. Now Arabs all over the world will suffer. GOOD LUCK IN YOUR WAR ON AMERICA! YOU’LL NEED IT YOU INFIDELS”
- BE VERY AFRAID...
- “All you f***** Arabs should be happy now. I hope you are all deported”
- “MAY YOU ALL BURN IN HELL”

September 12

- “Go Home! You people act violently towards Christian nations.”
- “If I never see another Arab face again, especially that lying Arafat or that two faced Palestinian spokeswoman again, it may be too soon.”
- “DIE BASTARDS!!!”
- “You Muslims must die!”
- “WE SHOULDN’T EVEN LET YOU FILTHY SWINE IN OUR COUNTRY. BEST TO SHOOT THOSE THAT ARE HERE AND BOMB THE S*** OUT OF THOSE SHIT COUNTRIES. GET READY TO TASTE FIRE!!!! THE WORLD HATES THE F***** ARAB SWINE. DIE, F*****!!!!”
- “Get out of our country..you ignorant pieces of crap!”
- “This is not a terrorist problem, it is an Arab problem. You will all die at the hands of Americans.”
- “Go f*** yourself you rag-head f***.”
- “If you don’t speak out or do anything about these terrorists attacks on the US then your people are condoning the hate.”

- "GET OUT OF OUR COUNTRY!"
- "This pathetic attempt to distance yourselves from terrorists will fool no one. I will enjoy watching your countries and people burn."
- "After watching your women and children dancing in Gaza after what happened in NYC, I realize that you are what the Israelis always say you are — animals. You are horrible, horrible, evil animals. Quite simply, you have lost any claim you have to humanity, why should anyone feel any sympathy for your people? I hope the Israelis run over you, your homeland, your families and your friends."
- "Discrimination against Arabs is the last of your worries...but the Palestinians cheering/dancing in the streets says it all about your people."
- "You need to pack your s*** and leave. You never see Christians or Jews hijacking planes and covering for a man like Bin Laden. I hope Bush kicks you bastards out of my f***** country."
- "I really enjoyed watching the footage of that Palestinian man with his son, right before they were shot by Israeli troops... he died like (all) Arabs should."
- "We're at war...order the Taliban's Afghan rulers...to hand over Bin-Laden, or we'll kill them. We should maintain and expand our civil liberties, instead of letting murderers recast us in their image."
- "... a race of camel f***** ... our military will enjoy killing your people. May the imposter Mohammed's words die in obscurity."

September 13

- "... [W]ar is the choice of Islam and we have no choice but to fight fire with fire."
- "You and your people deserve the ass-f***** that you are going to get. Every American hates you. Go home, you f***** camel-jockeys and scratch in the dirt that is your home."
- "You are dogs and your relatives will no longer dance in the streets at this loss. You will be able to watch on free American TV as we bomb your fathers, brothers,

mothers, and sisters into bloody pieces of dead meat ... burn in hell."

- "Your people are animals ... I feel sick to my stomach to see an Arab."
- "... [P]eople will never respect Arabs. Keep Arabs out of America! GO BACK TO YOUR COUNTRIES...WE DO NOT WANT YOU HERE."
- "Could you please provide me with information on how to join the cause. I too would like to be a murdering coward in the name of Allah ... We all now favor the Jews pushing you into the sea. There is blood on your hands."
- "Every Arab is to blame now ... do you think if they didn't feel like heroes they would do this? They are heroes in your disgusting backward countries."
- "... I bought a copy of the Koran today to wipe the dog s*** off the sidewalk. We should have let the Serbs destroy your people. You are the enemies of America."
- "The only good Arab is a dead one."
- "I will do my best to spread hatred for Arabs, Muslims, and any one that wears a f***** rag on their head!"

September 14

- "Its time for all Arabs in the USA to park their cabs, sell their 7-11, and hang your rag wearing heads in shame as you leave this great country ... I would like to help all your people meet Allah."
- "... [Y]ou are not worth the dirt from whence Allah threw you ... American or not, if there is another attack by one of your brethren, there will be no place in America for you or your children."
- "Seems to me work needs to be done somewhere else, not in the U.S. Working for peace and justice? Baby killers, spineless worms, dirt of their mothers' wombs, whom ever did this devastation on this free country."
- "You are praying in thanks now. You make me sick. Go home to those celebrating in the streets. Ignorant, incest, drug infested. Every soul is on your shoulders. If

you didn't do it, you didn't prevent it. Blood of innocent people are on your hands. We can only pray that your torment will come at death to spend eternity in what was created on September 11, 2001. The people of the United States pray for your torment in the other life."

■ "Yahoo home page led me to your web-site, and out of curiosity, since your name is a rip-off the anti-defamation league's name... I [sic] decided to see what you were all about. I read your 9/6/01 self-righteous article entitled "Israel targets Arab-American Doctor", understanding that you are basically a public relations arm of the Palestine Authority. You should really tone down your anti-Israeli attacks, because it makes you look real bad. Then, your web page has all these "we're-really-nice-innocent-peace-loving-people-who-share-your-grief" post September 11th articles, and let me say, you sound like a bunch of hypocrites ... and very self-righteous. If you want to sound like REAL Americans, why not urge your Muslim brothers to enlist in the US military. I'm sure in years to come, we can use Arabic speaking Muslim army rangers to ferret out the bad terrorists worldwide. Put your heart where your mouth is."

September 15

■ "Eat my S*** you filthy Arabs! My uncle died at the Trade Center and it was all your fault! Ride out of here on your camels into the dunes of your shit-hole country! ... f*** you towel heads!"

■ "When your kind live among us as normal then do what was done sept. 11 [sic] ALL of you become a suspect. Take note: A sleeping GIANT has been woken. So if you really care fly your AMERICAN flag and ware your pin. If not get on your camel and ride."

September 16

■ "Eat s*** you f***** towel heads!"

■ "It is reasonable to suspect that 20% of you are absolutely crazy and place a very different set of values on human life ... 80% of you must prove yourselves and earn back our trust. You can start by coming forward and turning in all the terrorists you know in the US, QUICKLY ... you know what you have to do, turn them in."

■ "We're sorry ... that the Jews did not kill all of you when they had the chance. But now, you have turned the Americans against you. And you will suffer now. No one cares about you."

3. Denial of Service, Discriminatory Service and Housing Discrimination

The following are sample case summaries of Arab-American customers who were either discriminated against or denied service entirely. Not included in this category are the cases of Arabs and Muslim customers beaten or directly threatened while obtaining services (See Physical and Psychological Attacks). Many of the following cases involve housing discrimination.

a) Denial of Service Case Summaries

Fall 2001 - Teaneck, NJ:

A New Jersey mosque attempted to reserve the grand ballroom of a major hotel, with the intention of hosting religious services at the hotel to celebrate Eid al-Fitr, the end of Ramadan. The hotel coordinators denied their request, explaining that the room would not be available. However, the president of the mosque stopped by the hotel during the two days he had requested, finding them empty and unused. This same hotel denied the mosque use of the ballroom for Eid al-Fitr in 2000, but finally complied after pressure from New Jersey State Assemblywoman Loretta Weinburg. The hotel then placed conditions on the use of the ballroom, stating that shoes must be worn at all times. Again, under pressure from Assemblywoman Weinburg, the hotel finally granted the worshippers permission to remove their shoes during the service. (The Islamic Institute, 1/9/02)

Fall 2001 - Huntington Beach, CA:

An Arab American had his first appointment with a new dentist in late September. At the end of the appointment, the dentist rescheduled the patient for a

later date for some additional work. Days later, the Arab-American patient received a call from the dentist's office, canceling the appointment. After two weeks, the Arab-American patient attempted to reschedule. The receptionist allegedly told the patient that the dentist was out of the office ill. Again the patient waited days before calling back. This time, the receptionist told the patient that the dentist was away on a two-week vacation and recommended that the patient see another dentist. The patient responded that he did not like changing dentists and said that he would try again later. At this, the woman allegedly responded shortly and with hostility before hanging up. The Arab-American patient had his wife call the office claiming to be a new patient and to schedule an appointment with the same dentist. The office reportedly offered her many convenient times for an appointment. The Arab-American patient asked his office secretary to call and schedule an appointment for him. The receptionist responded with hostility to the secretary and told her that the dentist does not want to see the Arab American again and that he needed to find another dentist. The patient called the dentist's office in order to arrange a time to pick up his X-rays and speak to the dentist. The receptionist told him that they did not feel safe or comfortable in his presence and they would mail the X-rays. The patient asked if the reason was his ethnicity and the receptionist hung up.

September - Warren, MI:

An Arab American was removed from her position on a voting organization comprised of condominium owners where the woman resides. According to the woman, she had been an active member of the association for some time. However, directly after September 11, she learned that a meeting of the association had been held without her knowledge and she had been "voted off" by other members. When the claimant inquired about the sudden and questionable decision, the president of the association told her that she was "not wanted" on the board. The removal of the woman from the board was not only in violation of state law, but was also in violation of the association's by-laws, which state that each co-owner is entitled to membership in the association and that all meetings should be announced by a public notice.

September 11 - Scottsdale, AZ:

A bar briefly posted a sign that read, "Arabs Not Welcome." The co-manager later removed it and

admitted, "It was a stupid thing to do." (*The Arizona Republic*, 9/14/01)

September 11 - Neshamock Township, PA:

A building manager opened and snooped through the apartment of an Egyptian-American radiologist while he was out. She came across an instruction booklet for a computer game, which she mistook for a flight manual, and a computer game CD cover, which depicted an airplane blowing up in the sky. She called state police and urgently reported her discovery. Federal agents soon arrived, as did television news cameras and reporters. In days that followed, the Egyptian-American doctor was questioned by agents, lost his job and was evicted from his apartment for being a "safety risk to the apartment complex." His name was repeatedly reported in the media as a suspected terrorist. Egyptian police also ransacked his parents' apartment in Egypt at the request of U.S. authorities, causing \$200,000 in damage. The U.S. Attorney's office later cleared him of being a suspect. (*The Pittsburgh Post-Gazette*, 12/21/01)

September 12 - Ocala, FL:

A businessman taped a sign reading "No Muslims" across the plate glass window of his sporting goods store. The property manager made him remove it, because the lease prohibits unapproved signs. He taped it up again and finally removed the sign when Ocala police officers were called to the store. (*The Saint Petersburg Times*, 9/14/01)

September 12 - New York, NY:

In Brooklyn, an Arab-American grocer was subjected to a litany of racial slurs and threats while he was attempting to pay the balance of his bill to his supplier. He offered to pay what he owed in cash to the delivery person who suggested that the grocer call into the main office and speak to the manager. The manager who answered the call harassed the grocer with racial slurs and threats. This incident was reported to the police.

September 13 - Columbus, OH:

A Franklin University professor had his Internet service account frozen without explanation. This account had always been fully and automatically paid from his bank account. He and his wife have contacted the Internet service provider at least ten times without hearing an explanation. He assumes that this freeze is because he shares the same last name as one of the alleged hijackers.

September 14 - Undisclosed Location, USA:

Before the September 11 attacks, a landlord had confirmed a lease to rent an apartment to a Muslim couple, an Egyptian-American man and his wife. On the Friday morning following the attacks, the landlord backed out of the agreement, insisting that the couple had credit problems.

September 14 - Seattle, WA:

A bus driver posted a sign on his bus urging patrons to treat all Muslims unsympathetically because they pose a threat to the United States. A passenger confronted the driver about the notice and filed a complaint with the public transportation department. The complaint resulted in the driver's suspension from work and removal of the sign. (The *Seattle Post-Intelligencer*, 10/18/01)

September 22 - Garden City, MI:

An Arab American brought her daughter to a hospital's delivery ward, where the women were subject to verbal and ethnic intimidation. The incident occurred when a nurse entered the room, but did not greet or introduce herself to the two women. When the mother spoke to her daughter in Arabic, the nurse ordered them to speak English only. The mother tried to explain that she was only trying to calm her nervous daughter, to which the nurse replied, "you can never tell." During their brief conversation, the nurse avoided eye contact with the women, looking off in the opposite direction.

September 24 - Fresno, CA:

A hairdresser became irate after her client, a Pakistani American, refused to answer her questions regarding bin Laden and the recent events. When he told her that he didn't want to discuss it, she threw her comb on the floor and stomped out of the store. The salon owner then began yelling at him, ordering him to leave immediately. That night, FBI agents came to his home and interrogated his wife.

September 26 - Seattle, WA:

A Muslim American was terminated from his job in December 2000 for taking off for a religious holiday. An EEOC investigation ensued and the investigator told his Muslim client that his was a case of religious discrimination and might be cause for legal action. However, after the September 11 attacks, the investigator allegedly called his client and inquired about his opinions on the tragedy, Israel and Zionism. Sometime afterwards, the client received a letter from the EEOC Seattle District

Office, informing him that they are "unable to conclude that the information obtained establishes violations of the statutes." When the client called his investigator and made reference to their previous conversation, the investigator denied such a conversation took place.

September 27 - Undisclosed City, NJ:

A New Jersey resident received a phone call from a Dallas collection agency threatening him to either pay the amount left on his car payments or else they would call the FBI and report that he was connected to the terrorist attacks.

October 2 - New York, NY:

An office supply store employee harassed an Arab-American customer about his accent. When the customer approached the employee with a question, the employee ignored him and asked, "Do I hear an Arabic accent here?" The customer repeated his question and, at this, the angry employee allegedly threatened to cut the customer's throat. The police arrived and filed a report. The manager of the store then apologized to the customer.

October 2 - Woodbridge and Montclair, VA:

A mother contacted ADC after her three year-old son was dismissed from daycare. The day care director alleged that the boy had discipline problems but provided no details. The mother met with the assistant director of another daycare in Montclair, Virginia, who agreed to accept the boy. During their meeting, the assistant director received a phone call, listened to the caller for a few moments and turned back to the mother. The assistant director then backed out of their agreement. The mother believes that both daycare centers discriminated against her based on the fact that her husband is Arab American and her son is of half-Arab origin.

October 9 - New York, NY:

An Arab-American woman went to the emergency room in a Bronx hospital. The nurse approached her to ask questions about her condition, but when he noticed that her husband's name was Osama, his questions changed. He allegedly asked her, "Where were you when the World Trade Center was bombed?" "Are you related to Osama bin Laden?" and "Where are you from?" She didn't answer his questions and was in pain for an hour until she received care. The nurse claimed that these were routine questions.

October 10 - Undisclosed Location, USA:

ADC received a report of a Muslim American family that was given three days notice to leave their apartment despite their good record of paying the rent on time.

October 11 - Detroit, MI:

When an Arab American called a local radio station to cancel advertisements for his business, he claimed he was verbally harassed and threatened by the station's account manager. The claimant had decided to cancel his ads because he had not heard them being aired during the agreed upon times. During the call, the accounts manager became very hostile and spewed angry racist remarks at him, such as "pay your f***** bill you stupid Muslim suicide bomber." ADC immediately contacted the station's general manager and a meeting was arranged with the station management, the claimant and ADC. The station apologized for the experience and reprimanded the accounts manager. The claimant was reimbursed for his advertisements and was granted free advertising with the station.

October 11 - Astoria, NY:

A Muslim woman was taking her driver's license test at the DMV when the proctor told her to stop and get out of the car. She allegedly did not want to test the Muslim woman because she was afraid to be in the car with her. The proctor threw the permit into the car and told the woman, "I hate you." She further said that, because the woman was Muslim, she "didn't want to touch her" and hand her the permit.

October 14 - San Jose, CA:

A Muslim American and his wife, who wears a hijab, contacted to ADC after feeling discriminated against at a diner. After being seated and placing their orders, the couple waited over an hour while customers around them were being served. After speaking to a manager, they decided to leave the restaurant. At that point, another customer told the Muslim customer that he was appalled at the treatment they had received from the manager. The manager stepped in and ordered the Muslim client not to speak to the other customers.

October 19 - New York, NY:

An Arab-American mother in Brooklyn was at home with her children when her landlords visited them and verbally abused them. Without notice or reason, the two landlords entered the apartment, harassed the fam-

ily with expletives, racial slurs and questions about Osama bin Laden.

October 29 - Mount Airy, NC:

A retail store customer began verbally harassing another customer who was Arab American. The assistant manager of the store approached and ordered the Arab American to leave, threatening to have him arrested for trespassing should he ever return. A security guard, who was an off-duty police officer, reiterated the assistant manager's threat.

October 30 - Inkster, MI:

While attempting to lease a new car from an automotive group, a customer's credit application was denied, allegedly due to her Arabic name. According to the customer, she was told that her ethnic-sounding name had alerted the finance department, and that they needed to see proof of her U.S. citizenship before approving her loan. She produced her voter registration card and left the dealership. After this, she received a phone call, informing her that her application had been approved. ADC contacted the automotive group, expressing shock that the claimant's application was initially denied based on her name.

November 16 - Clinton, NJ:

An Arab-American customer was harassed by a motel manager while having a drink with friends in the motel's lounge. After the customer placed his order, the manager approached the table and barked, "I don't want you here, I don't like the way you look!" The customer asked for an explanation, to which the manager answered, "I am talking to you and not to the rest." The Arab-American customer told him, "I'll leave, but after I finish my drink." The manager then threatened, "It's better for you to leave or I will contact the police department." The customer then left the lounge with his friends. According to their reports, he was not being loud or engaging in any misconduct.

December 26 - Sunrise, FL:

An Arab American applied for a mortgage through a real estate company. Afterwards, his real estate agent informed him that his home loan application had been rejected. Furthermore, she disclosed that the reason for the rejection was an allegation coming from the company's underwriting manager that the Arab-American applicant was a "terrorist." The applicant contacted the underwriting manager to know the exact reason behind

the rejection, asking if his ethnic name had anything to do with it. The underwriting manager assured him that the company covers names when reviewing an application. The Arab American had previously applied for a loan from the company and it had been approved.

January 3 - Undisclosed City, MI:

An Arab-American hardware store customer was making a purchase with his credit card when the cashier asked to see his ID. After presenting his ID to her, she rudely shoved the credit card slip and pen towards him and barked at him to sign it. When the customer questioned her aggressiveness, she allegedly ordered him to "shut-up," and stomped away from the register. Another cashier replaced her. The Arab American asked the new cashier for an explanation for the other cashier's rudeness, but his questions were not addressed. The cashier did not cooperate when the customer asked to speak to a supervisor. At that point, the customer left the store angrily. After ADC contacted the store, management apologized for the incident and immediately terminated the employment of the cashier.

January 29 - Undisclosed City, USA:

An Arab-American customer called his cable network representatives to discuss particulars on his cable bill. The representative who answered, although cordial and professional, could not answer his questions, so she put the customer on hold while she directed his call to her manager. When the manager picked up, he allegedly crudely demanded, "What d'you want?" Startled, the customer asked, "Is that the way you greet your customers?" The manager answered gruffly with a curt, "Yes." The customer then asked, "May I ask why?" The manager allegedly responded, "Because you're Arabic" before hanging up. The customer called back and was answered by the machine. The next day, he called again and spoke with a supervisor who apologized and assured him that she would investigate.

February - Indianapolis, IN:

A Muslim-American woman called to rent an event space in early May. She was told over the phone that the hall was available for the date and time requested but she would need to visit the office in person in order to pay a deposit. When the woman then appeared at the office dressed in a hijab, she found the man in charge much less friendly and accommodating than he had been over the telephone. When she tried to confirm her booking, he told her that he had misunder-

stood; thinking that she had meant the booking was for July. She told the man there had been no problem with the date and time when she requested it on the telephone. She then asked to be scheduled for any available date in that week of May. The man in charge then told her there was "no point" as there was nothing available. When the Muslim woman asked for an explanation, the man answered, "You know why." She then asked the man if he was prejudiced, to which he replied, "What do you expect? We're veterans."

4. Employment Discrimination

Federal law prohibits employment discrimination, codified in Title VII of the Civil Rights Act of 1964. This act makes it illegal to discriminate against an employee or one seeking employment on the basis of any of eight categories: race, religion, color, age, sex, disability, national origin or citizenship status. In addition, state and local ordinances may also prohibit these and other kinds of discrimination, including discrimination based on political opinion or affiliation. Discriminatory practices include bias in hiring, job assignment, promotion, termination, compensation, and various types of harassment or hostility in the work environment. It is also illegal for an employer to penalize an employee for exercising his or her right to oppose and report any of these forms of discrimination.

Whether the employee brings his or her claims to management, ADC, the Equal Employment Opportunities Commission (EEOC), or any other venue requesting an investigation, retaliatory actions as such cannot legally merit demotion or dismissal.

Whether one is authorized to work or seek employment in the United States as a citizen, resident, or alien, U.S. Law guards the right to equal opportunity. Except in the cases of some government contracts, a hiring employer may not discriminate based on citizenship status if the applicant has legal work authorization. An employer also may not discriminate against an applicant or employee based on his or her national origin, associations with persons of a national origin group, marriage to someone of a particular

national origin, membership in an organization that promotes the interest of a national group or because his or her name is associated with a national origin group.

Harassment on the basis of race, religion or national origin is illegal. In many cases of anti-Arab and anti-Muslim harassment in the workplace, the harassment creates an intimidating, hostile or offensive working environment, which in turn, interferes with the Arab or Arab-American employee's job performance. In many of the following cases, an employer avoids direct ethnic discrimination against an Arab or Arab-American employee, and instead penalizes the employee on the basis of work performance, ignoring the hostile environment that affected the employee's performance in the first place.

From September 2001 to October 2002, complaints of employment discrimination poured into the ADC national office at an alarming rate, which was four times that of previous years. Claims of discrimination in the workplace came from across the United States; the greatest numbers coming from California, Virginia, Michigan and New York, respectively. The following complaints reflect examples of employment discrimination based on national origin, religion, citizenship status, race, and political opinion. Not included in this section of the report are cases of employment discrimination involving schools and educators (see Educational Discrimination). The EEOC has recognized post-9/11 discrimination against Arab Americans, American Muslims and South Asians as a discrete phenomenon and has held hearings and released statistics on a regular basis in order to deal with the problem (see EEOC fact sheet, Appendix II).

Unless otherwise noted or indicated, these cases were reported directly to ADC.

a) Employment Discrimination Case Summaries

Undisclosed Date - the Bay Area, CA:

A Muslim woman working in the South Bay area said that she received a death threat from a co-worker. Her supervisors treated it as a joke, but ultimately, she left the job because she didn't feel safe there any longer. (The *San Francisco Chronicle*, 11/10/01)

Undisclosed Date - the Bay Area, CA:

An African-American Muslim complained after co-

workers asked him whether he had box cutters in his desk. (The *San Francisco Chronicle*, 11/10/01)

Undisclosed Date - the Bay Area, CA:

A man from Iraq who is a U.S. citizen said he was fired from his job and was specifically told it was because he was Middle Eastern. (The *San Francisco Chronicle*, 11/10/01)

Fall - Dallas, TX:

A Muslim university student was interviewed for a position in the lock box department of a bank. He was introduced to a supervisor, who allegedly surprised him with the question asked in complete seriousness, "How do I know that you won't blow up the building if I hire you?" The student was offered the position, however, the supervisor kept a close eye on him. On several occasions, the supervisor approached the student after watching him speak on the phone, asking to whom he was speaking and what their conversation involved. The student noticed that someone had been changing his work and creating errors. On several occasions, the student had colleagues proofread and approve his work before submitting it. However, management continued to complain of errors the student allegedly was making. His supervisor allegedly hassled the student over his sick days, contradicting the bank's policy. Finally, the student's position was terminated. He contacted his supervisor and asked him to review and challenge the grounds for his dismissal, but his requests were never honored.

September - Cupertino, CA:

A 34-year-old Jordanian-American technician was fired from his job of seven months making computer circuit boards. The week before September 11, his weekly evaluation was positive, as usual. However, the day following the terrorist attacks, his boss gave him his first negative review. Furthermore, his boss required him to report his whereabouts every half-hour. After a week, he lost his job in a series of layoffs. Although there were other layoffs, the company kept technicians with less seniority than his. (Newhouse News Service, 10/15/01)

September - Fontana, CA:

A Muslim high school senior working at a fast-food restaurant was the repeated target of bias jokes from both his coworkers and his manager. At first, coworkers taunted him, asking him why his "cousins" destroyed the World Trade Center. Sometime later, his manager began teasing him as well. "Hey, we're going to have to

check you for bombs," the manager joked, often in front of other employees. Days later, he was fired after he accidentally threw away a paper cup that the manager was using. Management said he was let go for "performance deficiencies." (The *Los Angeles Times*, 2/10/02)

September - Chicago, IL:

A man of Palestinian origin, working as a medical technician, was terminated after he was given suspension without pay. Apparently, he had joked about the media images of the Palestinians celebrating in the streets after the terrorist attacks. He condemned their celebration by sarcastically stating, "power to my people." He was terminated soon afterwards and told that the people in the office did not feel comfortable with him.

