TESTIMONY OF WADE HENDERSON, EXECUTIVE DIRECTOR
LEADERSHIP CONFERENCE ON CIVIL RIGHTS
HOUSE JUDICIARY SUBCOMMITTEE ON THE CONSTITUTION
OVERSIGHT HEARING ON THE
"VOTING RIGHTS ACT: EVIDENCE OF CONTINUED NEED"
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Good afternoon. My name is Wade Henderson and I am the executive director of the Leadership Conference on Civil Rights (LCCR) and counselor to the Leadership Conference on Civil Rights Education Fund (LCCREF). LCCR is the nation's premier civil rights coalition, and has coordinated the national legislative campaign on behalf of every major civil rights law since 1957. LCCR consists of more than 190 national organizations representing persons of color, women, children, organized labor, individuals with disabilities, older Americans, major religious groups, gays and lesbians, and civil liberties and human rights groups. It is a privilege to represent the civil rights community in addressing the Committee today.

Yesterday marked the 41st anniversary of Selma's "Bloody Sunday," a civil rights march in Alabama that left 50 marchers hospitalized after police used tear gas, whips, and clubs to beat them. A week after Bloody Sunday, President Lyndon Johnson addressed a joint session of Congress in a televised speech denouncing the brutal attacks, stating that, "There is no Negro problem; there is no Southern problem; there is no Northern problem; there is only an American problem." Two days later he sent the Voting Rights Act to the Congressional floor for a vote. In partnership with Rev. Dr. Martin Luther King, Jr. and other civil rights leaders, the historic Act was passed into law in 1965.

The Voting Rights Act of 1965 (VRA) is widely viewed as the nation's most effective civil rights legislation because it has allowed large numbers of minorities to register and vote, and has empowered minority communities to elect their candidates of choice to local, state and federal offices. The Act enforces the 15th Amendment's guarantee that "The rights of citizens of the United States to vote shall not be denied or abridged by the

United States or by any State on account of race, color, or previous condition of servitude," and has been successful in removing direct and indirect barriers to voting for African Americans, Asian Americans, Latino Americans, and Native Americans.

The movement to secure equality of voting rights for racial, ethnic, and language minorities has had a profound and positive effect on all Americans by helping to ensure a more fully functioning democracy. Today, the strength of our democracy depends on both equal access to the voting booth and the ability of all Americans to cast an effective and informed ballot. The Voting Rights Act has been instrumental is pressing for both. Able to address new and old challenges to the right to vote, the VRA and its temporary provisions have been the pivotal force behind the progress that we have made toward protecting the right to vote.

Despite the progress made during the last four decades in the registration of, and voting by, minorities, as well as efforts to increase participation of language minority citizens in the democratic process, there is no question that barriers to full and equal minority voter participation remain. During this time period, a second generation of discrimination has emerged. It is perhaps more insidious than it was a half century ago, but no less discriminatory. Whether it is an at-large election, an annexation, polling place change, or redistricting, changes in voting procedures and practices have resulted in discrimination against minority voters. Likewise, when language minorities in communities across America are denied the language assistance that they need in order to cast an informed vote, we know the right of minority citizens to cast an effective ballot is in jeopardy. Today, we know that there is much work left to be done. We **must** reauthorize and restore the temporary provisions of the Voting Rights Act.

Over the past year, as our nation celebrated the 40th anniversary of the Voting Rights Act, the Leadership Conference on Civil Rights Education Fund (LCCREF), the research and communications arm of the civil rights coalition, has been coordinating a diverse and extensive collaborative of national civil rights groups to examine the Voting Rights Act in the twenty-four years since its last full reauthorization. Many of the coalition members

have played significant roles in the implementation of the voting rights provisions through successful advocacy and extensive public education. The members of this collaborative effort, "RenewtheVRA.org," share a common vision: the critical importance of enabling every citizen to participate fully in the electoral process, ensuring the fundamental right to vote for a candidate of one's choosing. LCCREF charged RenewtheVRA.org with assessing states' compliance with the Voting Rights Act over the past 25 years, including but not limited to, voter access and the participation of minority communities in exercising their voting rights.