September - Boston, MA:

A 41-year-old Bangladeshi alleged in a complaint to the EEOC that he was berated, called names and then fired from his job at a motor company. After the terrorist attacks, the employee was asked his religion by a colleague. He responded that he was Muslim. According to his report, he then became the target of discrimination and name-calling. Allegedly, the vice president and general manager of the company began to call him "mullah" among other names. One asked, "Are you one of the Taliban?" (The *Boston Globe*, 11/22/01)

September - Island Park, NY:

A Kuwaiti-American employee of a laundromat was fired from her part-time job of three years. Apparently, her boss told her, "The customers, they're scared of you. They're scared you're going to put a bomb here. Nobody likes you." Her boss later explained that customers had urged him to let her go. He had fired her because of comments she had made to him and to customers, who were threatening to boycott his store. He said that, while at work, watching the destruction of the World Trade Center on television, "She said she wasn't surprised, America had it coming." (Newhouse News Service, 10/15/01)

September - Rochester, NY:

An Arab-American contractor received repeated threats and verbal assaults by coworkers since September 11. Examples include "Let's kill all the Arabs we find here," "We're going to kill you and send you back where you belong" and "We should kill all Arabs starting with the ones here."

September - Dearborn, MI:

After the terrorist attacks, a Lebanese-American electri-

cal engineer with a doctoral degree, who had worked as the leader of an air-bag development team was demoted to a less important job. (The *Boston Globe*, 10/19/01)

September - Alexandria, VA:

An American of Moroccan descent, working in a department store, faced discrimination and harassment from two of his coworkers. After September 11, the two began calling him, "Moroccan terrorist" and "Osama bin Laden's cousin" among other things. They engaged in anti-Muslim hate speech as well, calling them "pigs" and "terrorists." They openly and regularly expressed their wish to "kill them all"

September 11 - Miami, FL:

An Iranian medical technician working at a university medical center turned 22 on September 11. He kidded to his coworkers, "Some birthday gift from Osama bin Laden." The university found his comment, as well as his criticisms of U.S. foreign policy "inappropriate and unbecoming for anyone working in a research laboratory," and fired him. (Cox News, 1/12/02)

September 11 - Shreveport, LA:

An Arab-American surgeon was suspended. He had no contract of employment but a contract of income guarantee, so the hospital subsidized the practice.

September 11 - Huntington Beach, CA:

A doctor from Egypt was abruptly fired from his job at a medical center by his supervisor, who specifically mentioned the doctor's nationality and religion. The doctor thought of suing, but was worried that it would hurt his chances of getting a green card. (The *San Francisco Chronicle*, 11/10/01)

September 11 to 15 - Buffalo, NY:

An Arab-American construction company subcontractor was discriminated against and ordered to leave work the Friday following the terrorist attacks. The employee had been harassed at work each day since September 11. That morning, he was confronted by a female coworker who insulted him, "Go to your f***** country, someone blew up the World Trade Center!" The next day, he overheard a coworker say, "We have to kill all those of Middle Eastern descent." When the Arab American employee filed a complaint with the human resources manager addressing this issue, the manager was unable to help him. At the end of the week when he arrived at work, he was ordered to leave immediately by two area

inspectors. The employee asked for an explanation from the men, who only reiterated their order. "I want you out of this f***** area," one of them yelled.

September 12 - Chicago, IL:

A contracting company with an Arabic name operated as a cable service contractor with a Detroit company. On September 10, the company informed them to "increase their volume of work." However, on September 12, the company contacted them and informed them that all their services were terminated without explanation.

September 12 - Undisclosed City, TX:

An employer sent his Palestinian-American employee home. He was surprised to see her in the office the day after the terrorist attacks and explained that he didn't know if she would be celebrating or not.

September 12 - Detroit, MI:

A Muslim Yemeni American had worked for 15 years as a welder at a small factory. His boss fired him, telling him "Go home, you are Arabic, you are Muslim, go home, pray to your leader, go to your Mosque and pray. I don't want to see your face." (*Detroit Free Press*, 10/4/01)

September 12 - Newark, NJ:

An Arab-American maintenance company employee working in a mail room facility of the Newark International Airport was questioned by two security guards about his national origin, immigration status, friends in the United States and abroad and other such details. The guards at first denied him use of the phone, a usual privilege to all employees. After a while, they were persuaded to allow him to call his mother, but only on the condition that he speak in English. His mother, however, did not speak English. Later on, a shift manager made snide remarks about "your country" to the employee and threatened to write a penalizing report against him.

September 13 - Riverside, CA:

A human resources employee was put on probation despite receiving an excellent evaluation the month before. A supervisor warned her not to mention that her husband is Palestinian American. Since September 11, several employees asked about her Islamic necklace and the origin of her last name.

September 13 - Providence, RI:

A Muslim woman who works in a day care center

reported that the center had urged her to takeoff her hijab, on the grounds that "people who wear those head coverings are all terrorists." (*Providence Journal-Bulletin*, 9/13/01)

September 14 - Carson City, NV:

A Palestinian-American correctional officer suffered harassment while at work. His coworkers made hostile comments about Arabs in the United States in front of him, suggesting to him that all people of Middle Eastern descent should be placed "in camps like the Japanese during World War II, at least until this is all over."

September 15 - Arlington, VA:

An Arab American was fired from his position as a strategy consultant. The company claimed that his termination was due to a reduction in the work force. Before September 11, he was the first individual to be placed on a consultancy team because his performance had been exceptional. He was more qualified than his colleagues who remained on the team.

September 17 - Amarillo, TX:

An Arab American airline mechanic was hired by an aviation service company in September. His employment agreement included a relocation reimbursement payment of \$1,000 and a reimbursement of \$45 for a drug test. On September 12, his first day of work, he was perplexed to see that his timecard was not available. It was explained to him that he did not need one, although he had been told otherwise just the day before. His manager fired him on September 17 and refused to reimburse him the agreed upon \$1045. The mechanic then showed him the reimbursement agreement, so the manager finally agreed to pay. At the time the mechanic reported the incident to ADC in early November, he had yet to receive the payment.

September 17 - Undisclosed City, VA:

A closing manager of a large retail store was demoted to an hourly basis pay status. According to the employee, he had always performed well on his job and received no notice to the contrary. He suspected that this demotion had more to do with his national origin and the September 11 attacks than his job performance.

September 18 - Sharon, PA:

An Arab-American cashier working at a women's cloth-

ing department store was fired from her job. She filed a report with the Pennsylvania Human Relations Commission, believing that her dismissal from work had more to do with her religion and ethnicity rather than her performance.

September 18 - San Antonio, TX:

An Arab-American aircraft mechanic filed a discrimination complaint after a contracting firm withdrew a job offer, allegedly because of the mechanic's ethnicity. When the mechanic's wife called the contractor's office for an explanation, she was allegedly told that the company was unable to "secure" his background. The airline company later contacted the Arab-American couple and offered another position with lower pay. Finally a mediation session was arranged with the EEOC. (The *Boston Globe*, 11/22/01)

September 19 - Lake Elsinore, CA:

A truck driver left four threatening messages on the answering machine of his company, allegedly making threats against the owner, an Iranian American. The employee used profanities, threatened his boss and his family with racial slurs and said he hoped the "people of America take out every one of you living here." (The *Press-Enterprise*, Riverside, 10/12/01)

September 19 - Phoenix, AZ:

An American Airlines pilot who worked with the airline company for four years was pulled off duty and told that he cannot fly because a coworker allegedly reported that he was sympathetic to the Palestinian cause. After a background check was made, he was put back on duty and was again able to fly. However, the pilot was concerned that he would be terminated.

September 19 - Detroit, MI:

An employee of a shipping company at Detroit International Airport was asked questions about his national origin in a counseling session with the company's security chief. He was asked, "Where are you from?" and "Are you of Arab origin?" He was later given a letter of suspension without pay. Days later he got a call from the company asking him to report back to work by the next evening.

September 20 - Undisclosed Location, USA:

A Pakistani network engineer, who was working on a contract basis, was asked by his employer to leave or else he would be escorted out by police. He had never received any type of disciplinary action prior to this incident.

September 21 - Stockton, CA:

An engineering technician was fired after a series of discriminatory incidents at work. The day after the terrorist attacks, he was given a bad review, although just a week before he had received excellent reviews. That same afternoon he was handed a spreadsheet and asked to maintain and log his activities every hour of the day. No other employee was asked to do this. Finally, his manager terminated him, citing budgetary issues.

September 21 - New York, NY:

A Pakistani-American computer analyst working for an electronics company was sent on a one-week assignment. He had his wife's picture on his laptop with the World Trade Center towers behind her. A supervisor at his new assignment saw the picture and stated, "Oh boy, you're in real trouble." After a while, the supervisor told him that he did not want him working there. His boss at the electronics company also terminated him after this incident was reported.

September 24 - Falls Church, VA:

An Egyptian American and his coworker were both fired from their positions at a tax revenue office after alleging that their boss had made an anti-Arab slur. Upon hearing news that a suspect in connection with the attacks had been detained, the boss allegedly joked, "Did he have a rag on his head?" The coworker overheard this and later told the Egyptian American, who contacted an attorney and the city manager. A week later both men were fired, receiving letters from the boss which read, "... you have challenged my integrity, impeding my authority to operate this office. Your action is harassment and a breach of trust in our relationship."

September 24 - Undisclosed Location, USA:

A United Airlines manager told an Arab-American employee to take an administrative leave. The Arab American had been confronted with accusations, threats and hostile behavior by his fellow employees. On several occasions, he entered his office to find his desk, papers, and drawers out of place and searched. A notebook of his was stolen. A supervisor asked him to relinquish his computer password and to give up access to his files.

September 26 - Detroit, MI:

A car rental employee of Lebanese origin working at Detroit International Airport was questioned by FBI agents after taking two pictures of bin Laden from a person distributing them at the airport shouting, "This

is the terrorist." Many others at the airport also took the pictures. Following this questioning, his supervisor asked him to leave, saying he would contact him after his record clears. A week later, he received a letter of termination, asking him to return his ID and uniform.

September 26 - Houston, TX:

A Palestinian anesthesiologist working at a medical college was assisting three physicians in the operating room during surgery when one of them began to complain about Islam and Palestinians. When the anesthesiologist told them that he himself was a Palestinian Muslim, an argument ensued. The outspoken physician ordered the anesthesiologist out of the room. A replacement anesthesiologist was paged. A nurse and doctor present reported the physician's behavior to the in-charge nurse and vice president of the hospital.

September 26 - Undisclosed Location, USA:

An American married to a Palestinian had been facing hostility at work since discussing the media reports of celebrating Palestinians with her coworkers. She opined that "... U.S. policy should protect American citizens and this [the terrorist attacks] should not have happened." An out-of-uniform man claiming to be a police officer visited her, mentioning that many people had complained about what she said, and he asked her many questions. He did not show her a badge or give her his name.

September 19, 20, 27 - Undisclosed Location, USA:

An American Airlines flight attendant, an American of Lebanese origin, was pulled off duty. Although he was scheduled to work on Wednesday, September 19, he was escorted from the plane before takeoff because the pilot did not feel comfortable with him on board. On September 20, he boarded another flight and a female flight attendant kept making remarks to the passengers such as, "All these people should be shot, all these people should go back to their country." On September 27, his union representative informed him that he should not fly until they receive a letter from corporate security clearing him.

September 27 and October 13 - Detroit, MI:

An Arab-American design engineer found a sharp blade inserted in the door handle of his car while it sat parked in the lot of his company. A week later, his neighbor received an anonymous phone call, asking about him, what he looked like, what car he drives, and what car his wife drives. In September, the engineer found a

threatening note dropped in his internal mailbox. The note was cut and pasted together and read, "Go home Arabs, Death to Arabs, kill Arabs."

September 27 - Wayne County, MI:

An Arab American originally filed a grievance regarding a four-day suspension from work in June 2001. He asked for a copy of the grievance in late September. The foreman at work handed the claimant a sealed copy of his grievance. When the claimant opened the envelope, he found a copy of his grievance along with "An open letter to a terrorist." ADC immediately responded and the case was investigated.

September 28 - McLean, VA:

A department store employee was subjected to a hostile work environment by her supervisor who allegedly repeatedly stated that the government should restrict the admission of Arabs and Muslims. "It would be better to prohibit them from living here because any one of them can become a terrorist-in-waiting, even their children," the supervisor opined. He repeated anti-Arab comments on many occasions. The supervisor threatened to fire the employee, and claimed it was because of the economic situation. In the weeks that followed the terrorist attacks, two other employees of Middle Eastern origin were fired.

September 28 - Rochester, NY:

A man of Turkish origin contacted ADC and the EEOC after a company refused to hire him. An interview was held at 8 a.m. on September 11. According to the applicant, he was told that he was excellent for the position, has the necessary experience and would be contacted within one week. He was not contacted, and when he called the company, he was told, "We decided we don't need you here." Her tone insulted the applicant.

September and October - Chico, CA:

An Arab-American database administrator had spent years working for a company, when he began facing anti-Arab discrimination shortly after the terrorist attacks. The first incident occurred when two employees disabled his password and copied all of his computer files, including his personal file, which included his daughter's school project. He was the only employee who had his computer searched in this way. Shortly thereafter, he was taken off his regular assignments as a computer programmer and was given assignments on the technician level, much below his training and expe-

rience. On October 1, he was transferred to another branch of the company, with the explanation that his services were no longer necessary at that location. However, after the transfer, a new employee was hired to replace him. The Arab-American employee was not trained in this new position and, as a result, received poor performance evaluations. His new assignments also involved much heavy lifting, which he never had to perform as a programmer. His coworkers in the new facility treated him rudely. One of his coworkers passed his desk and hissed, "This mother f***** will soon be out of here and him and his kids will be begging for mercy." Other coworkers often harassed him about his religion and ethnicity. They posted signs around the office with Osama bin Laden's picture on it, containing statements like, "We'll get you" and the like. His supervisor also told him, "I know your people and I hate them." Fortunately, the harassment stopped after the employee contacted his union and ADC.

October - Fresno, CA:

The fiancée of a Palestinian-American worked as a supervisor in a retail store. Shortly after the terrorist attacks, one of the store's employees told her that he "will never work with those people," referring to Arabs. At a later date, one of the store's managers told her "I hope all Palestinians die, after seeing them cheering," knowing the supervisor's fiancé was Palestinian. The next day, the supervisor found a letter from her manager, which read, "Even Osama bin Laden can't stop the 51% sale, but not 50% pray to Allah."

October - Washington, DC:

A Jordanian American was employed as a cashier at a pharmacy, but his supervisor confined his duties to unloading trucks, whereas the other cashiers were allowed to work at the front of the store. He was told, "people from your country have to suffer." The manager also prohibited the employee from using the store's back room for his 5-10 minute prayers. After September 11, the employee was no longer allowed to take breaks during his workday. In late September, he requested a transfer to a different store because of his difficulties with his store's manager. He was given a transfer, but soon afterwards his former manager visited him to get an explanation for the transfer. Soon after this visit, the employee was laid off "until further notice." He was not contacted again, and when he tried to inquire about the reasons behind the termination, he received no answers.

October 1 - Tampa, FL:

An Arab American was fired from his position as the manager of an airport hotel service. Although 50% of the work force had also been terminated for lack of business, he was the only manager to lose his job. He believes that there was ethnic bias involved in his termination.

October 2 - Gaithersburg, MD:

When an Arab-American construction worker reported the threats and hostility he had received at work, his supervisor responded with, "Well, don't you think they have a right to be angry?" The construction worker had faced constant threats with vulgar language at work. A coworker acted as though he would attack him with a metal pipe. He claims also to have faced sexual harassment from coworkers.

October 2 - Midland, MI:

An Arab-American truck driver was suspended by the manager of one of the transport company's branches. Despite the driver's good record with the company, he was suspended for "safety reasons." He asked the manager if this had anything to do with the terrorist attacks or his religion and the manager responded affirmatively.

October 3 - LaGuardia, NY:

An Arab-American Atlantic Coast Airlines captain was taken off the schedule with pay. When he asked his supervisor the reason behind this, he was told that there was no reason but that it was due to the national crisis. He claims to have a perfect record, never called in sick and even worked on days off.

October 9 - Santa Clara, CA:

A Palestinian American working in the men's clothing department of a large department store was fired from her job after personnel managers asked her opinion of the terrorist attacks. A customer had confronted the employee days earlier, insisting that she and "her people" had no right to work in the United States. The employee asked for proof that "her people" had indeed committed the attacks, which sent the livid customer complaining to a manager. A manager took the employee aside and grilled her on her opinion on the terrorist attacks and Osama bin Laden. The employee expressed her horror at the attacks and denounced them. She was shocked when, a week later, she was fired with the allegation that she had expressed anti-American sentiment and felt that "America deserved it."

October 9 - Washington, DC:

A Moroccan-American lab manager in a local university's department of neurosurgery had been facing some hostility at work. The department chairman told her, "You are not like the other Arabs." He then named an Arab-American university employee whom he would suspect as a terrorist. An attending professor told her in the presence of a student that all Arabs should be "naked." The administration informed her that her position will be terminated and that they will do away with the department of neurology lab. She has not received a termination letter but is expecting it and is very concerned. She has been working at the department for seven years and had received excellent reviews and a raise.

October 9 - Los Angeles, CA:

An Egyptian-American janitor working on a university campus was threatened by his supervisor, who said that he "was not a man" and should be sent "back to Afghanistan." He was also insulted and harassed by the supervisor's assistant.

October 10 - Las Vegas, NV:

An Arab-American casino floor supervisor was suspended from work and his casino requested that the FBI carry out an investigation of him. The supervisor was not given an explanation when he asked for a reason, instead the casino's head of security answered that he "cannot talk about it." Two days later, he was called into an interview with the casino and asked to provide his version, though he was still unsure as to the nature of the investigation. The head of security questioned him for 45 minutes about the September 11 attacks and his patriotism.

October 10 - Ashburn, VA:

An Egyptian-American employee of eight years in a large national retail store was working as a greeter, welcoming customers, when he was called into an office and questioned by an FBI agent. A corporate representative of the store was also present and questioned the employee. The investigators brought up a conversation involving the employee and his coworker in which the latter held up a tabloid newspaper showing a photograph of Osama bin Laden. The Egyptian-American employee expressed, "If I saw him, I would slaughter him." When questioned by the FBI, he admitted that he would never kill anyone; he only wanted to assure his co-workers that he did not support the terrorists. The FBI agent allegedly asked him his opinions on Jews and on the Taliban. He further asked how much he had paid for his house.

Shortly after the FBI investigation, the employee was fired. (Newhouse News Service, 10/15/01)

October 11 - Louisiana:

A crane operator of Pakistani origin was suspended from work with the explanation that his performance was unsatisfactory. His supervisor had previously been impressed with the operator's performance and had even requested a raise in his salary. The operator was searched by metal detectors before leaving and watched closely until he left.

October 15 - Milford, MI:

An Arab-American car manufacturing employee of 23 years claimed that he was verbally harassed and intimidated by his supervisor and another supervising employee. According to the claimant, he was approached at work by the two supervisors and asked a series of interrogating questions. Both individuals wanted to know if the claimant had any terrorist ties, or if he was planning any terrorist activities. His supervisors did not give him a reason behind the interrogation. The claimant explained that, since the incident, he became uncomfortable at work, and believed that his job and his well-being were in jeopardy. ADC contacted the plant to inquire about the claim. The supervisor denied ever accusing the claimant of being a terrorist and assured ADC that discrimination is inexcusable. Since that time, the claimant has not faced any further complications.

October 16 - Los Angeles, CA:

An Egyptian American was fired from his job in a university's operating room laboratory. He had been the target of racial slurs and remarks before the September 11 attacks. He was fired immediately afterwards.

October 19 - Herndon, VA:

An Egyptian-American was terminated without warning from his position on a computer programming team. The employee had faced discrimination during his first months working for the company when management learned that he was Egyptian and Muslim. During his first Friday on the job, he excused himself during the afternoon to perform his prayers. Since that time, he reportedly had been excluded from company activities and assigned an enormous workload. Despite working several hours overtime, which he was told by management not to report, he was reprimanded for not completing his assignments and blamed for mistakes on the assignments he completed. On two occasions, a coworker yelled profanities at the employee. At the

beginning of October, he received notice that he would be terminated if his assignments were not completed by the end of the month. He was terminated before the ultimatum's end and his manager allegedly confided to him in a private conversation that his termination was based entirely on his ethnic background.

October 20 - Timlinville, KY:

An Indian-American employee worked at a restaurant for almost three months. A fellow employee interrogated him with questions such as, "Where are you from? You don't look like an Indian! Are you from those people?" The employee complained to his manager and showed him his Social Security card for verification of his citizenship. The next day, he left work because he was upset. The manager then fired the employee for leaving work without permission.

October 22 - Orlando, FL:

An electrician was terminated from his job. His supervisor approached him and allegedly stated, "We don't need the risk of any of you terrorist guys on the job." When the electrician asked about any problems with him or his quality of work, the supervisor said his performance was fine.

October 22 - Mount Rainier, MD:

An employee in a food distribution company was verbally harassed by the company's security officers. The employee's two supervisors and his manager were in a disagreement regarding the employee's position in the company. One supervisor allegedly phoned security on the employee. Security followed him to his car, shouting, "Go back to your f***** country and find a job."

October 22 - Mountain View, CA:

An Internet marketing communications service posted on its website a morphed photograph of an independent contractor who had worked for the company. The company's founder had dismissed the contractor, who had worked there two months on a project. The founder claimed to be dissatisfied with his work. Days later, the contractor was surprised to see on their website a picture of his own face morphed onto the turbaned head and shoulders of a man in Afghani clothing.

October 24 - Sacramento, CA:

An international student worked in a bank when suddenly, and without sound reason, his position was terminated. The student discussed the matter with his immediate

supervisor, his supervisor's manager, a human relations consultant and an employee relations consultant, but according to the student, these talks did "not seem to lead anywhere." The employee's manager presented claims against the student, for which the student provided the necessary documentation to prove the claims false. The manager then brought forth additional claims, which were also proven wrong. Before the employee's termination, the manager gave him a corrective memo which he was given "30 days to show sustained improvements" or else he would be terminated. His position was terminated only four business days later. The student brought this matter up with the employee relations consultant, who told him that the manager had the right to terminate his position immediately, which was left unmentioned in the memo.

October 22 - Chantilly, VA:

An Arab-American security officer was transferred to a different location with the explanation that four of his co-workers did not like working with him. When he asked his supervisor details, he was told, "It's not important to know their names but they said you have positive views about Osama bin Laden."

October 24 - Wilmington, NC:

A nurse recently converted to Islam and came to work wearing a hijab. A doctor called her to his office and said, "You're being offensive to me and to my clients." She talked to the head manager who assured her not to worry, that they would discuss it the next day. The next morning, the head manager told her, "I can't ask you to leave and it's not legal to fire you, but if you want to leave you can." He also told her, "If you don't cover your head, everything will be OK."

October 29 - Undisclosed Location, USA:

An Iranian-American woman and her coworker were laid off from their jobs at a publishing company after facing harassment from a male colleague. On September 11, this colleague approached the Iranian American accusing her "f***** relatives" of the terrorist attacks. When another coworker stood up for the Iranian-American employee, the colleague turned and threatened to "get rid" of her as well. Both women were then laid off while their male colleague remains an employee.

October 31 - Los Angeles, CA:

A Muslim employee in a medical lab faced harassment from his coworkers. One coworker threatened to "ask [her] FBI husband to track [him] down and kill [him]"

I. LEGAL ISSUES

Other employees have given him the silent treatment, harassed and yelled at him, and intimidated him because of his religion.

November - Washington, DC:

An Arab-American cashier in an Asian restaurant faced hostility at work. His manager constantly mocked him, often in front of the customers. On one occasion, he told him that he looked 'like bin Laden.' He also reduced the cashier's work hours and allegedly treated him worse than the other restaurant employees.

November - Undisclosed City, MI:

An Arab-American man was subject to ethnic intimidation and harassing comments directed at him by his supervisor. He filed a formal complaint through his union. His supervisor denied making any type of ethnic or racial comments and the company accepted his denials as truth. After ADC became involved in the matter, the company conducted a factual investigation and took appropriate measures to resolve the issue and to prevent the problem from occurring again.

November 2 - Undisclosed Location, USA:

A Lebanese-American seven year employee of a phone company was unexpectedly given a two month notice by her manager and told that she had become an "at risk" employee. The lay-off came as a shock to her and her associates.

November 7 - Burke, VA:

An Iranian-American employee of 15 years was away on vacation during the time of the September 11 terrorist attacks. When he returned to work the next week, none of his coworkers spoke about the recent events in his presence. In October, the company's vice president began to complain about this employee's performance, telling him that he did not know how to use the equipment properly. Furthermore, he singled out the employee, telling him that he was the only person who wasn't "working hard enough" and that for the money he was earning he "should work harder for it." Afterwards, the employee was put on irregular and nighttime shifts, often made to work long hours. Finally, the vice president fired the employee. The Iranian was the only Muslim and Middle Easterner in the staff and the only employee to be fired after the September 11 attacks. His performance had always been satisfactory, evidenced by a reoccurring annual raise for each of his 15 years at the company. After his termination, his

health insurance was cancelled, and then reinstated briefly. Money was deducted from his paycheck to cover the health insurance and he was not paid the full amount of holiday pay he was owed.

November 8 - New York, NY:

A Muslim-American computer programmer reported to ADC after receiving a poor evaluation from her employer. The evaluation showed that she "was not in good standing" and was nothing like the previous evaluations she had always received, which were positive. The company director had asked her earlier if she was Muslim.

November 8 - New York, NY:

After September 11, a Wall Street business relocated and, in the move, an Arab-American employee was requested not to return to work with the rest of his team. On September 20, his supervisor called him, requesting his return to work. During his brief reinstatement, the employee was asked intimidating questions about his religion and culture. On November 8, the company director called the Arab-American employee into the office and fired him, repeating that it was not 'because of the disaster at the World Trade Center.'

November 8 - Tulsa, OK:

A car salesman was fired a week after being visited at work and interviewed for ten minutes by the FBI. The employee had faced harassment from coworkers since September 11. His coworkers repeatedly addressed him with racial slurs and also posted signs of him, which read, "(his name) bin Laden, Wanted Dead or Alive." These signs were not removed until mid October. The day after coworkers saw him with the FBI, he was demoted from his department and called into his manager's office. The manager assured him that he was "a great guy" but nonetheless, he would have to be demoted to another department since there were enough employees working in his former department. A week later, he was fired on account of "management bad talk." Another Arab coworker, who had worked in the same department, was also briefly visited by the FBI and fired shortly thereafter. Again, the company cited poor performance as the reason for this second termination.

November 8 - Dearborn, MI:

When an Arab-American employee of a car manufacturing plant approached his supervisor requesting permission to leave work due to an injury suffered on the job,

the supervisor opined, "You know what? If it was up to me, the Middle East would be turned into a parking lot." The employee asked the supervisor for an explanation and he responded by shrugging off the remark. "Just expressing my views," he defended himself.

November 12 - Livonia, MI:

A foreign-trained physician was pursuing his U.S. license when he was discriminated against during his training and testing program. In August and early September, he applied to work at a company. Two of the company's supervisors told him he was overqualified for the position and assured him that he would be hired after the four-week office training and testing period, which began on October 1. His trainer was consistently rude to him; the physician contacted the supervisors about this. After the four-week training period, the physician took the exam and failed allegedly because of the lack of training he had received.

November 15 - Morton Grove, IL:

A Muslim temporary staff accountant was fired from her 8-12 week position after only six days of work. When pressed for an explanation, her supervisor and the human resources personnel gave her conflicting reasons for her termination. She had been challenged by colleagues after her third day of work when she had spent ten minutes saying her Friday prayer in her cubicle and had washed her feet in the company's women's restroom, a ritual before prayer. Days later, her supervisor asked her to use an empty room for her Friday prayer, or else "people at work might find it offensive." Other employees of the staffing firm complained of the "hygienic concern" of her washing her feet.

November 15 - Washington, DC:

A Pakistani recent MBA graduate was training with a survey research firm who also sponsored him. He discovered e-mails circulating around his office saying that Pakistanis lived "in the Dark Ages." He was fired from his job with the explanation, "It's un-American and unpatriotic if we sponsor you, the market is bad and we can now find a U.S. citizen."

November 25 and December 5 - Undisclosed City, MI:

An Arab-American store employee was involved in a dispute with his immediate supervisor, which resulted in him being asked to leave work, pending an investigation. The employee claimed to have been involved in a number of incidents where he was unfairly treated dur-

ing his six years with the company. On December 5, he was notified of his job termination.

November 27 - Undisclosed City, MI:

An Arab-American female was terminated from her position of three years by her supervisor, allegedly for a work-related mistake. The employee admitted to the mistake that she had made, but did not believe that it merited job termination, as other employees had received alternate forms of disciplinary action in the past. The employee was also denied unemployment benefits based on the fact that her supervisor "failed to establish by specific information that such action on her part was an intentional, deliberate, malicious disregard of the employer's best interest in connection with the work."

November 28 - Port Harlock, WA:

An Arab-American web designer was asked to choose between either taking a reduction in his salary or leaving his job. He accepted the salary reduction rather than leave. At a later date not specified, his supervisor told him that he was being terminated for financial reasons. The web designer alleges that, after September 11, he overheard his supervisor saying, "Kill them all." According to the former employee, the company is hiring new staff and is not facing any financial problems.

November 28 - New York, NY:

An Arab-American tax attorney was terminated from her job in a Brooklyn accounting firm. After September 11, she noticed a dramatic decrease in the amount of assignments passed her way, while her coworkers maintained their previous workloads. For months, a partner in the firm told her that the slowing economy had caused the reduction of her assignments. Finally, he told her that, due to business reduction procedures, her position would be terminated, even though she is the only lawyer in the firm.

November 28 - Birmingham, AL:

A Jordanian-American systems technician was terminated from his position of three years. The vice president of the company had previously made derogatory remarks about Muslims. For example, when his brother from Jordan accompanied his American girlfriend to the United States for a visit, the vice president allegedly asked, "Why would she bring another Muslim over here?" When the Arab-American employee called a morning radio talk show to comment on racism towards Arabs and Islam, he was overheard by a colleague when he stated, "You are not a true Christian or true

American for discriminating against a race and a religion. And the people who committed the September 11 [acts] should be punished but we should not punish a whole race or religion." The colleague reported to his supervisor, asking him to fire the Arab American. After a series of meetings, the Arab-American employee was terminated.

November 30 - Plymouth, MI:

An Arab-American was terminated from his job at a manufacturing plant. The claimant explained that he had been involved in numerous incidents after September 11 in which he was unfairly treated. He claimed that, on many occasions, his supervisor expected him to produce greater than the average output on the job. The increased duties, supervision and unrealistic demands placed a lot of stress on the claimant. When ADC contacted the plant, ADC was told that the reason for the claimant's termination was not discrimination, but deterioration of his work performance. The company refused to admit that discrimination was a factor.

December - Agoura Hills, CA:

A music store employee told his Arab-American colleague, "We have to wrap all of you and send you to camps." This statement was made before the office director, who laughed out loud at the remark.

December - Detroit, MI:

An Arab-American, employed with a high-tech valet company for two years, including one year as a supervisor, was terminated from his position. According to his claims, he never had any problems with management, or any other employee. In December, he was accused of disliking the United States and suspected of having terrorist ties. It was at this time that he was terminated from his position and asked to leave work immediately.

December 2 - Schaumburg, IL:

Supervisors at a men's clothing store terminated an Arab-American employee. According to the employee's claims, since September 11, he dealt with a number of anti-Arab and anti-Muslim remarks made by co-workers. One supervisor said to him, "Did you know that Muslims wash their asses before praying, it's disgusting. How can you eat after that?" Although the claimant had contacted the regional manager of the store with complaints of this harassment, he was brushed aside and told not take such comments seriously. He was also warned that if he contacted the corporate headquarters,

he would not go anywhere with his complaint. The claimant went ahead and contacted the headquarters. Shortly thereafter he was terminated from his job. The employee claimed anti-Arab sentiment even before September 11, when management recommended that he anglicize his Arabic name on his business card.

December 3 - McLean, VA:

A Muslim-American employee at an office supply store was standing in the receiving area of the store when he was approached by his direct manager, who demanded to know why he stood there. The manager fumed, "I don't want to see you in the back of the store anymore. I want you out of here. I don't need people like you." The employee was terminated from his job on the same day.

December 12 - Sterling, VA:

When an Arab-American senior database manager working at a contracting company lost his position due to budget cuts, his contractors transferred him to a position within a different company. However, a contracting officer involved in this transfer told the Arab-American employee that he would not be able to begin work in this new assignment before passing a security background check. He was asked to fill out the form 85-P which had a question regarding nationality. He was also asked to provide a copy of his green card. The contractors later informed the employee that they had decided not to transfer him to this new assignment. The contractors then terminated the employee because they had no contracts to assign him.

December 17 - Jenks, OK:

An American Muslim of Iranian ancestry was harassed and fired by his boss, an Indian-American Hindu. In several instances, the boss told the employee that he was "against Muslims," once referring to them as "bastards." He accused all Muslims of supporting terrorism, told coworkers that Islam promotes terrorism and that the Koran encourages Muslims to kill non-believers. The Muslim employee avoided confrontation by ignoring the comments and concentrating on his work. The employee was given no warning or poor evaluation prior to his termination. The company allegedly further denied his requests to speak to senior management about his termination.

December 19 and September - Detroit, MI:

When an Arab-American car manufacturing employee reported a defect in one of the cars to his team coordi-

nator, the coordinator snapped, "This is not my job, it's your job." The Arab-American employee insisted that the defect did, indeed, concern the coordinator. To this, the coordinator lashed out, "Mother f**** Arab, son of a b****." In September, immediately following the terrorist attacks, this coordinator bullied the Arab-American employee with threats, "We're gonna bomb you and your whole place" and "I know what you have said about the terrorists! F*** you damn Arab!"

December 19 - Western Wayne County, MI:

An Arab-American woman was terminated from her position as an assistant teacher based on what her academy claimed to be "conduct inconsistent with the principles of the ... program, violation of policies and repeated insubordination." The assistant teacher explained that she had repeatedly been misled in regards to the hours that she was to work and the salary that she was to make. She also claimed that she signed her termination papers under false pretenses. After the claimant was granted an appeal hearing, her position was restored.

December 21 - Fairfax, VA:

An Egyptian American worked as head chef of a country club for nearly four years when he was suddenly fired. One evening, the club's general manager saw the chef take some of the leftover food, which was both common and permitted among the country club staff. "You stole the food and this is not allowed," the general manager accosted the head chef before firing him. Two days prior to this incident, the club's banquet manager voiced his notion that most of the assailants behind the terrorist attacks were, in fact, Egyptian.

January - Undisclosed City, MI:

Two Arab-American employees contacted ADC claiming discrimination and harassment by their employer, who had terminated their jobs. Both individuals cited numerous instances where their supervisor verbally harassed them and both claimed that they had been terminated unfairly.

January 8 - Washington, DC:

An Afghani janitor at a Georgetown restaurant began facing harassment from the restaurant's chef, who nicknamed him, "Taliban," and spoke to him in offensive tones. The entire week before he was terminated, he was stripped of his working hours. Finally the chef fired the Afghani janitor for allegedly having an argument with the restaurant's manager.

January 31 - Fairfax, VA:

An Egyptian American worked as senior accountant for one year before he was unexpectedly terminated. Before September 11, the employee alleged that his work performance was excellent and his company was pleased with him. He had been promoted and received bonus vacation time. After September 11, the employee encountered hostility at the work place. At the end of January, he was called into his employer's office and told that his job would be terminated, effective immediately. He was told to leave the office.

January 30 - Laurensville, GA:

A Muslim-American teacher at a daycare center, who wears a hijab, was fired after the center's director alleged that she discriminated against her students. The director apparently felt as though the teacher deferred to the Muslim children and showed unfairness toward the non-Muslim students. The teacher denied these accusations. She had taught at the school for two years and never before faced such criticism of her performance. However, during Ramadan, the director mentioned to the teacher that three parents had complained to her, feeling uncomfortable that the teacher was fasting during the day.

February - St. Cloud, FL:

An Arab-American employee was fired after working four months at a company. When he asked for the reason for his termination, the company avoided answering his questions. Only when pressed for an explanation did they tell him that the termination was due to a failed evaluation. However, approximately two weeks prior to this, he had received a \$2.00 an hour raise and a positive evaluation. When the employee first joined the staff, a supervisor mentioned to him that the company's president did not want him hired, stating that, as an Arab, he would not likely take orders from a woman. During the four months, he had overheard offensive anti-Arab slander from coworkers on several occasions.

February 21 - Auburn Hills, MI:

After an Arab-American employee was terminated from her position at a manufacturing plant, she was escorted outside by security. She waited outside the gate for two hours in the rain before security allowed her to claim her personal belongings from her office. According to the employer's supervisor, the reason for the termination was his allegation that the employee returned late from her break on two consecutive workdays. The employee denies this allegation.

II. EDUCATIONAL DISCRIMINATION

The attacks of September 11 immediately brought about a major outbreak of hate crimes and discrimination against Arab-American students, who encountered hostility and harassment from kindergartens to college campuses across the country. On September 11, and the days and weeks that followed, students reported physical assaults, death threats and overt ethnic and religious bigotry. Students were beaten, cursed, kicked, spat upon and insulted. There were knife attacks, bomb threats, and vandalism. Many Muslim girls reported having their head covering pulled off. Teachers and

other students made fun of their Arab names and made obscene and demeaning remarks. Students were harassed in classrooms, hallways, cafeterias and restrooms, on school buses and walking home from school. Sometimes teachers, administrators and coaches were more of a problem than the other students.

Arab-American students, even young children in elementary school, were blamed for, or seen as associated with, the attacks. A 5-year-old came home from school and asked her father, "What does it mean, terrorist? The other kids called me a terrorist." Some school officials actually went as far as calling the police or FBI to investigate students.

A great many Arab-American parents kept their children home from school. Islamic schools shut down after repeated threats. Arab-American Christians took care to wear Christian symbols prominently, in order to ward off anti-Islamic attacks. Arab-American students who spoke out in political discussions were met with hostility and intimidation. Parents reported that their children were showing symptoms of stress, fear, tension, reluctance to go to school, bed-wetting, anger and combativeness. Many felt stigmatized by being associated with the hijackers.

ADC advised educators, as well as business people and community leaders, to take preventative and remedial measures, to make it clear that Arab Americans in general were not to be blamed for the actions of a handful of people. Schools were urged to set up guided discussion groups for students to air their feelings about the September 11 attacks and hold special classes about Arab Americans, the Arab world and Islam.

Some schools took immediate action to prevent incidents, by establishing a "zero tolerance" policy on discrimination, and taking corrective action when incidents did occur. Some other communities were less successful. ADC received reports that some school officials failed to respond to minor incidents and allowed them to escalate to the point of physical attacks and fights. Apparently, students with anti-Arab attitudes at times felt they could express their enmity with impunity. Some school officials seemed to be in a state of denial, not responding to complaints and claiming that there were no problems in their districts.

U.S. Secretary of Education Rod Paige sent a "Dear Colleague" letter to every school superintendent and college president in the country. He called on them to prevent threats, violence, and harassment, which are "unconditionally wrong and will not be tolerated in our schools." He emphasized that "our feelings and anger must not be directed at innocent Arab Americans." Significantly, he reminded educators that as recipients of federal financial assistance, they have the responsibility under the Civil Rights Act to provide students with "an educational environment free of discrimination." A racially or ethnically hostile environment, which is "encouraged, accepted, or tolerated by a school, college, or university," is unlawful. That type of educational environment denies students an equal right to the benefits of education and can be the basis for a formal civil

rights complaint with the Department of Education (DOE). This comprises all institutions receiving federal funding, including libraries, vocational training facilities and others. This strong action by the DOE was certainly influential in setting limits to the harassment in schools and strengthening the commitment of school officials to taking active measures to address the problem.

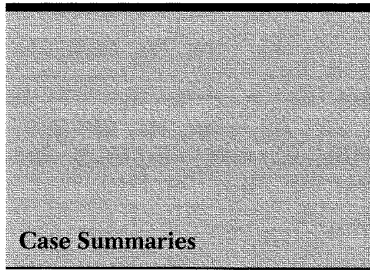
Many schools responded to the crisis in an admirable fashion. In Detroit and Dearborn, cities which have the largest Arab-American populations, few incidents were reported. Arab-American leaders there have an established working relationship with city, school and police officials and with other community organizations. As a result, they were able to prevent an outbreak of anti-Arab incidents. ADC Michigan Director Imad Hamad praised the school system, "They immediately attended to the crisis and were on top of the issue. Unlike the Gulf War, there were no major incidents. Problems were contained." The Washington, D.C., schools office for Multicultural Education and Civil Rights Compliance asked for a meeting with ADC and initiated a thorough program for teachers from all schools in the district. ADC assisted in the planning of training workshops on Arab Americans and Arab culture.

Preventing anti-Arab discrimination suddenly became a major educational issue. The National Education Association, Educators for Social Responsibility, the National Coalition of Education Activists, the Early Childhood Equity Alliance, the Colorado State Board of Education, the Connecticut Department of Education, *Education Week*, Teaching Tolerance, *Cobblestone* magazine, children's TV production companies, the U.S. Army Equal Opportunity Management Institute, mainline religious denominations, and many other organizations and publications joined the effort to combat hate crimes and discrimination.

In Boston, the ADC chapter helped organize a major regional conference for educators. ADC's Philadelphia chapter began systematically to set up teacher training workshops in each school district in southeastern Pennsylvania and southern New Jersey. Police chiefs in several Maryland counties invited the Baltimore ADC chapter to hold classes for their officers and police cadets. The Atlanta chapter worked with the DOE regional office to take programs into the schools and get involved in issues

of discrimination. Schools and educational associations everywhere reached out to ADC chapters for speakers, resources and advice. Requests came in from everyone from Girl Scout troops to Sunday school classes, and from the Elks to the United Way.

As time passed, fewer incidents were reported, but are still more frequent than before September 11. Parents continued to call in with worried stories about a climate of hostility at their children's schools, which only occasionally broke into incidents of overt ethnic hostility. Problems have been contained but lingering distrust and underlying enmity remain in many places.



Unless otherwise noted or indicated, these cases were reported directly to ADC.

I. Physical Violence and Threats

September - Tucson, AZ:

On the University of Arizona campus, a freshman's head was bashed into a brick wall after leaving class. (*Arizona Daily Wildcat*, 9/17/01)

September - Oakland, CA:

A Muslim student reported that someone had snatched the hijab from her head. (*San Jose Mercury News*, 9/20/01)

September - Woodland Hills, CA:

At Pierce College, two students wrote "die" across a sign belonging to the college's Persian club. A fight

broke out immediately following the incident. (City News Service of Los Angeles, 9/13/01)

September - San Diego, CA:

Someone tore the hijab off the head of a Muslim student at the University of California, San Diego. (*The San Diego Union-Tribune*, 9/15/01)

September - San Diego, CA:

A 17-year-old girl reported that students and teachers made fun of her culture, religion, and "everything I believe in." She felt deeply discouraged and changed schools as the result.

September - Detroit, MI:

A 14-year-old daughter of Palestinian immigrants received death threats from her fellow high school students. (*Toronto Star*, 9/15/01)

September - Union, NJ:

A Sikh student at Kean University reported that someone had filled a garbage can with water and hooked it to his dorm room's door, so that it tipped when the door was opened. (*The Record*, Bergen County, 9/26/01)

September - Denton, TX:

A University of North Texas graduate student found the tires on her car slashed. (*Fort Worth Star-Telegram*, 9/17/01)

September 11 - Tempe, AZ:

A Muslim student was pelted with eggs at Arizona State University. (*Arizona Daily Wildcat*, 9/17/01)

September 11 - Tucson, AZ:

Following a threatening phone call, the 50 students and seven teachers of the Islamic Center of Tucson were sent home and the building was closed for the day. The unidentified caller said, "I know you are very happy for what happened. Be careful." (*Tucson Citizen*, 9/12/01)

September 11 - Berkeley, CA:

Muslim and Arab-American students at the University of California, Berkeley campus, allegedly received telephone death threats and hate mail. (*The Daily Californian*, 9/13/01)

September 11 - Lake Elsinore, CA:

A teacher allegedly told his class, "All Muslims are terrorists." When obliged to correct his statement, he

resentfully turned to a 17-year-old Arab-American girl and said, "There! Does that make you happy?" Several boys had also harassed this particular student. One insulted her, "You're a f***** dirty Muslim." Another girl hit her over the head with a plastic water bottle and wanted to fight. The school failed to respond adequately in order to change this atmosphere.

September 11 - Santa Clara, CA:

The Granada Islamic school closed after being threatened and harassed by cars driving past the school. The motorists blared their horns and shouted curses. (*The San Francisco Chronicle*, 9/12/01)

September 11 - Southland, CA:

Students surrounded a female student and taunted her to "go back to wherever she came from." (*City News Service of Los Angeles*, 9/11/01)

September 11 - Bloomington, IN:

Anti-Muslim comments and signs were reported at Indiana University in Bloomington. (*Courier Journal*, Kentucky, 9/14/01)

September 11 - New Orleans, LA:

A caller left a threatening message on the answering machine at Masjid Al-Rahma at Tulane University. "You're going to get it," the caller threatened. (*Times-Picayune*, 9/12/01)

September 11 - Detroit, MI:

Vandals broke windows of the Muslim Students Association office at Wayne State University. (*The Detroit News*, 9/13/01)

September 11 and October - Detroit, MI:

A 15-year-old Indian-American girl was slammed into a wall of lockers and called a terrorist. In October, a boy kicked her in the shin and insulted her. The assailant's girlfriend stood by laughing. A week later, a group of boys harassed the victim and her friend. They reached beneath their hijabs and tugged at their hair. (*Detroit Free Press*, 11/6/01)

September 11 - Kansas City, MO:

An Islamic school closed for the day after being flooded with telephone threats. (AP 9/11/01)

September 11 - Saint Louis, MO:

An Islamic school closed after telephoned threats of

retaliation for terrorist attacks. (AP 9/11/01)

September 11 - New York, NY:

Vandals threw fresh pork chops onto the playground of a Brooklyn Islamic school, the largest Islamic school in New York. A few days later, a man trespassed onto the campus and began screaming, "You're next! You're next!" to the over 600 students, grades K-12. (*New York Daily News*, 12/23/01)

September 11 - Raleigh, NC:

A female Muslim student wearing a hijab was spit on. Another student was threatened, "I'm going to beat the crap out of you after class for what your people did." (*Raleigh News and Observer*, 9/12/01)

September 11 - Beavercreek, OH:

An Islamic school received four anonymous phone calls threatening the school. (*Dayton Daily News*, 9/13/01)

September 11 - Undisclosed City, TX:

Before he learned of the terrorist attacks, a professor of Middle Eastern language and culture at the University of Texas was spit on by a passerby.

September 12 - Fremont, CA:

A Sikh student was verbally harassed and physically assaulted at his high school. (*The San Jose Mercury News*, 9/20/01)

September 12 - San Francisco, CA:

A college student of North African descent reported that "Every telephone pole on campus had a sign reading 'Kill All Arabs!' or 'Shoot an Arab today — it's open season.'"

September 12 - Undisclosed City, FL:

A school affiliated with the Islamic Center of Northeast Florida closed for the day after receiving several threatening phone calls. (*Florida Times-Union*, 9/13/01)

September 12 - Undisclosed City, GA:

An ADC staff member's sister-in-law left Georgia State University campus in tears because of anti-Arab remarks by other students.

September 12 - Omaha, NB:

A University of Nebraska employee, who is a Muslim, received a threatening email, which read, "You must be put to death. I will go out of my way to kill every man,

woman and child that is even part of your people. You must be treated like the savage you are.”
(*Omaha World-Herald*, 9/13/01)

September 12 - Raleigh, NC:
Passengers in a car hurled pebbles at a female Muslim student on her way to campus. (*Raleigh News and Observer*, 9/13/01)

September 12 - Lakewood, OH:
Police picked up a 24-year-old man dressed in a camouflage shirt after he trespassed onto Lakewood High School property. He allegedly said something to school security about shooting Arabs. (*Cleveland Plain Dealer*, 9/13/01)

September 12 - Milwaukee, WI:
An Islamic school canceled classes after receiving six threatening phone calls. (*Milwaukee Journal Sentinel*, 9/13/01)

September 12 and 14 - Fort Worth, TX:
Three middle school students harassed and threatened a 13-year-old schoolmate from India. The group of boys had thought the student was Muslim and threatened to shoot and kill him. When another student alerted the school’s administrators to the situation, the three were taken into custody and suspended from school. (*Fort Worth Star Telegram*, 9/18/01)

September 13 - Oakland, CA:
A Saudi-Arabian student in an ESL program was harassed and threatened by a fellow student in the school’s cafeteria.