As part of LCCR's role in assessing the VRA and its continued need, LCCR commissioned a series of reports for the Congress to examine the impact of the VRA over the past 25 years to document how rights have been expanded and to look at where problems still exist. The result was a series of reports that constitute a critical state-by-state assessment of the status of voting rights across the country, focusing on 14 states covered by Section 5, Section 203, or both**.** This project was designed to be an update of "Quiet Revolution in the South," which contains state-by-state voting rights information from 1965 through 1990 for various states with significant minority populations. These reports are a continuation of the story that "Quiet Revolution in the South" began, with one important addition: a review of the availability of assistance to language minority groups in the various states.

Beginning today and over the next month, RenewtheVRA.org will be releasing reports on Alabama, Alaska, Arizona, California, Florida, Georgia, Louisiana, Mississippi, New York, North Carolina, South Carolina, South Dakota, Texas, and Virginia. Today, I will highlight the trends and findings of many of these reports.

I would ask that each of the reports previously submitted to the Committee, those that will be submitted in the coming days and weeks, and my testimony in full be included and admitted as part of the record of these proceedings.

STATE REPORTS:

Several consistent themes emerged in these state reports. The evidence shows that over the course of the last 25 years, these temporary provisions have been employed often and have worked well to stop practices harmful to the full participation of minority voters. First, it is clear that the preclearance provision, the language minority protections, and the examiner and observer provisions have made a dramatic difference in protecting the voting rights of minority citizens to ensure that they can elect candidates of their choice in local, state, and federal elections. What these reports also highlight, however, is a unifying theme that discrimination still pervades the electoral process. The reports contain clear and convincing evidence and examples of why the VRA remains relevant and necessary, documenting how these particular provisions of the VRA have been and would continue to be used effectively to stop both intentional discrimination and facially neutral practices that could have harmful discriminatory purposes or effects.

Each state report closely examines: Section 5 preclearance objections; litigation under Section 2 of the VRA; other voting rights litigation, including constitutional challenges to voting practices that impact minority voters; an analysis of the language minority experience in Section 203 and 4(f)(4) covered jurisdictions; where applicable, a discussion of the federal observers within the state since 1982; and demographic data detailing state minority office holders. These reports illuminate the discrimination that is still present in our society and undermines the right to vote, while also celebrating the important victories that minorities have achieved because of the VRA.

The state reports are rich with both data and anecdotal evidence and include compelling stories of how the VRA has impacted voters and minority office holders on the ground in each of the states. For example, Mississippi is the poorest state in the union. Its population is 36 percent black, the highest of any of the 50 states. Resistance to the civil rights movement was as bitter and violent there as anywhere. State and local officials frequently erected obstacles to prevent black people from voting, and those obstacles were a centerpiece of the evidence presented to Congress to support passage of the

Voting Rights Act of 1965. After the Act was passed, Mississippi's government worked hard to undermine it. In its 1966 session, the Mississippi legislature changed a number of the voting laws to limit the influence of the newly enfranchised black voters, and Mississippi officials refused to submit those changes for preclearance as required by Section 5 of the Act. Black citizens filed a court challenge to several of those provisions, leading to the United States Supreme Court's watershed 1969 decision in *Allen v. State Board of Elections*, holding that the state could not implement the provisions unless they were approved under Section 5.[1]

Dramatic changes have occurred since then. Mississippi has the highest number of black elected officials in the country. One of its four members in the United States House of Representatives is black. Twenty-seven percent of the members of the state legislature are black. Many of the county governing boards, city councils, and school boards in the state are integrated, and 31 percent of the members of the county governing boards (known as boards of supervisors) are black.

Additionally, the New York report recounts the long-overdue firsts that came about because of the 1982 VRA reauthorization: the first and only African-American mayor; the first and only Latino candidate for mayor; the first and only Asian American to win a city council seat; and the first and only African American to win a statewide office.

These changes, however, would not have occurred without the Voting Rights Act. Even after the Act was passed, many of them were a long time in the making, and most came about through Section 5 objections imposed by the United States Department of Justice and court orders obtained after extensive litigation.