September 13 - Riverside, CA:
A community college student said six men approached him outside the campus computer lab to ask if he was Arab. He responded affirmatively and one of the men spit at him before walking off. (AP, 9/15/01)

September 13 - Denver, CO:
At the University of Denver, a handmade anti-Muslim flier was attached to a residence dorm door. (*The Denver Post*, 9/13/01)

September 13 - Arabi, LA:
Vandals lobbed two rocks through a window at a local Islamic school. (*The Times-Picayune*, New Orleans, 9/18/01)

September 13 - Dearborn, MI:
A Henry Ford Community College instructor entered his philosophy classroom with a copy of a book entitled, “Why I Am Not a Muslim” and began to criticize Islam. A 21-year old Muslim student spoke up and challenged his statements, insisting that Islam teaches neither violence nor hatred. The student and professor argued back and forth and, finally, the professor grabbed the student and pushed him out the classroom door. He then gathered up the student’s belongings and threw them out behind him.

September 13 - Eugene, OR:
Someone wrote the word “die” over Afghanistan on a world map hanging up in the study abroad office of the University of Oregon. The map was immediately taken down.

September 13 - Fairfax, VA:
A father reported that Muslim high school students had been harassed — “push and shove stuff.” On the more positive side, his daughter’s class had a thoughtful discussion of the meaning of patriotism and the flag.

September 14 - Undisclosed Location, USA:
An Arab-American high school student on the school football team was harassed by opposing team members. One player threatened the student, “You f***** Arab terrorist, you bombed us Americans and now I am going to kill you.” The referee observed the incident but refused to take any action in response.

September 14 - Los Angeles, CA:
The University of Southern California Muslim Public Affairs Council reported that some students have been harassed on campus and some women have had their veils pulled off. (NBC-4 News, 9/14/01)

September 14 - New Orleans, LA:
An Arab-American teacher reported that “all school children” felt the pressure of verbal threats. One of her students dropped out of school “because she wears a hijab and was afraid.” There was an incident at one high school and the atmosphere led school officials to close down the system. In a later report, school officials denied that schools were closed because of the threat of anti-Arab incidents.

September 14 - Dearborn, MI:
Fordson High School, which has a large Arab-American

student body, was evacuated after a bomb threat. Police investigated, but found nothing. (*Detroit Free Press*, 9/18/01)

September 14 - Kent, OH:

A professor felt threatened by the attitude of students who refused to continue with a project dealing with U.S. business ties to Arab countries.

September 15 - Arabi, LA:

Just after midnight, two young men, ages 20 and 15, approached a local Islamic school in their pickup truck with a pellet gun sticking out of their window. A security guard saw the men approach with the gun aimed at the windows of the building and alerted police. The men were arrested before they could fire any shots. (*The Times-Picayune*, New Orleans, 9/18/01)

September 15 - Albany, NY:

Two college students of Middle Eastern heritage were hit in the face. (*The New York Times*, 9/19/01)

September 15 - New York, NY:

An Egyptian-American teacher reported that her school, which serves a large number of Arab-American and Muslim children, would remain closed for several days because of "numerous bomb threats and physical attacks" on the school. Evacuating the school on September 11 was "a madhouse." Each time a girl walked out of school with her hair covered, things were thrown at her and onlookers insulted her, some screaming, "Terrorist! Go back to your own country!" Some of the children who had lived through traumatic experiences in Palestine or Bosnia threw themselves to the ground, crying "They're going to kill us! We're going to die!"

September 16 - Greensboro, NC:

A Lebanese student was beaten by two college-aged men on the campus of the University of North Carolina. The attackers began by pestering the 19-year-old student about the terrorist attacks, yelling, "Go home terrorist!" The men then began to beat the student, hitting him with their fists, twisting his arm and breaking his glasses. (AP, 9/19/01)

September 18 - Palmdale, CA:

A note sent to a public high school said the World Trade Center attacks would be avenged with a massacre of Muslim students. The names of five students who would be targeted were listed beneath. Those students

were sent home for their safety. (AP, 9/20/01)

September 18 - Boulder, CO:

An international student was walking across campus during the evening when he was followed and threatened by four males. The group first stopped him and asked him why he was in their country. They followed him toward the library and threatened him, saying that he should "watch himself." (*Colorado Daily* via U-Wire, 9/20/01)

September 19 - Boulder, CO:

Anti-Muslim and anti-Arab messages were discovered on the pillars of the University of Colorado's Norlin Library. According to police, the graffiti was written in black spray paint and read, "Nuke sand niggers," "Arabs go home," and "Bomb Afghanistan." (*Colorado Daily* via U-Wire, 9/20/01)

September 19 - Meadville, PA:

A man with a knife attacked a female high school student of Middle Eastern descent, yelling at her, "You're not an American. You don't belong here." He sliced her finger with a sweeping motion from his three inch blade. He was arrested shortly thereafter. (*The Pittsburgh Post-Gazette*, 9/26/01)

September 19 - Houston, TX:

Two middle school students threatened a teacher of Middle Eastern descent, saying, "We are going to kill you and your family." The students were arrested, issued citations and suspended from school for several days. (*The Houston Chronicle*, 12/14/02)

September 24 - Undisclosed Location, USA:

A mother reported that her eleven year-old Palestinian-American son came home from school in tears. A 7th grade girl on the school bus sneered at him and told him that he should "go back to Afghanistan," provoking the boy to swear back at her.

September 24 - Undisclosed Location, USA:

Children riding a school bus ganged up on and harassed a seven-year-old. One child taunted him, "You're Muslim. You did it." The bus driver interrupted the harassment and the principal took action to "nip it in the bud."

September 24 - Storrs, CT:

A 20-year-old non-Muslim female student at the University of Connecticut wore a hijab to protest the anti-

Muslim harassment which had been taking place on campus. A classmate harassed her and threatened to kill her. (*The Hartford Courant*, 10/3/01)

September 24 - New York, NY:

An eleven-year-old Syrian-American boy in the 6th grade reported that other students had made fun of his Arabic name.

September 25 - Tempe, AZ:

Three people pushed to the ground a 19-year-old Arizona State University student from India. The group then punched and kicked him while making remarks about his national origin. Afterwards, the student declined medical attention. (AP, 9/26/01)

September 28 - Lexington, KY:

An Indian graduate student was assaulted shortly after leaving a school sponsored party welcoming international students on the University of Kentucky campus. The student was stopped by a black pick-up truck, which slowed down in front of him. Thinking that the motorist needed directions, the graduate student approached the car. Without a word, a passenger in the car struck the student across the jaw. (*Kentucky Kernel*, *University Wire*, 10/3/01)

September 28 - Lexington, KY:

A Palestinian student at the University of Kentucky had just delivered a pizza to the dormitories when he saw one of five men remove the pizza sign from the top of his vehicle. The men then turned to the student; one of them struck his face as the rest pushed him. The student suffered a swollen right eye and a twisted left ankle. The attackers yelled epithets and slurs at him and told him he shouldn't be in the country. (AP, 10/4/01)

September 30 - Vancouver, WA:

A man was arrested after leaving a threatening message on a local Islamic school's voice mail. The man also called mosques, schools and cultural centers threatening to blow them up in retaliation for the terrorist attacks. (*The Vancouver Sun*, 10/5/01)

October - Detroit, MI:

A Muslim high-school student, wearing a hijab, was slammed into a locker, kicked and verbally abused. Another Arab-American girl was kicked and tripped by the same assailant, who cursed her and told her, "Go home, you terrorist." (*The Boston Globe*, 10/19/01)

October 1 - New York, NY:

A student in the Columbia University library was verbally harassed and things were thrown at her. Another student of Indian origin was reportedly "jumped" by a group as he was getting off a bus and suffered two black eyes. A Pakistani student wearing a hijab was followed off campus and harassed by other students.

October 15 - Seven Hills, OH:

An Egyptian-American student had to endure taunts from other boys at his school, who said that he "looked like Osama." The boy is from a Coptic Orthodox Christian family, whose church sold American flags and red-white-and-blue mugs and lapel pins to raise money for the families of 9/11 victims.

October 18 - Detroit, MI:

Students in the Detroit area reported, "enduring racial slurs, dirty looks, a feeling of isolation and fear." One student said, "Before the attacks no one ever said anything derogatory to me ... Now all I hear in the halls at school are people saying, 'Let's kill all those Arabs. I hate those camels.'" Some principals found it necessary to "discipline a handful of students spouting inappropriate remarks." (*Detroit Free Press*, 10/18/01)

October 23 - Poughkeepsie, NY:

A high school student harassed and attacked another student, yelling, "I hate you, you dirty Afghani" as he pelted him with rocks and plants. The teachers reprimanded both students. The attacker punched the Arab-American student in the mouth, causing him to bleed. The student punched back. Both students were suspended. Although the Arab-American student's mother has met with the principal, the superintendent has refused to return her calls or meet with her.

October 29 - Bloomington, IN:

Two female Malaysian students studying at Indiana University were threatened and physically assaulted.

November - Westerville, OH:

Ten-year-old twin Palestinian-American boys were harassed by fellow students, who called them "terrorists" and taunted them that "your people killed Americans."

November 8 - Baltimore, MD:

A father reported that his two sons had been subjected to ethnic and religious harassment by other students,

who called one of them a “dirty Muslim” and picked fights resulting in several suspensions. One son required medical treatment for bloody cuts to his head and face. The school failed to take preventive measures after the first incidents.

November 13 - Rockville, IL:

Two middle school students attacked and badly beat an Arab-American student as he was opening his locker. The two shouted, “Arabian Muslim” before beating him. The victim’s mother called the police department and filed a report against the two attackers. The school also suspended the two students for ten days. The boy had been beaten once before earlier in the semester after the September 11 attacks.

December and January - Glen Burnie, MD:

Two Arab-American brothers began receiving verbal threats at school from a group of five other students. The elder of the two brothers repeatedly told the principal, who made light of the threats. He allegedly stated that it was not his responsibility, but to “call the cops.” On January 15, during the bus ride home, the group again began to pester the two brothers. A teacher was present and advised the brothers that they should have their mother drive them if they were having trouble on the bus. The brothers stepped off the bus at their stop, followed by the gang of students behind them. Two of them pinned the elder brother’s arms behind his back as the others began beating him. They slashed his face with a sharp object, which resulted in a wound requiring eight stitches. A passing motorist pulled over after witnessing the scene and rushed to the two brothers’ aid. As they were leaving, the five attackers threatened the younger brother that he would be next.

January 9 - Westland, MI:

An Arab-American parent reported that his son had been repeatedly harassed by other boys from his high school. There had been hostile phone calls, including threats of beatings and insults such as, “Retard...motherf***** ... you suck, A-rab ... bin Laden.” Harassment in the heat of a sports event (and without an overt ethnic element) led to a fight and suspensions from school. Some of the calls were from a former student volunteering as a coach. The school terminated his position as coach.

February 2 or 3, Cooper City, FL:

Nur-Ul-Islam Academy, a mosque and school for

children, kindergarten through 12th grade, was ransacked by vandals who knocked textbooks off shelves, spilled glue on the rug, and turned over a can of crimson paint. The vandals also wrote the word “sex” in puffy paint on a desk. (The *Miami Herald*, 2/4/02)

February 25 - Undisclosed Location, USA:

A parent reported that her 7th grade son was harassed by his fellow students. She feared that verbal threats were moving toward physical assaults. Her son asked to be home-schooled and so she withdrew him from the school.

February 25 - Birmingham, AL:

An Arab-American parent reported verbal and physical abuse of her daughter in a Christian high school. The girl, who has epilepsy, was pushed against a locker. One teacher reportedly told a class, “All Arabs hate America.” The mother was informed of numerous anti-Arab and anti-Muslim remarks by school personnel.

February 27 - Undisclosed City, TX:

An Arab-American parent reported that her five-year-old son was attacked and sexually harassed by other children at school. They pulled his pants down, played with his genitals, and stuck his head in the toilet. The family was the target of vandalism after September 11 and the mother believes the boy was harassed because of his ethnicity. He now has sleep problems, wets his pants, and throws up when he has to go to school. The principal denies that there are any problems.

2. Harassment and Bias

September - Dearborn, MI:

An Iraqi immigrant was told he could no longer be a lunchroom volunteer at his children’s elementary school. (The *Boston Globe*, 10/19/01)

September - Buffalo, NY:

Someone took a trash sign and placed it on the door of an Arab student in the resident hall of his university. (AP, 9/25/01)

September - New York, NY:

A school in Queens had always allowed a Pakistani

mother, who accompanied her young daughter to kindergarten each day, to use an empty room for afternoon prayers. After the terrorist attacks, the mother was surprised to see that the room was locked and unavailable. She was told that the reasons behind the locked room were new "security purposes." (*Newsday*, New York, 12/27/01)

September - Middlesex, NJ:

An ESL student at Middlesex Community College walked out of class following bias comments his teacher reportedly had made. The student alleged that, during class and in front of 15 students, the teacher turned to the one student and asked derogatory questions about Islam and Arabs. She joked about the hygiene of Arabs, which made the class laugh and humiliated the student. The student contacted the school administration, which responded quickly to the issue.

September 12 - Columbia, SC:

A female student from Yemen studying at Midlands Technical College was visited by the FBI after one of her professors allegedly called in to report her "suspicious behavior," this behavior being her one absence from class.

September 12 - Ferndale, MI:

A tennis coach allegedly made derogatory and inflammatory comments about Palestinians to his tennis team. According to the school district superintendent, the teacher's remarks advocated "bloodshed and bombing in the Middle East, [where some of the students had relatives] that Palestinian children should be shot/killed." The coach also made "sexist comments about a female president..." In a separate incident, the coach, who also teaches an adult education English and social studies course, refused to teach because one of his students wore traditional Muslim garb to the classroom. The teacher insisted that the student be removed from the school and interrogated. The teacher was suspended with pay after the two incidents and resigned before a disciplinary meeting was scheduled to take place. (*The Oakland Press*, 11/21/01)

September 30 - Philadelphia, PA:

A 13-year-old student was expelled from his middle school by the vice principal, who had interrogated him on three separate occasions with questions such as, "Where are you from? Do you know someone named Osama? Is there anyone in your family by that name?"

The vice principal called 911 and requested that the police search the student's locker.

September 13 - Philadelphia, PA:

An Arab-American teacher in a Christian school was told by the principal that another teacher had been hired to replace him and that they do not want him to return. When the teacher asked for a reason, the principal stated bluntly, "Because you're Arab."

September 12 and 18 - Austin, TX:

Classmates subjected a high-school student of Iranian origin to verbal harassment during a lesson. The abuse and taunting was such that the student fled from the room in tears, yet the teacher continued lecturing without taking any action. The school's assistant principal and the executive assistant to the superintendent both told the girl's parents that nothing could be done about the situation. She was subjected to verbal harassment again on September 18, resulting in her leaving the room in tears. Likewise, no action was taken by either the teacher or the school to address the issue.

September 14 - New York, NY:

In Brooklyn, a 17-year-old Palestinian-American high school student reported that her health teacher allegedly told her class that "Palestinian children all want to become terrorists." (*CNN*, 9/15/01)

September 15 - Falls Church, VA:

An Arab-American mother was called to her daughter's school for a meeting about a statement made by the daughter about the attacks. The girl has "strong feelings about Palestinians," but denied saying anything inappropriate. She was "terrified," did not want to go to school, and came down with a high fever. The previous year, the girl had been harassed by other students and received threatening notes. Her locker was also broken into. The school did nothing about those incidents.

September 15 - Undisclosed Location, USA:

A student in a private school reported that two of his teachers had made insulting remarks about Arabs. He was discouraged and believed that protests would be futile. "I know the teachers will lie and fail me," the student admitted.

September 18 - Alexandria, VA:

An Arab-American teacher reported that one of his

sixth grade students had told him, "My daddy said you were to blame for the bombing."

September 18 - Orange County, CA:

A college instructor at the Costa Mesa college offended four Muslim students during a lecture on terrorism and Islam. The students reported that the professor accused them of being "terrorists," "Nazis" and "murderers" and that his discussion had crossed the line of scholarship into discriminatory speech. After this incident, the professor was put on paid leave while an investigation ensued. In December, the professor was reinstated.

September 20 - Hamburg, NY:

An Arab-American parent formally complained to her daughter's principal that a teacher was "systematically harassing" her 16-year-old daughter and making fun of her Arabic family name. On one occasion, the teacher pointed his finger at the student and said, "See what your people are doing."

September 21 - Chicago, IL:

An Arab-American community leader reported that Arab American teachers were being taunted by other teachers, and students taunted by other students. One teacher made the comment that people commit acts of terrorism "because of their religion." One principal sent the Arab Americans home because of this tension.

September 24 - Undisclosed City, CT:

Two teachers "lashed out" at Arab-American and Muslim students in the classroom, associated them with the attacks, and demanded that they go home. School Board members were said to disagree about handling the situation; some wanted a public discussion, others wanted to keep it low profile in an executive session.

October - Detroit, MI:

A student contacted ADC explaining that he had been continuously denied, for the past two years, the privilege of serving as a Graduate Teaching Assistant (GTA) by the economics department of Wayne State University. The student had all of the qualifications for the position, including a bachelor's degree in economics, a post-graduate degree in economics and plans for a doctoral degree in economics. The student claimed that all of the students had been granted a GTA, except for him, including under-qualified students. Without a GTA the student would be unable to complete his

Ph.D. The student believed that he had been targeted for unfairness and discrimination.

October - Sterling Heights, MI:

Three young Arab-American high school students were expelled from high school after engaging in a physical confrontation with a non-Arab student. According to the information ADC received, the non-Arab student provoked the Arab students by shouting racial slurs at them. The slurs resulted in the altercation between the young men. The three young Arab males admitted to school officials that they were wrong to engage in the altercation and were willing to accept any disciplinary actions that would be taken against them. However, they did not anticipate expulsion, which was the punishment rendered to them. Such punishment was not only unfair, as it was not imposed on the non-Arab student involved, but it also posed the threat of jeopardizing the academic future of the young men.

October 1 - Boynton Beach, FL:

A mother reported that, when a volunteer speaker came to the 8th grade class of her 13-year-old daughter, he made comments such as "Muslims think we are the devil. They hate us. They want to die and go to their Mohammad. That's why we will keep on killing them." During his presentation, the girl was embarrassed and hid her face. The mother reported, "Now she doesn't believe anything I say about Arabs and Muslims. She doesn't believe anyone now." The volunteer later apologized privately, but offered no such apology or explanation to the class.

October 1 - Vienna, VA:

An Arab-American engineer working in a public school was asked by his supervisor to complete a daily log, outlining his activities for every 15 minutes and to deliver it to his supervisor's desk every morning. To the engineer's knowledge, no other employee was asked to do this. He had also received a warning letter from his coordinator, his first and only poor evaluation since he began working at the school a year ago.

October 2 - Bellevue, WA:

A Muslim student at City University corrected his professor during a lecture. The professor allegedly stated to the class, "We are at war against Jihad!" To this the student responded, "We are not at war against Jihad, we are at war against terrorists." The next morning, the student received a call from this university instructor, who threatened to call the FBI should he attend class that day.

II. EDUCATIONAL DISCRIMINATION

October 9 - Long Island, NY:

A community college professor was given a poor evaluation by the chairman of the department who stated that the reason being a "cultural clash" between the professor, who is Arab-American, and the majority of the school. The chairman advised the professor that he should wear a cross around his neck. The professor was also not permitted to participate in an annual school activity, in which he has participated in past years. His employment contract was not renewed.

October 10 - Michigan:

A Muslim middle school teacher lost her job shortly after the principal of her school openly expressed that he "did not want anyone but Christians" working for him. During the teacher's dismissal from the school, she was told not to seek legal aid over this matter or else they "would find a way to publicly humiliate [her]." Earlier, the teacher's Pakistani husband had visited the school to pick up a set of keys from her. After checking in at the office, he was ordered to leave or else he would be arrested. The husband did not know the reason for the order, for he had completed all visitor check in requirements and was there approximately five minutes.

October 25 - Undisclosed City, CA:

A 16-year-old Arab-American high school student with a record of behavioral problems was suspended for disruptive behavior and for having made disparaging remarks about the United States before September 11, after a teacher engaged him in a political discussion. He was told that, because he was away from school on the morning of September 11, two teachers believed that he "knew something" about the attacks. The student was, in fact, at a doctor's appointment. The principal called the FBI to investigate him. FBI agents then visited the family and decided that the school's response was "an overreaction."

October 26 - Pittsburgh, PA:

A Jordanian student nurse made a paper airplane with Arabic writing on it during class a few weeks before the September 11 attacks. On October 19, he was called into the office of the director of the Nursing program where he was questioned about his behavior. The police were contacted and came to the school to question him. The student began to cry, which led the director to suspend him and recommend counseling.

November 20 - Washington, DC:

An education graduate student reported hostile anti-Muslim attitudes among teachers at a middle school. The teachers had made accusations and very hateful comments, saying among other things, "America needs to take revenge against Muslims." The graduate student heard "more complaints about teachers than about students."

November 25 - Undisclosed City, MD:

An Arab-American mother reported that her eleven-year-old son was involved in a food fight and was the only student punished. The school counselor later apologized for the one-sided punishment, but allegedly also asked the boy, "Were any of your family involved in the September 11 attacks?" The school denies that the counselor made this remark.

November 26 - Jacksonville, FL:

A high school student reported that his teacher had made hostile remarks about Muslims and treated him with disrespect. The teacher's comments were reportedly in the vein of, "I know about Muslim people. They're just doing s*** all over the world." The student asked, "Are you making fun of my religion?" to which the teacher reportedly replied, "No, I'm making fun of you." The student arranged to change classes; afterwards he transferred to another school.

November 29 - Oakland, CA:

An ESL school teacher of 13 years was fired, allegedly for his efforts to reach out to a Saudi Arabian student. The student had faced harassment and intimidation from fellow students with little help from the college's administration. His teacher urged the administration to respond and address the issue, wrote to the board of directors and met with the president of the college. The Arab student returned home and the teacher was terminated by the administration.

December - Chicago, IL:

An 18-year-old Muslim high school student and Junior Reserve Officer Training Corps (JROTC) member suffered harassment from his teachers. One teacher told the student that his beard "looked like s***." He was also advised not to wear his ROTC uniform because he "made the JROTC look bad."

January - Toledo, OH:

An Arab-American University of Toledo professor con-

tacted ADC to report that he had been denied teaching privileges based on allegations that he was anti-Semitic and sexist. The professor taught at the University of Toledo for 35 years, during which time the faculty and administrators repeatedly attempted to cancel his tenure. Although the university Grievance Appeals Council recommended that the professor be cleared and returned to his position, the administration refused to assign him a teaching schedule and withheld his salary payment. The professor later contacted ADC to report that he had been allowed to resume teaching, although the situation had not yet been completely resolved.

January 3 - Fairfax County, VA:

A non-Arab mother complained that she and her children encountered repeated cases of political, ethnic and religious bias at school. Her son's middle school librarian told her that an award winning teen novel about a Palestinian-American girl was removed from a reading list when an Israeli-American falsely claimed that the book was "racist." Her daughter's history teacher harshly rejected her comments about U.S. Middle East policy and subjected her to a lecture about the Holocaust. The mother also reported that her other daughter was taught at a middle school that, before the State of Israel was established, "nothing was there." An elementary school librarian allegedly insisted that one Palestinian-American second grader was "from Jordan" and complained that he was "so much trouble" for wanting to do his home country report on Palestine. The mother persuaded a 6th grade teacher to assign students the project of writing post cards in support of Iraqi children; the principal vetoed the project.

January 7 - Baltimore, MD:

An Arab-American student was striving for a "Perfect Attendance" record at school but fell short after missing classes for the Eid holiday. In this school system, Muslim holidays did not have the same recognition as Christian and Jewish holidays. Additionally, one school board member allegedly made the comment that "Christians are better than Muslims."

January 16 - San Luis Obispo and Oakland, CA:

Schools came under criticism from conservative Christian parents who objected to lessons on Islam. Students in a world history and geography course engaged in role-playing exercises in which they dressed in "Muslim robes," adopted Islamic names, read verses from the

Koran, studied Islamic proverbs, staged make-believe pilgrimages to Mecca, and pretended to be "warriors fighting for Islam." Educators insisted that the schools were utilizing routine teaching techniques in order to teach "about Islam" and were not promoting Islam as a religion. (*Washington Times*, 1/16/02)

February 1 - Chicago, IL:

Muslim students at North Park University, a Christian university, found a student opinion column in the school newspaper offensive. Afterwards, North Park University responded with a statement of regret and extended an invitation to Muslim students to respond in the opinion column. The school, which has a strong Middle East studies program, took active measures to ensure the safety and peace of mind of Muslim students after September 11. The school also promoted a campus discussion with the theme, "Who is my neighbor?"

February 22 - Los Angeles, CA:

An Arab-American parent reported that his son came home from school in tears asking, "What is a suicide bomber?" The school counselor had questioned him about being a "suicide bomber" and gave him a suicide prevention booklet. The counselor concerns stemmed from the boy's habits of drawing pictures, and because he was distracted and inattentive.

February 27 - Undisclosed City, VA:

An Arab-American parent reported that other parents attempted to prevent him from setting up a Palestine table with a Palestinian flag at the school's International Day.

III. MEDIA BIAS AND DEFAMATION

One of the most troubling aspects of the backlash facing the Arab-American and Muslim communities in the wake of the September 11 attacks is the increased space in American popular culture for defamatory representations and vilification of Arabs, Arab culture and Islam. Such defamation has been a long-standing feature of American culture, as amply documented in the work of scholars such as Edward Said, Jack Shaheen, Michael Suleiman and Yahya Kamalipour, and in previous editions of ADC's *Report on Hate Crimes and Discrimination against Arab Americans*. However, the

space for such defamatory representations, including in our most respected media outlets, has increased significantly since the September 11 attacks. Inhibitions against outright defamation and open verbal attacks on Arabs and Muslims in the media have been significantly lowered, and both the rate of defamation and its intensity increased steadily throughout 2002. Indeed, defamation against Arab Americans, as distinct from hate crimes, discrimination and civil liberties concerns, is the only one of the subjects dealt with in this Report that steadily worsened throughout the 12 months following September 11, 2001, without respite or reasonable hope for improvement.

Arab Americans live in a society in which their friends, neighbors, co-workers and fellow citizens have, for decades, been fed a constant stream of negativity about their ethnic heritage, culture and identity from the mass media. Lacking any other source of information on the subject, what most Americans believe about Arabs, Arab Americans, the Middle East and Islam is shaped by images which come from the entertainment and news industries. Unfortunately, most of these representations are based on stereotypes, clichés, and deep-seated misunderstandings, the effects of which are to make images of Arabs in American popular culture highly negative and often outrightly defamatory. Against this backdrop, the key industries of American mass culture, Hollywood and television, for decades have been bastions of anti-Arab stereotyping, and have consistently resisted positive or realistic representations of Arabs and Arab Americans. Negative representations in popular culture reinforce, and are reinforced by biased and at times hostile journalism in the mainstream news media, academic polemics that urge a confrontational and aggressive approach to the U.S. role in the Middle East, and government programs and policies which are informed by anti-Arab bias. The result is a self-reinforcing vicious circle of negativity about Arabs, Arab Americans and Muslims, who have been all-too-successfully represented as “the enemy” in contemporary American culture. It is this perception that provides the basis for much of the hate crime and discrimination Arab Americans are enduring.

In particular, representations of Arabs and Arab Americans as terrorists in literally hundreds of movies featuring thousands of such characters have, in recent decades, as exhaustively cataloged in Jack Shaheen’s book *Reel Bad Arabs* (Interlink, 2001), cemented a firm connection in the minds of many Americans between Arabs and terrorism. Such images are not countered by positive or even neutral images of Arabs and Arab Americans in our popular culture, in which the Arab who is not a villain or a buffoon (usually a terrorist) is virtually non-existent. This link allowed many people to misinterpret the September 11 attacks as an authentic representation of Arab culture and political opinion, or of Muslim devotion. ADC strongly believes that most of the discrimination Arab Americans face, as outlined in the legal section of this report, is underwritten by the widespread anti-Arab defamation that permeates American culture, including, at times, the discourse and behavior of policy makers and law enforcement officials.

An obvious link between Hollywood representations and the violent backlash of hate crimes in the weeks following the terrorist attacks was the focus of so many attacks on Sikh men. Sikh men typically wear turbans, grow beards and have dark complexions — and indeed, to those who are familiar with the peoples of Asia, traditionally-dressed Sikhs are very distinctive, and entirely distinct from Arabs in appearance. No one familiar with the typical appearances of the peoples of Asia would confuse the two. However, traditionally-dressed Sikh men do resemble the representation of Arabs, especially as terrorists, in many Hollywood films. Indeed, South Asian actors have often been cast in the roles of Arab terrorists in such movies. The fact that so many perpetrators of hate crimes targeted Sikhs, apparently believing them to be Arabs, draws a clear connection between representations of Arabs in American popular culture and the thinking that informed some of the worst incidents in the hate crime backlash.

The most notable feature of the increased climate of negativity facing Arab Americans in the post 9/11 environment has been an increasingly vicious, sustained and coordinated attack by leaders of the evangelical Christian right on Islam as a faith and even on the Prophet Mohammed as an individual. These attacks reached a crescendo in October 2002, when the Rev. Jerry Falwell told CBS’s 60 Minutes program that the Prophet Mohammed was a “terrorist.” Other senior evangelical figures had earlier voiced similar attacks. Pat Robertson, of the 700 Club, said Mohammed was a “killer” and a “brigand,” that Islam was inherently violent, and that the Koran preaches violence. Leaders of the Southern Baptist Convention called Mohammed a “demon possessed pedophile.” The Rev. Franklin Graham, son of Billy Graham and head of Billy Graham Ministries Inc., and who led the prayer at President Bush’s inauguration, repeatedly denounced Islam, calling it “a very wicked, evil religion.” While this campaign of defamation has been criticized in some quarters, the evangelical preachers involved have by no means suffered significant social or political stigmas. The Rev. Robertson’s organization was recently in receipt of many thousands of dollars in federal aid under the President’s faith-based initiative programs. None of these religious figures have been treated as pariahs as a result of their open bigotry, and continue to be seen as legitimate public figures with an important contribution to the national conversation.

The political allies of these right-wing evangelical preachers were also busy spreading the message of fear and hatred against Arabs and Islam. One of the most vile documents to have been published after the September 11 attacks is a pamphlet entitled "Why Islam is a Threat to America and the West," written by Paul M. Weyrich and William S. Lind and published by the Free Congress Foundation. Weyrich is a leading figure in the conservative movement in the United States, founding president of the Heritage Foundation, and widely recognized as one of the most influential voices in Washington on the far right. Their pamphlet, reminiscent of the worst forms of anti-Semitism, states plainly "we do believe Islam is at war with the Christian West, and we are proud to be considered spokesmen for that view." "Christendom is again in peril" from Islam, they warn. The authors pose as experts on, or at least serious students of, Islam but their sources are entirely drawn from two web sites — an extremely obscure British Muslim student site and a virulently anti-Islamic Christian fundamentalist site called answering-Islam.org. Drawing on such impeccable sources, the authors proclaim, "Islam is, quite simply, a religion of war. While there are lax Islamics [sic], there is no such thing as peaceful or tolerant Islam." Moreover, they misinform their readers, "the two principal sources of Islamic belief, the Koran and the Hadith, ooze war and blood." Joining the attack on the person of Mohammed, Weyrich and Lind declare, "The history of Islam has been a history of violence against non-Islamics [sic]. It started with Mohammed himself. Not only did he personally wage war, he repeatedly called for 'hits' on anyone he did not like, in the manner of a Mafia don." Islam, they conclude, "is a religion made for the 21st century — as, perhaps, in some corner of Hell, it was." This characterization of a faith, and a religious minority in the United States, as categorically opposed to Western civilization, bent on its destruction, and probably a tool in the hands of demonic forces, ought to be readily recognizable to anyone familiar with anti-Semitic rhetoric characteristic of the second half of the 19th-century and the first half of the 20th-century.

Indeed, the tone and tenor of the verbal attacks on Arabs, Arab Americans and Islam, as well as their intensity and frequency and the social and political prominence of individuals launching them, make a comparison with American anti-Semitism in the first 40 years of the 20th-century irresistible. The accusations are precisely the same: that a religious and ethnic minority in the United States comes from a religious and cultural tradition that

is flatly incompatible with majority traditions, that it is bent on the subversion and destruction of those traditions, that the minority itself therefore poses a palpable threat, and that there is a connection with demonic forces (this was also implicit in the Rev. Vines' characterization of Mohammed as a "demon possessed pedophile"). It can be no surprise that such attacks come also from similar quarters: extreme right-wing Christian preachers with an ultraconservative political agenda. The Falwells and Robertsons of today are the direct political and intellectual descendants of the Father Coughlins of the '20s and '30s. Given that the attack on Islam is, in its essence, also an attack mainly focusing on Arabs, a further parallel is obvious: that the focus of such rarified fear and loathing has shifted from one group of Semites to another, with all of the bizarre racial anxiety that it suggests. It has long been the case that the principal caricatures and negative stereotypes of the Hollywood Arab have been reminiscent of the main tropes of anti-Semitism. The two favorite Jewish stereotypes of traditional anti-Semites were the rapacious Jewish banker and the wild-eyed, bomb throwing Jewish revolutionary. These calumnies find their contemporary parallels in the all-consuming, but dirty and vulgar, oil sheikh (the favorite Hollywood stereotype of the Arab in the '60s and '70s), which is the updated version of the Jewish moneylender or banker, and the insane Islamic terrorist bomber, the contemporary version of the fanatical Jewish bomb-throwing revolutionary. Indeed, in the first quarter of the 20th-century in the United States and some other Western countries, the words terrorist and Jewish were virtually synonymous (as well as the terms Bolshevik and anarchist, for that matter). The cultural climate confronting Arab Americans and American Muslims in the current moment can probably best be described as a sort of "anti-Semitism lite," an analogous, but as yet, less onerous set of challenges as those facing Jewish Americans in the first 30 or 40 years of the last century.

The irony is that, in addition to the intellectual, political and religious heirs of Henry Ford and Father Coughlin, the forces of extreme right-wing reaction and the paranoid and chauvinistic version of ultraconservative Christianity, the other set of leading voices in the movement to promote fear and hatred of Arabs and Islam are themselves Jewish. Motivated, no doubt, by a profound commitment to Zionism and a misguided sense that promoting anti-Arab bigotry in the United States will serve Israel's interests, several of the leading figures in the campaign of anti-Arab defamation are

Jewish supporters of Israel. Commentators such as Daniel Pipes and Steven Emerson, who have made careers out of attacking the Arab-American and Muslim communities from a right wing pro-Israel perspective, found a greatly increased space for their promotion of bigotry in the post 9/11 environment. Emerson's career had been badly damaged by his numerous false accusations, including blaming Arabs for the Oklahoma City bombing that was later proven to be the work of Timothy McVeigh and declaring that the crash of TWA flight 800 was a result of a bomb. Before the September 11 attacks, Emerson was largely restricted to commentaries in the *Wall Street Journal* and appearances on programs hosted by his friend Geraldo Rivera. Most mainstream news organizations shunned him as a proven charlatan. Following the September 11 attacks, however, Emerson found himself rehabilitated. Even though the attacks did not serve in any way to validate his claims that the Arab-American community and its organizations generally provided a home and front for terrorists groups bent on attacking the United States, Emerson and his supporters were able to falsely claim that he had been vindicated. Emerson published a new book entitled "American Jihad: The Terrorists Among Us," which continued with his long-standing campaign of false accusations, guilt by association and Arab-bashing. He found himself once again welcomed by the mainstream media, including by National Public Radio, which had previously committed itself to not using him as a commentator or an expert on the grounds that he was notoriously inaccurate. In the atmosphere of fear and suspicion generated by the September 11th attacks, Emerson's wild theories once again became cast as legitimate.

Daniel Pipes, head of the "Middle East Forum," emerged as an even more ubiquitous figure than ever in the American media, continuing with his long-standing campaign of accusing all prominent Arab Americans and American Muslims of being extremists and all community organizations of being fronts or apologists for terrorist groups. A classic example of Pipes' techniques was a lengthy attack that he made on the Communications Director of ADC, Hussein Ibish, which was published as an op-ed article in the *New York Post* and *Jerusalem Post* in late March 2002. The column consisted almost entirely of falsehoods and mischaracterizations, as well as a deeply telling departure from his earlier mischaracterizations of

Ibish's views. In a 2000 column, Pipes had absurdly misidentified Ibish as a "fundamentalist," an "Islamist," a "jihadist," and a man bent on the "Islamization of America." In his March 2002 article, Pipes now claimed, "Unlike most of today's prominent Muslim spokesmen, however, the 38-year-old Ibish does not advocate militant Islam. Instead, he pushes a set of far left-wing views." Pipes called Ibish "anti-American, anti-Semitic, inaccurate, and immoral" and demanded that American television programs "close their doors" to him. That preposterous characterization also having completely failed to create a stigma, in September, 2002, in the *National Review Online*, Pipes was reduced to calling Ibish simply a "lout." Pipes' desperate quest for an epithet which would effectively discredit Ibish is indicative of his entire modus operandi, which consists of little more than unfounded slanders. In September 2002, in this same spirit, Pipes established a web site called "campus-watch.org," which serves as a blacklist designed to chill academic criticism of Israel on American campuses. The site included "dossiers on professors" and "dossiers on institutions" and urged students to report their professors' political beliefs to Pipes for inclusion in the blacklist. The mission statement for the site states that most American academics hate the United States, and complains that Middle East studies departments simply have too many "Middle Eastern Arabs" working in them. This open appeal to racism typifies Daniel Pipes' work over the decades as a man dedicated to opposing the Arab-American and American-Muslim communities in every aspect of American life and promoting fear and hatred of them.

Scores of right-wing and neoconservative commentators and columnists, many of them extreme supporters of Israel like Pipes and Emerson, joined the relentless campaign of anti-Arab defamation and vilification. The editorial section of the *Wall Street Journal* and the pages of the *Weekly Standard*, the *National Review* and the *National Review Online* were particularly enthusiastic participants in this campaign of racism. The *National Review* went so far as to call for the ethnic cleansing of all Palestinians from Israel and the occupied Palestinian territories, question whether Islam was a peaceful religion and discuss the possibility of dropping a nuclear bomb on Mecca. It also published several cover illustrations featuring racist depictions of Arabs, including Arabs as rats and vermin. Further down the media food chain, websites such as

"NewsNetDaily.com" and "JewishWorldReview.com" featured racist Arab-bashing articles as their mainstay and primary content. The notorious right-wing extremist David Horowitz also engaged in systematic racist attacks against Arabs and Arab Americans, and published one of the most vicious attacks — again targeting ADC communications director Hussein Ibish — on his web site "FrontPageMagazine.com."

Horowitz withdrew the accusations immediately and apologized, as outlined in the next section, but the incident was indicative of the extent to which certain commentators and media organizations, especially on the far right, were willing to go in attacking Arab Americans and their organizations.

Nor has the situation with the entertainment industry, outlined in detail in ADC's previous *Report on Hate Crimes and Discrimination against Arab Americans 1998-2000* (ADC, 2001), seen any improvement. On the contrary, according to Jack Shaheen, the leading expert on anti-Arab defamation by Hollywood, the media climate in the entertainment industry in the post September 11 environment is, if anything, worse than ever. Although, because of the length of time involved in planning, producing and marketing films, we still do not know exactly what kind of effect the experience of September 11th has had on Hollywood, although numerous television programs have stepped up their defamatory content.

It is far beyond the scope and purview of this report to provide a detailed record and analysis of all the different forms of anti-Arab defamation that have flooded American popular culture since the terrorist attacks. For example, we cannot even begin to tackle the subject of talk radio programs, and the absolutely extraordinary levels of hatred and vilification that have found a home on many major radio stations throughout the country. Similarly, print, Internet and television defamation are all far too complex and varied a subject to be dealt with comprehensively here. What we have tried to provide is a sense of the overall situation, which is grim, and a set of egregious examples, which serve to illustrate the depth of the problem.

A. Hostile Commentary in Print

1. Zev Chafets

"Arab Americans Have to Choose,"

New York Daily News, 9/16/01

"The undeniable fact is that until Tuesday, at least, a great many American Arabs and non-Arab Muslims openly associated themselves with groups and countries that engage in and support terrorism."

"No one who has paid any attention to the Arab-American community can be surprised by this. Many mosques, here in New York and beyond, are hotbeds of anti-American sentiment. Respectable Arab community organizations across the country raise money for Hamas, Hezbollah and other terrorist groups. This sort of affinity for the worst elements in the Middle East has been a hallmark of Arab American political discourse for years."

"Arab spokesmen similarly argue that the Arab world is being branded anti-American because of the extremism of a few. But that's nonsense. In that world, hatred of the U.S. and anti-social behavior is nearly universal."

2. Mona Charen

Jewish World Review, 9/21/01

"Let's not pretend that "ethnic profiling" is out of the question. It is absolutely necessary. If a young unmarried man from Iraq, Egypt, Syria, Lebanon or a half dozen other nations buys a ticket on a plane, boat or train in the next ten years and does not receive a thorough background check and pat down at the gate, we are not defending ourselves."

Jewish World Review, 10/17/01

"There are thousands of Arabs in the United States at this moment on student and travel visas. They should all be asked, politely and without prejudice, to go home. This will work hardships in many cases, and that is regrettable. But, there is no constitutional right to visit the United States. There is no constitutional right for foreign students to study here ... This would not apply to citizens of Middle-east origin, though they too should receive some scrutiny."

"The only answer is ethnic profiling. Every Middle-Eastern-looking truck driver should be pulled over and questioned wherever he may be in the United States."

Jewish World Review, 11/30/01

"We've seen ample evidence during the past ten weeks of the capacity of Middle Eastern people to indulge in self-delusion and downright lies."

3. Richard Cohen

"Profiles In Evasiveness,"

The Washington Post, 10/11/01

"But in another sense, we have become driveling idiots on matters of race and ethnicity. One hundred percent of the terrorists involved in the Sept. 11 mass murder were Arabs. Their accomplices, if any, were probably Arabs too, or at least Muslims. Ethnicity and religion are the very basis of their movement. It hardly makes sense, therefore, to ignore that fact and, say, give Swedish au pair girls heading to the United States the same scrutiny as Arab men coming from the Middle East."

"Where Bigotry Gets a Hearing,"

The Washington Post, 10/30/01

"... yet another example of Arabs saying one thing to Western audiences and quite another thing at home. This is not to say that all Arabs do that — just enough to cause worry."

4. Chuck Colson

"Evangelizing For Evil In Our Prisons,"

Wall Street Journal, June 24, 2002

"... the aggressive nature of Islam behind bars, where one out of six inmates is an adherent. Islam, certainly

the radical variety, feeds on resentment and anger all too prevalent in our prisons."

"Alienated, disenfranchised people are prime targets for radical Islamists who preach a religion of violence, of overcoming oppression by jihad. Yes, most Muslims interpret jihad as an inner struggle. But the radical fundamentalists — some of whom are invading our prisons — mean it literally. Those who take the Koran seriously are taught to hate the Christian and the Jew; lands taken from Islam must be recaptured. And to the Islamist, dying in a jihad is the only way one can be assured of Allah's forgiveness and eternal salvation."

"What's the answer? In the short term, prison officials have ample legal authority to deny radical inmates access to inmates. No civilized nation would allow the preachers of violence access to places packed with angry, alienated men."

5. Ann Coulter

"This Is War,"

National Review Online, 9/13/01

"We should invade their countries, kill their leaders, and convert them to Christianity."

"Future Windows of America: Write your congressman,"

Jewish World Review, 9/28/01

"It is impossible to stop Islamic fundamentalists who believe that slaughtering thousands of innocent Americans will send them straight to Allah. All we can do is politely ask aliens from suspect nations to leave with the full expectation of re-admittance while we sort out the peace-loving immigrants from the murderous fanatics."

"Detainment isn't Enough,"

Jewish World Review, 10/4/01

"Under the house plan, the government could hold immigrants suspected of terrorism for only seven days without bringing charges. Let's hope that seven days is enough to perform a thorough intelligence-based investigation of a million Muslim immigrants."

"Focusing on men of Middle-Eastern appearance is less 'profiling' than suspect identification."

The Harvard Republican Club

On November 18, Coulter addressed Oregon State University students during a College Republican meeting. During her remarks, she referred to Native Americans as

"Peyote Smoking Indians" and Middle Easterners as "camel riding nomads."

In a January op/ed in the *New York Post*, Coulter suggests that the secret service officer removed from his American Airlines flight (see December 25 - Baltimore Washington International Airport, MD) was a "ticking time bomb, in a simmering rage at America's supposed mistreatment of Muslims." Coulter further dismisses the backlash against Muslims with the claim that, "These alleged civil liberties have only one purpose: to give Muslims a cushion for another attack on America."

6. Greg Crosby

"Some Thoughts About the 'War On Terror': Part I,"

Jewish World Review, 10/19/01

"...call (terrorists) 'evil monsters' or 'evil barbarians.' I prefer descriptive rhetoric with a little more bite, I guess. Actually, 'Arab-sonofabitchin bastards' comes closer to the mark, but I realize I can't say that."

"Some Thoughts About the 'War on Terror': Part II,"

Jewish World Review, 10/26/01

"The complaint from the left against the unfair racial profiling of 'people of Arab descent' doesn't pass the laugh test. As the *Wall Street Journal* pointed out in a commentary this week, ALL of the 19 terrorists involved in hijacking of the four planes on September 11th were Arabic. ALL of the 22 suspects on the FBI's most wanted list of international terrorists are Arabic.

ALL of them are practitioners of Islam. ALL of them come from known state incubators of terrorism in the Middle East. YES, THEY FIT A RACIAL PROFILE." "We must stop, detain, question, and investigate any and all Arab people in this country who appear suspicious or out of place. ...Pretending that we don't know that Islamic Arabs committed these crimes is just plain stupid."

7. Jonah Goldberg

National Review Online, 9/28/01

"... I'm beginning to believe that the central source of animus from the Arab world is, quite simply, envy. ... The Islamic world has a self-esteem problem. ... Indeed,

after September 11, claims to social martyrdom were invoked by Arab-American activists far more quickly than any denunciations of the assault. In that corner of the national conversation, the shrieks of outrage about discrimination against Muslims came fast and furious, while the fatwas against mass murder remained in their holsters."

National Review Online, 10/24/10

"Whether such bigotry is a natural outgrowth of Islam or an outgrowth of the various stagnant cultures of the Middle East is a debate for another day... But, either way, it's worth noting that the Middle East, and the Muslim world generally, are home to the greatest feelings of religious intolerance in the world."

National Review Online, 11/5/01

"Muslims can't eat pork (hmmm pork) or drink wine (hmmm pork and wine). Moreover, they can buy a ticket into heaven by blowing themselves up."

National Review Online, 11/19/01

"... al Jazeera (Arabic for 'a bunch of crap') ... Kuwait (Arabic for 'ungrateful bastards')"

8. Betsy Hart

Scripps Howard News Service, 1/13/02

"[Muslim and Arab Americans] should be outraged at those young Muslim men, almost all of Middle Eastern descent, who are trying to kill as many Americans as they can per Osama bin Laden's order. Instead, they wrongly vent their rage at decent Americans (surely including Muslim Americans) who simply don't want their planes blown up."

9. David Horowitz

"Message from a Saudi Citizen,"

FrontPageMagazine.com, 3/15/01

In a column, dated March 15, 2002, featured on the websites of WorldNetDaily.com and FrontPageMagazine.com, right-wing commentator David Horowitz accused Hussein Ibish, Communications Director of ADC, of secretly celebrating the 9/11 attacks. Presented in the form of an unsigned "letter from a Saudi citizen," the column presented unattributed claims that a Saudi individual was with Ibish on

Sept. 11 and that he was “cheering and singing.” Horowitz prefaced the unsigned letter with a note saying “I have no way of knowing whether it is authentic, but its particulars seem accurate to me.” ADC demanded a retraction and apology from both websites.

Horowitz wrote that “The fraudulent nature of the claim in the ‘Saudi’ letter (at least insofar as it may have been intended to refer to this Hussein Ibish) was brought to my attention on the evening of the day it was posted (Friday March 15) by my friend Christopher Hitchens, whose word on this matter as far as I am concerned is conclusive. I received Christopher’s e-mail Friday night when I returned from a weeklong trip to the Northeast and immediately sent an e-mail apology to Hussein Ibish.” Horowitz cited “political disagreements” with ADC, Ibish and Hitchens, but affirmed “these are irrelevant to the fact that this is a matter of a man’s character and reputation, and it is important to set the record straight. I have therefore removed the letter from our site and am taking this occasion to make a public apology.” On March 15, Joseph Farrah, editor and CEO of WorldNetDaily.com which had linked to the original column, wrote to ADC that the website offered “an immediate retraction.” “We do apologize for any bad judgment made in linking to material that may be incorrect or wrongly injurious,” Farrah added.

10. Paul Johnson

“Relentlessly and Thoroughly; The only way to respond,”

National Review, 10/15/01

“Islam is an imperialist religion, more so than Christianity has ever been, and in contrast to Judaism.”

11. John Keegan

“Clash of civilizations; The West will prevail,”

The San Diego Union-Tribune, 10/14/01

“Westerners fight face to face, stand up in battle, and go on until one side or the other gives in. They choose the crudest of weapons available, and use them with appalling violence, but observe what, to non-Westerners may seem curious rules of honor. Orientals by contrast, shrink from pitched battle, which they often deride as a

sort of game, preferring ambush, surprise, treachery and deceit as the best way to overcome an enemy.”

“On September 11, 2001, [‘Oriental Tradition’] returned in an absolutely traditional form. Arabs, appearing suddenly out of empty space like their desert raider ancestors, assaulted the heartlands of Western power, in a terrifying surprise raid and did appalling damage.”

“It is no good pretending that the peoples of the desert and the empty spaces exist on the same level of civilization as those who farm and manufacture. They do not. Their attitude to the West has always been that it is a world ripe for the picking.”

12. Mark Krikorian

“Muslim Invasion?”

National Review Online, 4/17/02

“A final, longer-term threat to Israel from U.S. Muslim immigration comes from the possibility of terrorism fatigue. Muslim immigration helps facilitate domestic terrorism, with immigrant communities serving, as Mao might have said, as the sea within which the terrorists swim as fish...”

13. Charles Krauthammer

“War and the Polar Bear,”

The Washington Post, 11/9/01

“In Washington and New York, nearly 5,000 people have already been killed. Fifteen of the 19 murderers were Saudi. Their leader is Saudi. Most of their money is Saudi. And that same Saudi money funds the madrassas, the fundamentalist religious schools where poor Pakistani, Afghan and Arab children are inducted into the world of radical Islam and war against the American infidel. And yet we bow and scrape to the Saudis. We beg and borrow. We tolerate their deflecting onto America the popular hatred that would otherwise be directed at their own corruption. Why? Because we need their oil.”

“The Silent Imams,”

Washington Post, 11/23/01

“And why must we constantly repeat that we are not at war with Islam? We never declared war on Islam. It was Islamic fanatics who, killing 4,000 Americans in the

name of God, declared war on us. Why, then, are we the ones required to continually demonstrate our religious tolerance and respect for others? Shouldn't that be the responsibility of the Islamic world, of those in whose name this crime was perpetrated?"

"And yet after Sept. 11, where were the Muslim theologians and clergy, the imams and mullahs, rising around the world to declare that Sept. 11 was a crime against Islam? Where were the fatwas against Osama bin Laden? The voices of high religious authority have been scandalously still."

14. Larry Miller

"Whosoever Blesses Them,"

The Weekly Standard, 4/22/02

"There are no Palestinians. It's a made up word. Israel was called Palestine for two thousand years. Like 'Wiccan,' 'Palestinian' sounds ancient but is really a modern invention ... As soon as the Jews took over and started growing oranges as big as basketballs, what do you know, say hello to the 'Palestinians,' weeping for their deep bond with their lost 'land' and 'nation.'"

"So for the sake of honesty, let's not use the word 'Palestinian' any more to describe these delightful folks, who dance for joy at our deaths until someone points out they're being taped. Instead, let's call them what they are: 'Other Arabs From The Same General Area Who Are In Deep Denial About Never Being Able To Accomplish Anything In Life And Would Rather Wrap Themselves In The Seductive Melodrama Of Eternal Struggle And Death...'"

15. Paul Perry

The Koran: Suicide Playbook,

WorldNetDaily.com, 4/9/02

"Of course, the same media pundits who like to pretend Palestinians are fighting a political war for freedom and are only using suicide as a "cheap defense weapon," argue that the Koran forbids suicide. They claim clerics twist the meaning of the salient passages in the Koran to imply martyrdom paves the way to Paradise. But don't be fooled. Typical of Islam's apologists, they are merely cherry picking verses to try to make the Koran seem less violent than it is."

16. Daniel Pipes

"We're going to Conquer America,"

New York Post, 11/12/01

"But the situation is more complex than the president would have it. The Muslim population is not like any other, for it harbors a substantial body — one many times larger than the agents of Osama bin Laden — who have worrisome aspirations for the United States. Although not responsible for the atrocities in September, these people share important goals with the suicide hijackers: Both despise the United States and ultimately wish to transform it into a Muslim country." "The ambition to take over the United States is hardly a new one. The first Islamic missionaries from abroad arrived in the 1920's and unblushingly declared, 'Our plan is, we are going to conquer America.' Such hopes have become commonplace in recent years."

Speaking before the convention of the American Jewish Congress, 10/21/01

"I worry very much from the Jewish point of view that the presence, and increased stature, and affluence, and enfranchisement of American Muslims ... will present true dangers to American Jews."

The Washington Times, 11/23/01

"The pattern is clear: So long as Americans submitted passively to murderous attacks by militant Islam, this movement gained support among Muslims. When Americans finally fought militant Islam, its appeal quickly diminished."

17. Debbie Schlusel

"Darrell Issa [Arab-American Republican member of Congress from California] Traitor or useful idiot?,"

Townhall.com, 11/28/01

"Jihad Darrell."

"This man, Darrell Issa, is disgusting [sic]." "More disgusting is that Issa was representing the House International Relations Committee on which he serves, leading a congressional delegation including Arab-American Congressman Nick Joe Rahall, D-WV."

"Issa also hung out in Syria, the country which sanctions Hezbollah and other terrorist groups, and

which allowed Hezbollah to get its explosives through security checkpoints to kill the 241 U.S. Marines.”

18. Cal Thomas

Jewish World Review, 10/18/01

“When Tony Blair claims that Islam forbids the harming of any civilians, he must be in severe denial. Either these terrorists and others who hate America, Israel and all things Western are not Muslims, or they are conducting a major disinformation campaign that would be the envy of Joseph Goebbels and Tokyo Rose.”

19. National Review Online

National Review Online editors posted an article on December 17, 2001, which poses in its title, “The Unavoidable Question: How Should We Now Consider Islam?” Although the editors agree with President Bush’s oft-repeated statement that the west is not at war with Islam, they questioned his assurance that Islam is “a religion of peace,” an assurance that has been repeated by scores of politicians, journalists and clerics.

“Perhaps these claims are true. But it is at least imaginable that they are not that a sizable proportion of the world’s Muslims, if not — willing to take up arms against us, cheer on those who do. Moreover, the people who are making these claims have generally made no deep study of the Islamic world. Bush says what he says mainly for reasons of state (and again, he is quite right to do so). Others seem to harbor a misguided fear that Americans would lash out at innocent Muslims if not reassured that Islam is incidental to the attacks on us.”

“Most religions have been able to inspire nobility and cruelty, glory as well as madness, and Islam is no exception. But that does not preclude the possibility that something in Islam lends itself, more than other religions, to exterminationist and totalitarian politics. The Islamists who have interpreted their religion in that manner are our enemies. They are not the entire Muslim world, but they are not a tiny and isolated minority of it either. Since they claim to speak for all Muslims, it is up to those Muslims who reject the Islamists’ views — including, yes, Muslim immigrants to America, to repudiate them in word and deed.”

“The extent to which Islam has contributed to this war and also to the poverty, illiberalism, and general backwardness of the Muslim world is an open question. It is a question that Americans will necessarily debate, under the circumstances, and it was an arrogant folly of American political elites to believe that incantations and intimidation could stop them from debating. They would be wiser to make constructive contributions, so that the debate is as humane and intelligent as possible.”

B. Racist Statements by Prominent People

I. Politicians

a) U.S. Attorney General John Ashcroft

In an interview with syndicated columnist Cal Thomas, Ashcroft was quoted as saying “Islam is a religion in which God requires you to send your son to die for him. Christianity is a faith in which God sends his son to die for you.” The Attorney General denied that this was the gist of what he said, but declined to clarify exactly what he did tell Thomas.

b) Louisiana Congressman John Cooksey

On Louisiana radio stations on September 17, Representative John Cooksey (R-LA) stated that “If I see someone come in that’s got a diaper on his head, and a fan belt wrapped around that diaper on his head, that guy needs to be pulled over.”

c) Georgia Congressman Saxby Chambliss

At a November 19 meeting with local Georgia officials, Rep. Chambliss (R-GA) made the anti-Muslim comments that, in order to combat terrorism, a Georgia sheriff should be turned loose to “arrest every Muslim

that comes across the state line.” These remarks came as an even greater blow to the Muslim community considering Chambliss’ position as chairman of the House Subcommittee on Terrorism and Homeland Security. Additionally, on September 14, 2001, he was selected by Speaker J. Dennis Hastert (R-IL) to spearhead efforts in the House of Representatives to examine all facets of the terrorist attacks of September 11 and to recommend new countermeasures. Chambliss has since apologized repeatedly for the comment, admitting that such remarks, even if said in jest, are inappropriate.

d) Georgia Congressman Charlie Norwood
Congressman Norwood sent a letter to his constituents in the 10th District, dated June 12, that supports the racial profiling of Arab men. It says “Arab Muslim male extremists” are responsible for numerous terrorist attacks, such as the 1998 bombings of U.S. embassies in Kenya and Tanzania. The letter mistakenly blames Arabs for the takeover of the U.S. Embassy in Iran in 1979, and says that the Taliban are almost universally made up of Arab men.

2. Religious Leaders

a) Rev. Jerry Falwell

700 Club, 9/13/01

“And I fear, as Donald Rumsfeld, the Secretary of Defense, said yesterday, that this is only the beginning. And with biological warfare available to these monsters — the Husseins, the Bin Ladens, the Arafats — what we saw on Tuesday, as terrible as it is, could be miniscule if, in fact — if, in fact — God continues to lift the curtain and allow the enemies of America to give us probably what we deserve.”

60 Minutes, 10/06/02

Rev. Falwell: “I think Mohammed was a terrorist. He— I’ve read enough of the history of his life written by both Muslims and—and non-Muslims, that he was a— a violent man, a man of war.

CBS Reporter Bob Simon: “So the same way that Moses provided the ultimate example for the Jews and the same way that Jesus provided the ultimate example for Christians, Mohammed provided the ultimate example for Muslims, and he was a terrorist?”

Rev. Falwell: “In my opinion. And I do believe that Jesus set the example for love, as did Moses. And I

think that Mohammed set an opposite example.”

b) Rev. Franklin Graham

NBC Nightly News, 11/17/01

“We’re not attacking Islam, but Islam has attacked us. The God of Islam is not the same God. He’s not the son of God of the Christian of Judeo-Christian faith. It’s a different God and I believe it is a very evil and wicked religion.”

AP, 12/04/01

“The persecution or elimination of non-Muslims has been a cornerstone of Islamic conquests and rule for centuries... [The Koran] provides ample evidence that Islam encourages violence in order to win converts and to reach the ultimate goal of an Islamic world.”

c) Rev. Benny Hinn

American Airlines Center, Dallas, TX., 6/02

Hinn told the cheering crowd that, “The Muslim population is going down!” He then invited an Israeli tourism official on stage and offered his support. “We are on God’s side. This is not a war between Arabs and Jews. It’s a war between God and the devil.”

d) Rev. Jerry Vines, pastor of First Baptist Church of Jacksonville, Fla., and a former Southern Baptist Convention president

Speaking to a congregation of preachers at the Southern Baptist Convention, 6/10/02

“Islam is not just as good as Christianity.” “Islam was founded by Mohammed, a demon-possessed pedophile who had 12 wives and his last one was a 9-year-old girl.” “Allah is not Jehovah. Jehovah’s not going to turn you into a terrorist that will try to bomb people and take the lives of thousands and thousands of people.”

The Rev. Jack Graham of Plano, Texas, the new president of the Southern Baptist Convention, said Vines’ statement was accurate and he wouldn’t condemn Vines, a former president of the organization.

e) Rev. Pat Robertson

CNN’s Late Edition With Wolf Blitzer, 2/24/02

“Now, sure, in America, many, many so-called Muslims had watered down the teachings of Mohammed. They say, we don’t believe that, we don’t believe the Koran, really it’s something else. But if you believe what those people in Mecca believe, what the people who follow

Osama bin Laden believe, then we have an enemy we have to do something about.”

“You haven’t heard me say Islam is evil. I didn’t say it was evil. I merely said that the founder of Islam preached violence.”

“Well, if you get right down to it, Osama bin Laden is probably truer to Mohammed than some of the others.”

FoxNews’ Hannity & Colmes, 9/18/02

“All you have to do is read the writings of Mohammed in the Koran. He urges people to attack the infidels. He urges his followers to kill Christians and Jews. He talks about eradicating all of the Jews. This man was an absolute wild-eyed fanatic. He was a robber and a brigand. And to say that these terrorists distort Islam, they’re carrying out Islam.”

“You read the Koran, it says wage war against your enemies. Kill them if you possibly can. And destroy anybody who doesn’t agree with you.”

“I mean, it’s all laid out in the Koran. And what is called the hadith, the — you know, interpretation of what Mohammed said, that this whole thing is in my opinion, is a monumental scam, if you really understand what went on back there in the early days of Mohammed.”

“It took about 20 years to write the entire Koran. 80 percent of it comes from the Jewish and Christian scriptures. He mentions Moses 500 times in the Koran. I mean, it is strictly a theft of Jewish theology. And then he turned around and he murdered all the Jews in Medina. I mean, this man was a killer. And to think that this is a peaceful religion is fraudulent. It just is. I wish people would read the Koran itself and see what it says, because they’d be shocked.”

C. Other Prominent People

1. Paul Weyrich, the Free Congress Foundation

“Conservative Icon Weyrich Warns ‘Moral Minority’ Still Dwindling.”

CNSNews.com, 1/14/2002

“...if the United States continues to emulate the lax immigration policies of Western Europe - where Muslim communities are growing in France, Germany and Great Britain - soon the security of the United States will be at considerable risk.”

“They’re going to, at some point or another, attack us. It’s like having a giant fifth column in your own country.” “In fact, they’re [Muslims] told to deceive, which makes it very difficult.”

2. Charlie Daniels, musician

Country music performer Charlie Daniels released a racist and inflammatory song entitled, “It Ain’t No Rag, It’s a Flag, and You Don’t Wear It on Your Head.”

“This ain’t no rag / It’s the flag / And we don’t wear it on our heads / It’s a symbol of the land where the good guys live / Are you listening to what I said / You’re a coward and a fool / And you broke all the rules / And you wounded our American pride / Now we’re coming with a gun / And you know you’re going to run / But you can’t find no place to hide....”

“This ain’t no rag / It’s the flag / Old glory / Red, white

and blue / The sounds and the sights / When it comes
to a fight / We do what we have to do / Our people
stand proud / The American crowd is faithful and loyal
and tough / We're as good as the best and better than
the rest / You're going to find out soon enough...."

In an interview on Fox's Hannity & Colmes, Daniels
defended his lyrics against the controversy it stirred,
insisting that the words were meant for the terrorists
alone. "... there's only one group of people on the plan-
et that I could possibly be talking about, and it's the
people who came and bombed our Trade Towers and
our Pentagon."

"But please believe me this song is not intended to be
an insult to anybody at all, except Osama bin Laden
and his bunch of henchmen who came over here and,
and any terrorist in the world, for that matter, not just
him. But any terrorist in the world."

IV. RECOGNIZING POSITIVE ACTS AND SUPPORT

Although the Arab-American and Muslim-American communities suffered a painful backlash following the terrorist attacks, hundreds of expressions of support, kindness and acceptance have represented a more charitable and understanding America. President Bush himself led the way by making repeated statements that the terrorists and their evil actions did not represent Islam as a faith or Muslims generally, and that the war on terror was not an attack against Arabs or Islam but on extremists. President Bush's leadership on this issue at a time of national trauma did much to allow ordinary

Americans throughout the country to continue to express their commitment to tolerance without in any way impinging on their patriotism or diminishing their outrage at the terrorist attacks. The examples of support for Arab Americans from their fellow citizens across the country are many, indeed far outnumbering the cases of hate crimes and discrimination.

In addition to expressions of support, many Americans began to educate themselves about Arabs and Islam. Many visited mosques to speak with Muslim leaders to confront their own misconceptions. Others turned to their neighbors and colleagues with their questions, finding

more productive and beneficial ways to deal with ignorance and confusion over the situation. ADC has been flooded with requests for educational materials about Arab Americans, Arabs and Islam. Many educators took advantage of ADC's educational resources and incorporated them into their classrooms lessons.

A. Positive Responses/Activism

The following is a sampling of some of the positive and pro-active steps Americans took to combat hate and foster tolerance.

a) Fund Raising

Across the country fund-raising efforts were undertaken by activists, schools, organizations and neighbors to combat the backlash and rebuild mosques, community centers, businesses and homes which had been attacked and vandalized. In many cases, the money raised was substantial, such as the cost to repair a store damaged by vandalism or to assist a family victimized by a violent crime. In other cases, the cost was minor, but even these small amounts, coming from entire neighborhoods, symbolized a united stance against the bias crimes.

Fifth and sixth graders at Park Day School in Montclair, California, organized a "Walk of Acceptance," in which members of the community, parents, teachers and students, walked around a local lake to raise money for a hate crimes information hot line. Over 100 people participated and raised \$3,000 for the hotline, which was run by Grassroots Organizing Muslim and Arab Communities. "Today's walk and the experience that these students had in organizing this event will leave an indelible memory of how one can influence the world through activism," said Tom Little, director of Park Day School. (*Contra Costa Times*, 9/13/01)

In Reedley, California, advocacy groups responded to the hate-crime murder of Abdo Ali Ahmed by creating a fund, which collected \$2,000 for the Ahmed family. In October, the Central Valley Partnership for Citizenship established the Coalition for Tolerance and

Understanding Fund, and donations came from across the central valley to the fund. "We know it's not a tremendous amount of money and we wish it could've been more, but we think this money will do much to help a family that is barely scratching a living," said Ernest E. Velasquez, executive director of Catholic Charities, one of the member groups of the Central Valley Partnership for Citizenship. School children in Reedley contributed to the fund, showing their support. (*The Fresno Bee*, 11/14/01)

The Ameridream Charity in Gaithersburg, Maryland, was honored on Capitol Hill for its efforts to assist the targeted Arab-American community. The charity created a \$25,000 rebuilding fund to help low-income Arab Americans whose property had been vandalized. (*The Atlanta Journal and Constitution*, 12/5/01) In Madison, Wisconsin, neighbors of a Muslim family raised money to replace the family's mailbox, which a vandal had destroyed. (*Capital Times*, Madison, 9/19/01)

b) Escorts

Amidst the reports of hate crimes and harassment that followed the attacks of September 11, many Arab Americans and Muslims were afraid to venture outside of the safety of their homes. Sensitive to their fears and the danger they faced, several communities organized escort services in which these frightened individuals could be accompanied and protected.

Members of St. Anne's Episcopal Church in Reston, Virginia, were honored on Capitol Hill for their services to the Muslim women in their community. Following September 11, scores of women in St. Anne's congregation volunteered to be companions to Muslim women with errands to run, such as grocery shopping and doctor's appointments. Of course, from the service project sprang many friendships between the two groups of women and, although the fear of hate crimes has subsided, the women continue to meet often. (*The Atlanta Journal and Constitution*, 12/5/01)

Within days of the terrorist attack, the Church Council of Greater Seattle, Washington, set up a program called "Watchful Eyes." This service also provided escorts to physically protect Muslims worried about retaliatory violence. In response, Jamil Razzak of the Islam Idriss Mosque expressed, "We have not enough words to say thank you." (*Seattle Weekly*, 11/8/01)

c) Businesses

After September 11, many Middle Eastern restaurants suffered from a steep decline in patronage. In many cases, rumors circulated alleging that Middle Eastern employees had celebrated the attacks. In extreme cases, some enraged people took to picketing, leafleting, and using the Internet to urge boycotts of Middle Easterners or Middle Eastern operated businesses. Vandalism and arson struck a number of restaurants, causing thousands of dollars in damage.

Yet, at the same time, many Americans stepped forth to symbolically demonstrate their support and solidarity with their fellow Americans of Middle Eastern descent by patronizing their businesses. One such example is the Kabul Restaurant in San Carlos, California, co-owned by Afghani native Bashir Ahmad. On the Friday night following the terrorist attacks, Ahmad was amazed to see that his restaurant was packed. "Almost 300 people showed up. All my regulars, people I haven't seen in a long time. They said, 'you guys are not the ones that did whatever happened in New York. You guys are just like us,'" Ahmad said. "They all supported us." (AP 9/28/01)

Afghani American Abdul Satar, who owns the International Food Bazaar in Boulder, Colorado, reported that the community showed him kindness and support. "The people in Boulder are very positive," he said. "They brought me flowers." Another business in Boulder, the Shish Kabob Supreme, received a similar message from the community. Afghani-American owner Rahim Rashidi, credited his success to loyal customers and to members of local Christian churches who visited his restaurant to support him. A University of Colorado graduate student gave Rashidi his phone number on September 12, inviting him to call him should he experience any trouble. (*Boulder County Business Report*, 12/14/01)

In San Francisco, California, dozens of young adults held a slumber party at the City Blend Café, whose windows had been shattered in a hate crime. The Iranian-American owner, Nick Heydarian, had answered many threatening phone calls throughout the month. After the window incident, Heydarian invited customers to an overnight sit-in and many young adults showed up with sleeping bags and guitars, camping inside the café and on the sidewalk in front. "We want to send a strong message that we denounce these crimes," said Marla Ruzicka, one of the participants. (*The San Jose Mercury News*, 9/29/01)

d) Support for Mosques

Many concerned individuals called or visited mosques to show support and offer their assistance. Mosques across the nation, whether hit by vandals or not, received supportive letters, condolences and even flowers in the days that followed the terrorist attack. Many mosques also reported an increase in the number of visitors.

Seattle's Islam Idriss Mosque experienced an enormous outpouring of support from the community. "We had thousands of flowers brought in, cards, even teddy bear toys," Jamil Razzak of the mosque recalled. "People from all walks of life, churches, organizations, neighbors. It has been an overwhelming and gratifying experience." (*Seattle Weekly*, 11/8/01)

In Salt Lake City, Utah, representatives from the city's Jewish, Catholic and Latter-day Saint communities attended the Khadecja Mosque on the Saturday following the attacks. They brought flowers, patriotic pins and carried signs that read, "We love our Muslim neighbors." Utah Governor Mike Leavitt attended the mosque the next day to show his support for the Muslim community and to announce that Utah will not tolerate bias crimes. (*Daily Utah Chronicle*, 9/24/01)

e) The "Hijab Movement"

In a show of solidarity with Muslim women, students and professors in universities across the nation initiated "the hijab movement," in which non-Muslim women covered their hair. The University of Connecticut hijab movement began with Professor Anne D'Alleva, professor of art history and women's studies, who made several scarves from inexpensive black material and wrote a message on each, "Them equals Us." About 30 of Professor D'Alleva's students and colleagues wore the hijab during two separate weeks to protest incidents of anti-Muslim harassment on campus. Many Muslim students expressed their gratitude for the women's supportive gesture. On October 1, students also held a "Rally for Unity" which drew about 200 students.

A graduate student at the University of Michigan, Lisa Levin, called on non-Muslim women on campus to wear the hijab. Although many wanted to participate, not all students felt comfortable wearing the hijab and feared that their expressions of solidarity would appear blasphemous. These women opted to wear wristbands instead. (*The Hartford Courant*, 10/3/01)

The hijab movement was not just limited to university campuses, but also included women demonstrating against racism in their own communities as well. Marcy Honarbakhsh and Susan Brock of Royal Palm Beach, Florida, organized a candlelight vigil in which 25 mostly non-Muslim women wore the hijab in support of Muslim women throughout the United States. (*The Miami Herald*, 11/11/01)

f) Neighbors

Many Americans demonstrated their support to the Arab-American and Muslim-American communities through simple but powerful acts of charity and compassion. Simple expressions of kindness during the frightening and uncertain time made an enormous difference to those living in fear of retaliation and intolerance. Some people offered to take Arab Americans and Muslim Americans into their homes if they felt unsafe.

In Los Gatos, California, Layne Hackett wanted to do something positive for her community. So she decided to host a neighborhood gathering at the Los Gatos History Club and invited people from different communities. She only wanted to enable them to "get to know each other. Simple as that," she said. "No charge, no agenda. It's very informal." To this end, Hackett invited Arabs and South Asians to meet with people from other communities. (*The San Jose Mercury News*, 9/29/01)

Tansy O'Bryant, who lives in Cary, North Carolina, heard repeated reports of Muslim women facing harassment and she worried about her Afghani-American neighbor, Durkhany Sadat, who wears a hijab. One day on her way home from work, O'Bryant stopped by a Lebanese bakery and bought pastries for Sadat's family. She asked the storekeeper to write, "Welcome" in Arabic on the white cardboard box. She printed her name, address and phone number below. Other visitors on Sadat's doorstep included a man with his son who dropped off a business card and promised to help if they needed anything. Another woman stopped by and brought the family more sweets. (AP, 9/29/01)

B. Efforts from the Entertainment Industry

Disturbed by the many reports of discrimination and hate crimes she had been hearing, actress Patricia Arquette contacted the Los Angeles County Human Relations Commission and offered to volunteer her time and talents to help out these targeted ethnic communities. "After September 11, I heard ... about these acts of discrimination and murders, and I had a lot of empathy for these totally innocent people," Arquette explained, "I started going on the Internet and saw hundreds of really violent and discriminatory statements people were making. I spoke to the [LA county human relations] commission, and they said they needed some support, so I called some actors and artists." She went on to enlist the help of over 50 celebrities in a public-service message project, discouraging racist acts and hate crimes.

The announcements urged the public to call a toll-free number with questions regarding hate crimes or to report a hate crime or incident. In her message, Arquette gives the example of a Muslim emergency medical technician who lost his life trying to save others at the World Trade Center. "His mother not only has to mourn the loss of her son, but also has to worry for other children and herself because of discrimination," Arquette said.

Many celebrities contacted by Arquette were gracious and participated in the project, including actors Ben Stiller, Whoopi Goldberg, Benicio Del Toro and Lucy Liu. Actress Shannon Elizabeth, who is part Syrian and Lebanese, recorded a public service message in which she announces, "I'm half Arabic, but I'm 100 percent American." She recorded the ads to tell the public "what is going on affects me the same as everybody else."

From there, Arquette and the Los Angeles County Human Rights Commission organized and announced a new program to educate high school students about hate crimes. At Long Beach Poly High School, Arquette urged a group of high-school students to step out of cliques and to learn more about people of different races and

religions. "Start making friends in all kinds of different places. Become rich with yourself," she invited the students during her presentation. "We all have similarities," she told the students. "If you all close your eyes, what color's your blood? What color's your bone?"

In a conference announcing the public service project, Arquette, whose father is Muslim and mother is Jewish, told the press that, "Diversity makes America beautiful. My father celebrates Ramadan. My mother celebrates Hanukkah." ADC appreciates the sensitivity and initiative of Patricia Arquette who first educated herself on the condition of ethnic and religious groups post September 11 and then used her talents and contacts to combat hate crimes and discrimination.

C. Statements of Support

a) President George W. Bush

On September 17, 2001, President Bush visited the Islamic Center of Washington, DC, where he met with Muslim leaders and defended Islam. The following are excerpts from his statement:

"Like the good folks standing with me, the American people were appalled and outraged at last Tuesday's attacks. And so were Muslims all across the world. Americans and Muslim friends and citizens, tax-paying citizens, and Muslims in nations were just appalled and could not believe what we saw on our TV screens."

"These acts of violence against innocents violate the fundamental tenets of the Islamic faith. And it's important for my fellow Americans to understand that. The face of terror is not the true faith of Islam. That's not what Islam is all about. Islam is peace. These terrorists don't represent peace. They represent evil and war."

"When we think of Islam we think of a faith that brings comfort to a billion people around the world. Billions of people find comfort and solace and peace. And that's made brothers and sisters out of every race — out of every race."

"Women who cover their heads in this country must feel comfortable going outside their homes. Moms who wear

cover must not be intimidated in America. That's not the America I know. That's not the America I value."

"Those who feel like they can intimidate our fellow citizens to take out their anger don't represent the best of America, they represent the worst of humankind, and they should be ashamed of that kind of behavior."

b) Senate Majority Leader Tom Daschle

On September 26, 2001, in Washington, DC, at a Tolerance and Unity Press Conference, attended by ADC, Senator Daschle stood with leaders from several ethnic and religious groups and commended, "the rich mosaic that is America."

"We have all been moved by the tremendous outpouring of compassion and courage we've seen in the days since the terrorist attacks. The overwhelming majority of people understand instinctively that the way we get through hard times is by turning to each other, not on each other. Unfortunately, not everyone understands that. In the last couple of weeks, hundreds of crimes in dozens of states have been reported against Muslims, Arab Americans, Sikhs, and others. Just as the terrorists betray the peaceful teaching of Islam, the people who commit these hate crimes betray our ideals as a nation."

"In the wake of September 11, Americans are all filled with grief and anger — and understandably so. We must focus our grief on comforting the victims. And we must focus our anger on punishing the perpetrators. If Americans strike out at their neighbors because of the way they look, or dress, or worship; if we use our anger as an excuse to trample basic rights, the terrorists will have struck a blow against everything we stand for."

"But if we remain true to our commitment to liberty and justice, tolerance and diversity, at the very time those ideals are most tested — we send a powerful message. We show those who committed this evil that they have not won, and they will not win. And we show that we are truly one nation, indivisible, with liberty and justice for all."

c) Senator Edward M. Kennedy

On September 12, 2001, in Washington, DC, Senator Kennedy voiced his support for the U.S. Muslim and Arab communities. "I know that the American Muslim and Arab communities share the nation's horror and

outrage over yesterday's terrorist attacks. They have issued strong statements unequivocally condemning these vicious atrocities and expressing their condolences to the families of the innocent people killed."

"In the aftermath of these shameful attacks, there is understandable anger across the nation. But it is wrong and irresponsible to jump to conclusions and make false accusations against Arabs and Muslims in our communities. Above all, we must guard against any acts of violence based on such bigotry. America's ideals are under attack too, and we must do all we can to uphold them at this difficult time."

D. Messages of Solidarity

The hundreds of supportive and sympathetic messages that poured into ADC's national office testify to a far more united America than this Report may suggest. Just hours after the terrorist attacks, dozens of concerned individuals undoubtedly mourning and frightened themselves, contacted ADC asking how they could help out Arab Americans, correctly sensing a violent retaliation on its way. Many individuals wanted simply to assure ADC that they themselves did not blame innocent Arab Americans for the tragedy. The following is a sampling of the dozens of e-mails received by ADC on September 11 and 12. Not included are the many phone calls expressing the same sentiment.

a) September 11

Berkeley, CA:

"In the wake of today's events, you have my deepest sympathies and best wishes for your challenge ahead."

Undisclosed City, USA:

"I'm Japanese American Today, we all must feel like people felt when Pearl Harbor was bombed...dismay, shock, anger, a terrible tragedy. One of the first things that came to my mind was the hope that there will not be anti-Arab sentiments like that directed at Japanese Americans during WWII. I pray that the American people do not treat Arab Americans now like they treat-

ed my people back then. I hope history does not repeat itself. Take care."

Undisclosed City, USA:

"... let me say that I wish to offer support for Arab-Americans Be strong, know that there are those of us who know that men of good will do not do these things. Peace to you and yours."

Boulder, CO:

"Regardless of the cause of the disasters in New York and Washington, it is important to emphasize that many rational U.S. citizens do not harbor anti-Arab or anti-American-Arab sentiments. Best wishes to the American-Arab Anti-Discrimination Committee during this crisis."

Undisclosed City, USA:

"I just want to say, I know you will be getting, have gotten hate mail because of the trade center, etc., bombings. As an American Jew I will speak up loudly against any anti-Arab sentiment I encounter. May we all live in peace and justice someday."

San Francisco, CA:

"I have worked with members of the American-Arab Anti-Discrimination Committee in the past. They are honorable and moral people.... I just want to let you know that I do NOT in any way blame Arabs and Arab-Americans for what happened today in NYC. If I hear any condemnations of Arabs and Arab-Americans for what happened today, I will try to get the person making the condemnations to think about what they are saying and to realize how unjust and dangerous such statements can be."

San Francisco, CA:

"I want at this moment to express solidarity with ADC and the whole Arab-American community at a time when the danger of vigilante attacks and repression is particularly high. The image of Japanese-Americans being transported to internment camps, over virtual silence from the rest of the public, is deeply shameful; I'm determined that it should not be repeated in the case of Arab-Americans."

Phoenix, AZ:

"As an American of Irish descent I would like to say that Americans in general love their Arab Brothers. We are not influenced by the actions of some madmen."

b) September 12*New Paltz, NY:*

"I wanted to let you know that my family, friends, and I condemn anti-Arab sentiments, threats, and violence against Arab-Americans at this time, and at all times. Although I do not live in Washington, DC, please let me know if I can do anything to assist your efforts to prevent and deal with racist acts in your national community."

Orlando, FL:

"...I fear that Arab-Americans will soon be facing discrimination and worse. I am writing to express my support to people of Arabic and Middle Eastern descent who may find themselves the victims of bigotry and closed-mindedness. Best of luck in the coming days and weeks."

College Park, MD:

"You are probably getting flooded with hate mail by now. This is not one of those. At such a difficult time, we all are distressed. But I am sorry that honest, innocent Americans, who happen to have an Arab background and are as distressed as anybody, have to face the extra burden of being judged. Hang in there."

Oakland, CA:

"This is a scary time for us all, but it can be less so if we all stand together and support each other to work through our fears in constructive ways. Please know that this African American (who's also a Jew by affiliation and a Buddhist by religion) sends all Arab Americans nothing but love and prayers for happiness and healing at this time."

Williston, ND:

"My thoughts and prayers are just as much for Arab Americans as anyone else. I hope all of you in your offices are well. You don't deserve any of the negativity out there."

Undisclosed City, USA:

"I've heard some chilling and shameful reports of a backlash against Arab Americans in response to yesterday's tragedy. I just want you to know that this unreasoned and prejudiced attitude is most certainly NOT something that is held by most Americans. The healing that needs to take place is one that will require us all, and I hope that we will be brought closer together,

not further apart by this."

Menifee, CA:

"Please know that all Americans are not spewing hate toward Arabs, just as all Arabs are not hateful toward Americans. I pray that this terrible tragedy does not victimize more innocent people, Arab or American."

Berkeley, CA:

"Just a note to offer peace, love, and support. I hope no one from your organization has experienced any negative backlash from non-Arab Americans, but if anyone has, I sincerely apologize for the unconscious behavior of those who don't appear to know better."

Undisclosed City, USA:

"I watched in horror yesterday as did the rest of the world and then to find out tonight idiots felt the need to shoot at your schools and mosques makes me wonder what it will take to realize that hatred is what led to yesterday Please know I will pray for your people's safety as well as the rest of our country. May God keep you safe."

Beacon Falls, CT:

"I just wanted to write to offer my thoughts and support in these times which will surely test members of the Arab American community. I am most proud to be American because we are not all alike. My ancestry of Swedes and French Canadians can be as much part of this country as those with African or Arabic backgrounds. It is this that truly makes America a great country. I can only hope that the blatant attacks on Arab Americans that took place yesterday will soon pass and this country can unite to face our toughest battle. It is those that hate America that we must all devote our attention and energies toward."

Lincoln, NE:

"I wished to express my deep regrets for the general ignorance of the American people; it is a national characteristic for which I am truly ashamed. I know of a few students who have been targeted not by any illegal means, but by the crimes that scar emotionally through humiliation and discrimination. Being a part of the Asian minority on campus, I can imagine what this must feel like, but certainly not to nearly the same degree as the Arab population. You're in my thoughts along with many other grieving Americans, and I sincerely hope you all the best."

APPENDIX 1

Chronology of Executive Branch Changes to Immigration Policy Following September 11, 2001

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 American Immigration Lawyers Association (AILA)
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The following are administrative actions taken by the Executive Branch since 9-11. These actions:

- curb rights and due process
- undermine fundamental constitutional protections
- profile certain communities and target them for

heightened measures

- respond to various actions by the INS that have drawn criticism

■ **September 20, 2001: Detention without Charges**
 The Department of Justice publishes an interim regulation allowing detention without charges for 48 hours or "an additional reasonable period of time" in the event of an "emergency or other extraordinary circumstance." The rule is made effective 9-17-02, *three days prior to publication.* (66 FR 183 at 48334, 9-20-01)

■ **September 21, 2001: Closed Hearings**
 Chief Immigration Judge Michael Creppy issues a memo stating: "the Attorney General has implemented additional security procedures for certain cases in the Immigration Court." Creppy further states that these procedures "require" Immigration Judges (IJ) to "close the hearing to the public..." (*Creppy Memo, 9-21-01, 12:20 P*)

■ **October 4, 2001: FBI "mosaic" Memo, Opposing Bond**
 The FBI begins to use a boilerplate memo to oppose

bond in all post-9-11 cases. The memo states: "The FBI is gathering and culling information that may corroborate or diminish our current suspicions of the individuals who have been detained ... the FBI has been unable to rule out the possibility that respondent is somehow linked to, or possesses knowledge of, the terrorist attacks..." (*Memo submitted to United States Department of Justice, Executive Office for Immigration Review, Immigration Court, "In Bond Proceedings", "Exhibit A", signed by Michael E. Rolince, Section Chief, International Terrorism Operations Section, Counter terrorism Division, Federal Bureau of Investigation*)

■ **October 31, 2001: Automatic Stays of Bond Decisions**

DOJ issues an interim regulation that provides an automatic stay of IJ bond decisions wherever DD has ordered no bond or has set a bond of \$10K or more. The rule is made effective 10-29-02, two days prior to publication. (*66 FR 211, at 54909, 10-31-01*)

■ **October 31, 2001: Eavesdropping on Attorney/Client Conversations**

DOJ issues a Bureau of Prisons interim regulation that allows eavesdropping on attorney/client conversations wherever there is "reasonable suspicion ... to believe that a particular inmate may use communications with attorneys to further or facilitate acts of terrorism." The regulation requires written notice to the inmate and attorney, "except in the case of prior court authorization." The rule is made effective 10-31-01. (*66 FR 211, at 55062, 10-31-01*)

■ **October 31, 2001: New Terrorist Groups Designated**

The Attorney General issues a letter requesting that the Secretary of State designate 46 new groups as terrorist organizations, per powers authorized by USA Patriot Act (9 groups identified in President's Executive Order of 9-23-02; 6 groups identified in joint State-Treasury designation of 10-12-02, and 31 groups designated by DOS Patterns of Global Terrorism Report, published April 2001). (*Colin L. Powell*)

■ **November 7, 2001: Creation of Foreign Terrorist Tracking Task Force**

The President announces the first formal meeting of the full Homeland Security Council, and the creation of a "Foreign Terrorist Tracking Task Force" which will deny entry, locate, detain, prosecute and deport anyone

suspected of terrorist activity. The Task Force includes DOS, FBI, INS, Secret Service, Customs and the intelligence community. Mandates a thorough review of student visa policies. (*White House Announcement, 11-07-01*)

■ **November 9, 2001: Interviews of Arab/Muslim Men**

The Attorney General issues a memo directing interviews of a list of 5,000 men, ages 18-33, who entered the U.S. since Jan. 2000 and who came from countries where Al Qaeda has a "terrorist presence or activity." The interviews are to be "voluntary" but immigration status questions may be asked (see *Pearson memo, Nov. 23*).

■ **November 13, 2001: Military Tribunals**

President Bush issues an Executive Order authorizing creation of military tribunals to try non-citizens alleged to be involved in international terrorism (<http://www.whitehouse.gov/news/orders/>).

■ **November 15, 2001: New 20-Day Wait for Certain Visa Applicants**

The State Department imposes new security checks on visa applicants from unnamed countries. The State Department refuses to confirm the new requirement, but the following message appears when individuals born in certain countries attempt to make a visa appointment through the on-line Visa Appointment Reservation System: "Effective immediately, the State Department has introduced a 20-day waiting period for men from certain countries, ages 16-45, applying for visas into the United States."

The following countries of birth are among those for whom this message appears: Afghanistan, Algeria, Bahrain, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, Yemen.

■ **November 16, 2001: Secrecy re INS Detainees**

The DOJ issues a letter to Senator Feingold asserting that identities and/or locations of 9-11 detainees will not be disclosed. (*U.S. Department of Justice, Office of Legislative Affairs, to Senator Russell D. Feingold, dated 11-16-01*)

■ **November 23, 2001: INS Actions re Interviewees**

INS issues memo stating that "officers conducting these interviews may discover information which leads

them to suspect that specific aliens on the list are unlawfully present or in violation of their immigration status." The memo directs INS to provide agents to respond to requests from state and local officers involved in the interviews. (*Memorandum for Regional directors, from Michael A. Pearson, INS Executive Associate Commissioner, Office of Field Operations, dated 10-23-01*)

■ **November 26, 2001: Interviews to be "voluntary"**
US Attorneys in Detroit issue a letter stating that the interviews are voluntary, but that "we need to hear from you by December 4." [*Letter from U.S. Attorney, Eastern District of Michigan, signed by Jeffrey Collins and Robert Cares, dated 11-26-01*]

■ **November 29, 2001: "Snitch Visas"**
The Attorney General issues a memo announcing the use of 'S' visas for those who provide information relating to terrorists. (*Attorney General Directive on Cooperators Program, 10-29-01*)

■ **December 4, 2001: Senate Hearings**
Senator Feingold holds hearings on the status of 9-11 detainees. The Attorney General states that those who question his policies are "aiding and abetting terrorism."
(http://www.lexis.com/research/retrieve/frames?_m=d88b568e87c195aeca968445f816c1f&csve=bl&cfom=bool&fntstr=XCITE&dnum=1&_startdoc=1&whp=dGLbVlb-lSllB&_md5=cdbb097ca85216c342e7a33a47c91389)

■ **January 25, 2002: "Absconder Initiative"**
The Deputy Attorney General issues a memo of instructions for the "Absconder Apprehension Initiative" announced by INS Commissioner Ziglar in December to locate 314,000 people who have a final deportation or removal order against them. 6,000 men from "al Qaeda-harboring countries will be first to be entered in the National Crime Information Center (NCIC) database. DOJ uses country, age, and gender criteria to prioritize this selective enforcement list. (*Office of Deputy Attorney General, Subject: Guidance for Absconder Apprehension Initiative, dated 1-25-02*)

■ **February 19, 2002: BIA "Reforms"**
The Attorney General publishes a new regulation proposing to restructure the Board of Immigration Appeals. The BIA "reform" would institute one-judge review, streamlined procedures, and would reduce the

Board itself to 11 members (from the current complement of 21 positions.) (*67 FR 33 at 7309, 2-19-02*)

■ **February 26, 2002: Interview Report**
The Department of Justice issues a final report on its project of interviewing the 5,000 Arab/Muslim men. The Report states that approximately half (2,261) of those on the list were actually interviewed and that fewer than twenty interview subjects were taken into custody. Most of these were charged with immigration violations; only three were arrested on criminal charges. (*Report from U.S. Department of Justice, Executive Office for U.S. Attorneys, Memorandum for the Attorney General, from Kenneth L. Wainstein, Director, entitled "Final Report on Interview Project, dated 2-26-02*)

■ **March 19, 2002: Additional Interviews**
DOJ announces another round of interviews of 3,000 Arab/Muslim *Memorandum from U.S. Department of Justice, Executive Office for U.S. Attorneys, TO: All U.S. Attorneys, from Kenneth L. Wainstein, Director, entitled "Interview Report" dated 3-19-02.*

■ **April 10, 2002: Local Law Enforcement Powers**
News of a new DOJ legal opinion that states that local law enforcement personnel have "inherent" power to enforce the nation's immigration laws is leaked to the press. (*Various news reports*)

■ **April 12, 2002: New Limitations on Visitors/Students**
INS issues a proposed regulation establishing a presumptive limitation on visitors to the U.S. of 30 days, or a "fair and reasonable period" to accomplish the purpose of the visit. The regulation also prohibits a change of status from visitor to student, unless student intent is declared at time of initial entry. (*67 FR 71 at 18065, 4-12-02*)

■ **April 12, 2002: New Limitations on Student Change of Status**
INS issues an interim rule prohibiting a visitor from attending school while an application for a change to student status is pending. The rule is made effective April 12, 2002 (*67 FR 71 at 18062, 4-12-02*)

■ **April 22, 2002: States Forbidden to Release Detainee Information**
The Attorney General issues an interim regulation that forbids any state or county jail from releasing informa-

tion about INS detainees housed in their facilities. This regulation flies in the face of a New Jersey state court decision ordering the release of information regarding detainees in New Jersey facilities. The rule is made effective April 17, 2002, a week prior to publication. Comments due 6-21-02. (67 FR 19508, 4-22-02)

■ **May 9, 2002: Aliens Ordered to Surrender within 30 days**

The Attorney General issues a proposed regulation that requires that aliens subject to final orders of removal surrender to INS within 30 days of the final order or be barred forever from any discretionary relief from deportation, including asylum relief, while he/she remains in the U.S. or for ten years after departing from the U.S. [67 FR 90 at 31157, 5-9-02]

■ **May 10, 2002: New Security Checks Required**

The INS issues a memo requiring District Offices and Service Centers to run IBIS (Interagency Border Inspection System) security checks for all applications and petitions, including naturalization. The checks are to be run not only on foreign nationals, but also on every name on the application, including U.S. citizen petitioners and attorneys. IBIS includes information on "suspect" individuals and can also be used to access NCIC records. It is used by INS, Customs, and 20 other federal agencies (FBI, Interpol, DEA, ATF, IRS, Coast Guard, FAA, Secret Service, etc.) (INS Memorandum from William Yates to Regional Directors, Service Center Directors, and District Directors, 5-10-02)

■ **May 16, 2002: Student Reporting Required**

The Attorney General issues a proposed regulation that implements a new student reporting system, SEVIS. The system will become voluntary on July 1, 2002, and mandatory for all covered schools on January 30, 2003. The new SEVIS system will require reporting of student enrollment, start date of next term, failure to enroll, dropping below full course load, disciplinary action by school, early graduation, etc. [67 FR 95 at 34862, 5-16-02]

■ **May 28, 2002: Immigration Judges Given Authority to Seal Records and Issue Protective Orders**

The Attorney General issues an interim regulation authorizing immigration judges to issue protective orders and seal records relating to law enforcement or national security information. The rule applies in all immigration proceedings before EOIR. The rule is made

effective as of May 21, 2002, a week prior to publication. (67 FR 102 at 36799, 5-28-02)

■ **June 13, 2002: Registration and Monitoring of Certain Nonimmigrants**

The Attorney General issues a proposed rule requiring certain yet-to-be-designated aliens to register (fingerprints and photographs and other information) at entry, at 30 days after entry, at one-year intervals thereafter, and at exit, which must be through designated exit points. The registration requirements may be applied to certain named nation groups already within the United States whenever the Attorney General so orders.

Failure to satisfy any of the required reporting results in criminal penalties, and in the entering of the person's name in the NCIC database. The regulation is accompanied by a statement by the Attorney General indicating that local law enforcement officers will be requested to check the names of any persons they encounter against the NCIC data base, and arrest and detain not only those who have violated the registration requirement, but also those who have overstayed a visa whose names will also be entered into the database.

The power of local law enforcement to arrest people for mere civil violations of immigration laws is stated to derive from a new DOJ Office of Legal Counsel opinion which has not been made public, which states that local law enforcement officers have "inherent authority" to enforce not only criminal violations of immigration law, but civil violations as well.

It is contemplated that the new registration requirements will be put into effect by September 2002, and will first apply to nationals from Syria, Libya, Iraq, Iran and Sudan. The list is contemplated to expand to all 26 countries now subject to heightened security checks at visa posts: Afghanistan, Algeria, Bahrain, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, Yemen. (67 FR 114 at 40581, 6-13-02)

■ **July 24, 2002: Powers of State or Local Law Enforcement Officers To Exercise Federal Immigration Enforcement [Final Rule]**

The Department of Justice has issued a final rule which implements INA 103(a)(8), which allows the Attorney General to authorize any state or local law enforcement officer, with the consent of the head of the department whose geographic boundary the officer is serving, to exercise and enforce immigration laws during the period of a declared "mass influx of aliens."

The rules authorize the Attorney General to consider the definitions of "immigration emergency" and "other circumstances" under 28 C.F.R. 65.81 when making a declaration of "mass influx of aliens." The rules purport that civil liberties and civil rights will be protected with officer training, and a complaint reporting procedure. The final rule is effective August 23, 2002. (67 FR 142 at 48354, 07-24-02)

■ **July 26, 2002: Address Notification to be Filed with Designated Applications**

The Attorney General proposed a rule clarifying the alien's obligation to provide an address to the Service, including a change of address within 10 days. The rule will require every alien to acknowledge having received notice that he or she is obliged to provide a valid address to the Service. The rules clarify that a "willful" failure to register with the INS, or a failure to give written notice of a change in address, is a criminal violation. This proposed regulation is accompanied by a statement by Department of Justice.

The proposed regulations will allow the Service to mail a "Notice to Appear" to the most recent address reported by the alien. Upon such mailing, the Service will have met its burden of the "advanced notice" an alien must receive before an Immigration Judge issues an *in absentia* order of removal. This expanded definition of "notice" increases the likelihood for *in absentia* orders to be issued against non-criminal aliens who fail to report an address change.

The stated intent of this rule is to provide clear notice to aliens of their obligation to report their address, and to punish those who fail to do so. (67 FR 144 at 48818, 7-26-02)

APPENDIX 2

US EQUAL OPPORTUNITY COMMISSION Washington, DC 20507

FACT SHEET- Muslim/Arab Employment Discrimination Charges since September 11

Between 9/11/2001 and 12/11/2002, 705 charges were filed under Title VII with Process Type Z. 198 Charges were open as of 7/11/2002. Of the 507 charges resolved by the EEOC as of 12/11/2002, 56 were settlements, 13 were withdrawals with benefits, 7 were successful conciliations, 38 failed conciliation, 317 were closed with no cause findings, 44 were closed after Charging Parties requested and received notices of

right to sue, 1 was closed after the respondent declared bankruptcy, 2 were closed for a failure to respond to a letter, 1 was closed for a failure to cooperate with the EEOC, and 5 were withdrawn with no benefits.

Of the 688 charges filed:

- Discharge is an issue in 428 charges.
- Harassment is an issue in 294 charges.
- As of 12/11/2002, EEOC found reasonable cause to believe that a violation of Title VII occurred in 54 Process Type Z cases.
- As of 12/11/2002, 72 individuals aggrieved by September 11-related employment discrimination have received \$956,000 in monetary benefits through the efforts of EEOC.
- On September 30, 2002, EEOC's New York District Office filed a lawsuit against the Worcester Art Museum alleging that, in the wake of the terrorist attacks of September 11, 2001, the museum fired an Afghan-American Muslim man on the basis of his national origin and religion. After the terrorist attacks of September 11, 2001, Mr. Zia Ayub, the only employee of either Muslim or Afghan origin, was ostracized by

his co-workers, and one of Mr. Ayub's co-workers falsely reported Mr. Ayub to the authorities as a suspected terrorist. On January 4, 2002, the museum terminated Mr. Ayub's employment without notice, allegedly for taking excessive time to complete security rounds on three separate occasions, and he was replaced by a non-Muslim who was not of Aghan or Middle Eastern origin. The suit alleges that reasons given for Mr. Ayub's termination were false and were used as an excuse for discrimination.

■ On September 27, 2002, EEOC's Phoenix District Office filed a lawsuit against Alamo Car Rental alleging discrimination against Ms. Bilan Nur, a Customer Service Representative who had worked for Alamo since 1999. Ms. Nur had been allowed to wear a head scarf, or hijab, in observance of the holy month of Ramadan in 1999 and 2000, but was told not to do so in December 2001. Instead, Alamo told Ms. Nur that the company dress code prohibited wearing a head scarf. Notwithstanding this representation, Alamo had no such policy. Alamo subsequently disciplined, suspended, and terminated Ms. Nur for failure to remove her head scarf. The alleged discrimination occurred right after September 11, and Ms. Nur believes it was in reaction to her being Muslim. Ms. Nur even offered to wear an Alamo company scarf, but her offer was refused.

■ On September 30, 2002, EEOC's Miami District Office filed a lawsuit against Chromalloy Castings Tampa Corporation, a manufacturer of precision investment castings for the aerospace industry. The EEOC's suit, alleges that a naturalized American citizen of Palestinian descent was singled out and discharged within days of the September 11 attacks for no other reason than his national origin.

■ Between 9/11/2001 and 12/11/2002, 705 charges were filed alleging employment discrimination under Title VII with Process Type Z. The numbers by State are: Alabama (7), Arizona (41), Arkansas (2), California (82), Colorado (5), Delaware (1), District of Columbia (20), Florida (53), Georgia (16), Illinois (53), Indiana (20), Kansas (1), Kentucky (13), Louisiana (5), Maryland (8), Massachusetts (3), Michigan (29), Minnesota (13), Mississippi (6), Missouri (10), Nevada (5), New Jersey (17), New Mexico (9), New York (39), North Carolina (31), Oklahoma (15), Ohio (17), Oregon (2), Pennsylvania (31), South Carolina (11),

Tennessee (19), Texas (78), Utah (2), Virginia (25), Washington (11), West Virginia (1), and Wisconsin (4).

Employers include:

Airlines
 Manufacturing
 Aviation Companies
 Oil Refineries
 Car Dealers
 Package Delivery
 Retail Stores
 Research Centers
 Electrical Companies
 Restaurants
 Health Care Facilities
 State and Local Govt.
 Hotels
 Universities
 Information Technology
 Laboratories
 Protection Services
 Freight Companies
 Cable Companies
 Power Companies
 Public Schools

■ From 9/11/01 to 12/11/02, EEOC received 841^[2] charges of discrimination based on Religion-Muslim. In the same period last year, 6/11/00 to 9/10/01 (15 months), EEOC received 391 charges alleging discrimination based on Religion-Muslim.

[1] This code is for charges related to the events of 9/11/01, by an individual who is — or is perceived to be — Muslim, Arab, Afghani, Middle Eastern or South Asian or individuals alleging retaliation related to the events of 9/11/01. Some Process Type Z charges are from non-Muslims.

[2] This number includes some charges with alleged violation dates prior to 9/11/01. These charges are, by definition, not coded as Process Type Z charges.

APPENDIX 3

US Department of Justice Federal Bureau of Investigation Hate Crimes Statistics 2001

In response to Congress' passage of the Hate Crimes Statistics Act of 1990 and subsequent acts that amended the directive, the FBI Uniform Crime Reporting (UCR) Program collects and publishes data on crimes motivated by racial, religious, ethnicity/national-origin, sexual orientation, and disability bias. In 2001, 9,730 bias-motivated incidents were voluntarily reported by law enforcement agencies nationwide.

From the first year that national hate crime data were reported in 1992 until 2000, incidents motivated by racial bias comprised the largest portion of reported hate crime incidents followed by incidents motivated by a religious bias and those motivated by bias against sexual orientation. The fewest number of incidents of hate crimes resulted from ethnicity or national origin bias, until the addition of the disability bias in 1997,

which then became the lowest portion of reported hate crime incidents.

That distribution changed in 2001, presumably as a result of the heinous incidents that occurred on September 11. For many offenders, the preformed negative opinion, or bias, was directed toward ethnicity/national origin. Consistent with past data, by bias type, law enforcement reported that most incidents in 2001 were motivated by bias against race. However, crime incidents motivated by bias against ethnicity/national origin were the second most frequently reported bias in 2001, more than doubling the number of incidents, offenses, victims, and known offenders from 2000 data. Additionally, the anti-other ethnicity/national origin category quadrupled in incidents, offenses, victims, and known offenders.

Another noticeable increase in 2001 was among the religious-bias incidents. Anti-Islamic religion incidents were previously the second least reported, but, in 2001, they became the second highest reported among religious-bias incidents (anti-Jewish religion incidents were the highest), growing by more than 1,600 percent

over the 2000 volume. In 2001, reported data showed that there were more than 481 incidents made up of 546 offenses having 554 victims of crimes motivated by bias toward the Islamic religion.

■ Hate crimes touch not only the individual victim, but they also affect the entire group associated with the particular bias motivation. Unfair and inaccurate stereotyping can make victims of all who share the same race, religion, ethnicity or national origin, sexual orientation, or disability. Law enforcement's commitment to hate crimes awareness and collecting and reporting data surrounding bias-motivated offenses underscores the notion that valid information is essential in developing tools with which to combat these pernicious crimes.

Ellen Katz
Written Statement

Research Advisory: Fall 2005

The Senate Report in Court:
A Portrait of Section 2 Litigation Since 1982

Research Objective:

The Voting Rights Initiative (VRI) is a research effort of 100 law students of the Michigan Election Law Project at the University Of Michigan Law School. VRI seeks to provide legislators, scholars, and the public with a detailed portrait of litigation brought under section 2 of the Voting Rights Act between 1982, when Congress last amended the statute, and July 2005. VRI is based on the belief that a detailed understanding of section 2 litigation is essential as Congress begins discussing the reauthorization of provisions of the Voting Rights Act that will expire by 2007.

Catalogued and Analyzed:

- All reported section 2 lawsuits nationwide (and those published on Westlaw/Lexis) with at least one case determining whether section 2 was violated.
- Judicial findings of the *Thornburg v. Gingles* factors.
- Judicial findings of the 1982 Senate Report factors (derived from Supreme Court case *White v. Regester* and Fifth Circuit case *Zimmer v. McKeithen*):
 1. history of official discrimination that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
 2. racially polarized voting
 3. the use of voting practices or procedures that may enhance the opportunity for discrimination;
 4. denial of access to the candidate slating process;
 5. extent to which members of the minority group bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
 6. whether political campaigns have been characterized by overt or subtle racial appeals;
 7. the extent to which members of the minority group have been elected to public office in the jurisdiction;
 8. whether elected officials have been "responsive" to minority group needs;
 9. whether the justification behind a challenged practice or procedure is "tenuous."
 10. other factors courts found relevant.

Compared:

- Violations and findings over time, 1980s v. 1990s.
- Section 5-covered and non-covered jurisdictions.
- Minority groups involved, practices and governing bodies challenged.

VRI Section 2 Data Will Soon Become Publicly Available At:
www.sitemaker.umich.edu/votingrights

For more information, contact Emma Cheuse, Lead Director, at votingrights@umich.edu or Ellen Katz, Faculty Advisor, at ekatz@umich.edu.

**Korean American Resource & Cultural
Center
Written Statement**



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National Commission on the Voting Rights Act Testimony

Korean American Resource & Cultural Center (KRCC) was founded in 1995 to empower Korean Americans in greater Chicago area through community education, collaboration, and organizing. KRCC is also Chicago affiliate of National Korean American Service And Education Consortium (NAKASEC) who projects a national progressive voice on immigrant rights and civil rights issues through education, organizing and advocacy.

Since its inception, KRCC focused on providing comprehensive education for Korean American voters through voter registration campaigns, publication of voter guides, distribution of candidate sheet, and community workshops. Last year, KRCC had registered over 1400 new voters in the community (1100 from Cook County¹) during three months prior to general election, conducted non-partisan Get Out The Vote campaign for three weeks and collected exit surveys from 5 polling sites in suburbs and in the city with assistance from ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND (AALDEF)

While the number of Korean American voters in Cook County has increased significantly over the last decade, there had been little bilingual materials available to Korean voters. Last year, KRCC helped the Cook County Clerk's Office publish the very first voter registration brochure in Korean language.

As one of the most recent immigrant groups, Korean voters with limited English capacity face significant barriers to exercise their voting rights and to have their votes count.

Following cases were reported by Korean voters in greater Chicago area:

- Lack of Election Judges providing bilingual assistance
- Vote by provisional ballots even if it is the right polling site and voters had all the required documents
- Lack of Sample Ballots in Korean language; little info about candidates in their districts

Recommendation

Continuation of Section 203 of Voter Rights Act
Expansion of Section 203 by lowering current trigger of 10,000 as it fails to include underrepresented migrant communities.

¹ Northwest suburban county near Chicago including the city of Chicago

**Greg Moore
Written Statement**



**Testimony of Greg Moore, Executive Director,
NAACP National Voter Fund
National Commission on the Voting Rights Act
Midwest Regional Hearing
July 22, 2005
Minneapolis, Minnesota**

To the members of the National Commission on the Voting Rights Act and invited guests: I want to thank you for the opportunity to testify here today on the proposed reauthorization of the Voting Rights Act of 1965 and other issues of racial discrimination in the voting process. My name is Greg Moore and I am the Executive Director of the NAACP National Voter Fund, (NVF) a non-profit social welfare organization that was created in 2000 by the NAACP in order to carry out 501 C 4 activities that promote voter registration, education and participation in the electoral process. We are proud to be one of the original co-sponsors of the National Commission's hearings.

NVF is headquartered in Washington, DC and have established a number of voter outreach programs in over 25 states over the past five years, including the states of Ohio, Michigan, Wisconsin and Illinois. Over the last two years our most extensive work has been in the state of Ohio. I should also mention that I am an Ohio native born and raised in Cleveland, Ohio and a graduate of Ohio University in 1982.

In 2004, the NAACP National Voter Fund in conjunction with a number of state and local branches of the NAACP registered over 214,000 voters throughout the US. Over a third of those new voters 82,000, were registered throughout the state of Ohio. In 2004 NVF built strong alliances with a number of voter registration and education coalition partnerships. Collectively we registered over 3 million new voter's nationwide and

helped spark a historic turnout of African American, Latino and young voters in a number of states.

We have also been very actively involved with a number of our allied organizations since November 2, 2004, seeking to ensure that the vote of every voter was fairly counted. We have participated in a number of community based hearings in November and December of 2004 in the aftermath of the Ohio election debacle and in 2005 have been closely monitoring the work of the Ohio General Assembly and other state legislatures as they seek to address many of the issues that rose out of the problems that took place throughout the voter registration process and on Election Day.

As we conduct these hearings on reauthorization, it is important that the commission hears many of the concerns that were being expressed by voting rights advocates as well as community and civic groups who know first hand what when wrong in Ohio on November 2, 2004. We know from history and past elections that African Americans, low income and young first time voters are more likely to encounter problems at the polls, not just in Ohio, but around the country. The NAACP National Voter Fund, the NAACP and many other national, state and local organizations have spent years developing election protection programs designed to ensure full compliance with the Voting Rights Act. However, efforts to disenfranchise voters continue to this day and. It is therefore the challenge of all federal and state lawmakers to ensure that all election related laws which govern how elections are conducted in states are being drafted and enacted in compliance and in the spirit of the Voting Rights Act. This is the primary concern I wish to emphasize in my remarks today.

I understand that at some point Representative John Conyers, Jr. will address you during these hearings. I would suggest that you submit into your records the Conyers Report which provides over 100 pages of documented evidence of voting irregularities that had a profound impact on African American voters in Cleveland, Columbus and other counties throughout the state. While Ohio was not one of the original states covered under the act, it is important that states that do not have to pre-clear changes to their voting laws know

that any changes that they are seeking should be in the spirit of the Voting Rights Act and should also fall within the letter of the law as well.

A number of hearings, not unlike this one, were held immediately following the November 2nd election that produced hundreds of hours of testimony and volumes of first hand accounts of voter suppression on the part of the state and county election officials in urban and minorities across the state. Today I urge this commission and other voting rights activists to monitor the actions of the Ohio General Assembly as they undergo their version of election reform. Based on an in-depth analysis of the proposed legislation being sponsored by the governing party, it has become clear to a number of voting rights activists that the pages of reform language attempts to codify many of these abuses.

Today we urge the members of this commission to send a strong signal to Washington and state legislative leaders that this commission is willing to submit as findings all of the recently gathered evidence of voter suppression, voter intimidation and voter disenfranchisement. In fact any relevant fact or finding regarding current barriers to the full exercise of voting rights should be exposed and taken into consideration before any final reauthorization legislation is passed into law.

We also need to take this opportunity of the 40th anniversary of the Voting Rights Act to advance innovative state legislation initiatives that can expand the voting rights where it is needed despite the political consequences. Opponents of expansion of voting rights are working over time at state legislatures all over the country drafting up cookie cutter legislation that are increasingly imposing mandatory ID requirements, and imposing restrictive voting procedures that will force millions of more voters into provisional voting status.

Likewise I would urge the commission to consider the following recommendation that I will admit may go against the conventional wisdom of the current legislative strategic thinking. But I believe that these issues need to be addressed now and not after the

debates over the voting rights of American have ended. This would be in the true spirit of the Voting Rights Act and the movement that spurred its enactment.

Our election laws must always place the greatest emphasis on increasing the electorate and not making it more difficult for citizens to participate. As state legislatures continues to deliberate on election reform legislation, it is important that the basic principles of the **Voting Rights Act of 1965, the National Voter Registration Act of 1993 and the Help America Vote Act of 2002** are all adhered to. First and foremost each provision of the new election reform laws must ensure that the reforms will expand the right to vote and not contract it. The provisions should be designed to make voting on Election Day easier and not more difficult and that it encourages and not discourages voting.

Provisional Voting

On the question of provisional voting, the NAACP National Voter Fund believes that citizens who vote provisional ballot should have laws that will not penalize them or take away their right to have their vote counted simply because they showed up at the wrong precinct or the wrong polling place. The jurisdiction for protecting provisional voter's right should be as broad as possible so that if they do make a mistake it can be corrected without sending them through hoops that may ultimately prevent their vote from ever being counted.

Voting Jurisdiction

Through our review of testimony from voters in Pennsylvania and Ohio we learned that how a state defines voting jurisdictions can have a major impact on the counting of minority voter's votes. In an increasing number of states, the voting jurisdiction which governs provisional balloting are precincts. The NAACP NVF believes that this jurisdiction should be *counties* and not *precincts*. This will ensure that the least amount of people are turned away at the polls on Election Day. This is a major change that must be made to any legislation that becomes law in any state considering changes to this provision of their election code.

There were many cases in the 2004 election where provisional ballots were cast in the correct polling location, but not in the correct precinct line, so those provisional ballots in too many cases were never counted. This accounted for over 92,000 ballots in the 2004 elections in Ohio where the election was decided by just over 118,000 voters. The Help America Vote Act designates a "voting jurisdiction" as the entity that oversees elections. In Ohio, this is the county Board of Elections. If Ohio and other states are to embrace the true spirit of the Voting Rights Act, it would designate counties as the jurisdiction to govern provisional voting thereby dramatically decreasing the number of voters whose votes would not be counted in future elections. Our overall goal must always be to pass laws that will decrease the number of people who should vote provisional ballots and not increase the number.

Voter Registration expansion and state accommodation

The high level of increased voter registration 2004 produced historic levels of voters being placed on the registration rolls. In many ways it was a breakthrough from decades of neglect as hundreds of thousands of potential voters throughout the country were registered--the vast majority who were young, African American, Latino and low income citizens. Because of these efforts over 300,000 new voters in the state of Ohio alone were eligible to participate in the political process for the first time.

In the state Ohio, what hundreds of thousands of minority and young voters found when they got to the polling place were long lines where people were forced to wait anywhere from two to nine hours to vote. They also found intransigent election officials and offensive poll watchers who challenge their right to vote because they made honest mistakes on the forms in their efforts to find the right polling place. In Ohio over 35,000 registered voters were placed on a statewide list to be challenged at the polls by partisan party operatives. Over 150,000 were not able to participate in our elections due to administrative and sometimes political barriers that occurred on Election Day. For that one day they became second class citizens as the term "Provisional" was stamped on their right to vote thereby nullifying it.

Voter ID Requirements, Voter Fraud, Accountability Standards and Penalties

Contrary to popular belief, mandatory ID requirements for all voters are not required under the federal HAVA statute, and is only required for those new registrants who did not provide either their social security number or drivers license numbers on their original mail in form. Ohio and many other states have gone further and are taking steps to require all new voters to show ID. NVF strongly opposes these efforts that are underway to add this new provision to the state election codes.

Mandatory ID requirements are opposed by the NAACP and virtually all civil rights and voting rights advocates because they create barriers for low income, homeless, youth and people of color who are statistically less likely not have photo ID. A new study released in May of 2005 by the Ohio League of Women voters revealed that over 357,000 voters (a disproportion of minority voters), could be disenfranchised in the state of Ohio were this provision to be added and would set back years and years of progress that has been made to increase voter participation among traditionally disenfranchised communities.

Maintaining Re-enfranchisement Voting Rights

By the same token we also strongly oppose adding any legislation currently under consideration in Ohio and Pennsylvania that would undermine, repeal or weaken laws that allow ex-offenders to regain their right to vote after they have served their time. Since a high proportion of voters effective would be African Americans and other men and women of color, we need to monitor the effects of these changes to ascertain if they contribute to increasing state sponsored minority voter dilution.

Ohio and Pennsylvania has one of the best laws in the nation regarding restoration of voting rights and has led the way for other states to follow suit. Both legislative bodies need to resist any temptations to repeal this law in this wave of reform. If anything the state needs to do more to help these young men and women regain their full citizenship by providing more public education about these rights. An ex-offender who is registered to vote is much less likely to return to a life of crime than a person who remains politically estranged from his community. In 2005, as we commemorate the 40th

anniversary of the voting rights act, we need to be breaking down barriers to voting not erecting new ones.

Many of these regressive reforms are being promoted in the name of stopping voter fraud. The study by the League of Women Voters and COHIO reveal a startling revelation that only 4 cases of voter fraud could be documented out of 9 million voters cast in Ohio since 2002. It makes the case in a very dramatic fashion that the real problems of our election system, despite popular belief, is not people voting illegally, but rather the failure of an election system to respond to the real problems of disenfranchisement. What failed on November 2nd all across the county was a national election apparatus that was not prepared to accommodate a large outpouring of democratic participation. The problem was not and can never be too many people voting—at least not in a democratic system of government.

The problem is the ability of the state to take on those reforms and create a new election apparatus that is necessary to absorb the full desires of the people for greater political participation. We have every reason to believe and hope that voting participation and turnout will continue to increase. As the pool of the electorate continues to expand, we as a democratic nation should be opening the doors to participation wider, and not doing anything that would close the doors and erect more barriers.

The Voting Rights Act of 1965, (VRA) the National Voter Registration Act of 1993, (NVRA) and the Help American Voter Act of 2002, (HAVA) were all enacted as avenues for continued enfranchisement and expansion of the American electorate. We must do everything to ensure that the current focus and attention being given to reauthorization of Voting Rights Act also be given to election reforms taking place in state capitols all across the country. We cannot allow states to erecting state laws that will weaken or nullifies federal efforts to reauthorize the Voting Rights Act.

This August we will celebrate the 40th anniversary of the **Voting Rights Act of 1965, (VRA)**, the act that made state laws restricting political participation by African -

Americans and other minorities illegal. The VRA became landmark legislation that outlawed poll taxes, literacy tests, and other forms of voter disenfranchisement that had been waged against African-American citizens throughout the south for many decades.

Forward Fast to **Ohio in 2004** and again we see a number of dedicated organizations and individuals standing up for the right to vote for all Americans and all Ohioans. The US Congress and the civil and voting rights community have a responsibility to the hundreds and thousands if not millions of citizens whose votes were not counted even after standing in line for hours in the cold rains of November. They want and deserve an election system that will go out of its way to ensure their votes are counted and not go out of its way to make it harder to do so.

The Spirit of Voting Rights Act of 1965 should Guide current legislative effort to re-enact it. In 2005 we have an opportunity to continue that legacy and make our democracy a shining example for election reform for the rest of the world to follow. But unfortunately our democracy is broken and in serious need of repair. I urge you to give careful consideration to all of these concerns as well as the other concerns that have been raised by the voting right and civic organizations who have testified before you previously. It is now up to us to ensure that the disenfranchisement that took place on November 2, 2004 is never repeated. We must do all that we can to ensure that no one is ever again denied the right to vote because of administrative or politically motivated barriers.

The reauthorization of the VRA needs to be more than the preservation of the status Quo. It should still be narrowly tailored but in a way that allows the path to intervene in modern day voting rights battles. I understand that this will take careful legislative and political skills to accomplish, but this is a battle that has never been easy and that has never come without a struggle. In 2005 and 2006 that struggle must continue until we fulfill American Democracy's Broken Promise.

Thank You for this opportunity to share my views on this important issue.