The reports also highlight the recent history of discrimination in the 14 states, focusing on old and new methods of discrimination that have been employed to abridge the voting rights of minorities – everything from at-large elections, to annexations, redistricting and

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1 393 U.S. 544 (1969).

changes in voting procedures. For example, the Georgia report focuses on the ninety-two objections lodged pursuant to Section 5 since 1982, noting the range of voting practices where objections are made including, method of election, redistricting, judicial elections, annexation, scheduling of elections, qualifications of candidates, registration procedures, polling place locations, and numerous other voting procedures.

Finally, the reports examine current events, attitudes and news stories in the states that have an impact on the right to vote and illuminate the nature of the political climate for minorities. The Louisiana report offers significant analysis and factual evidence regarding the future of Orleans Parish as a center of African-American political power following Hurricane Katrina, particularly in light of the historical record of the state's vote denial and dilution. The South Dakota report highlights how societal attitudes and a hostile climate led to practices that undermined the participation of American Indian voters. These tactics included voter intimidation, investigations of newly registered voters, failure to provide polling places on reservations, discriminatory redistricting, and failure to provide language assistance at the polls.

Today, I want to share with you the most significant findings contained in these reports. I will begin with highlights regarding the utilization of Section 5 of the VRA since 1982, its successes, as well as why it remains a relevant and necessary tool to curb voting rights abuses.

Section 5 of the Voting Rights Act:

As the Committee is aware, Section 5 of the Voting Rights Act requires certain covered jurisdictions, state, and local governments with a history of voting discrimination, to "preclear" proposed changes in voting or election procedures with either the United States Department of Justice or the United States District Court for the District of Columbia. What follow are examples of why Section 5 remains relevant and necessary.

Selected Excerpts from RenewtheVRA.org's Alabama Report

In Alabama, the non-retrogression and preclearance provisions of Section 5 have become the most important guarantors of equal political and electoral power for African Americans, first in their recurring negotiations with white officials, and, second, in their ability to restrain efforts of white elected officials to reverse the progress in voting rights and restore the old, discriminatory practices.

In 2003, the Chilton County Commission, under pressure from members of an all white group, Concerned Citizens of Chilton County, adopted a resolution, over the objection of the sole black commissioner, asking the local legislative delegation to pass a local act reducing the size of the commission to four; restoring the probate judge as *ex official* chair; repealing cumulative voting; and thus ending any opportunity for African Americans to elect a candidate of their choice. The U.S. Attorney General refused to consider Chilton County's submission of the 2003 local act for preclearance. Without the protections of Section 5 of the VRA, white-majority state and local governments in Alabama ***just 3 years ago*** succumbed to pressure from their white constituents and were willing to return to the racially discriminatory election practices of the past. "We would be having a totally different conversation if it didn't exist," said Chilton Commissioner Bobby Agee, "We would have been at ground zero without Section 5." This case also highlighted the extent to which racially polarized voting exists in Alabama, and courts have recognized the synergy between racially polarized voting and previous racial discrimination in Alabama. "Racial bloc voting by whites is attributable in part to past discrimination, and the past history of segregation and discrimination affects the choices of voters at the polls."[2] Several recent federal court cases underscore that racially polarized voting remains a current problem in Alabama.

An expert analysis of the 2004 general election for Chilton County Commission provides "dramatic evidence of how white voters are unwilling to vote for African-American candidates." For example, the one African-American commissioner, Bobby Agee, has

2 *Brown v. Board of School Comm'rs of Mobile County*, 542 F.Supp. 1078, 1094 (S.D. Ala. 1982), aff'd, 706 F.2d 1103 (11th Cir.), aff'd 464 U.S. 1005 (1983).

served continuously since 1988. Despite his incumbency, he cannot garner support from the white electorate. He is the first choice of African-American voters to represent them on the commission; in contrast, he finishes last in terms of votes cast by non-African Americans in each type of electoral analysis undertaken by voting experts.

Additionally, in the city of Selma, site of 1965's infamous Bloody Sunday, Section 5 has been used as a vital tool in restraining efforts to "restore discriminatory practices." In 1991, utilizing a recent 1990 census, the Department of Justice refused to grant preclearance to two different redistricting plans submitted by the city of Selma. The Department of Justice concluded that the redistricting plans submitted by the city exhibited a purpose to prevent African Americans from electing candidates of their choice by fragmenting the black voting population. Amended plans were eventually precleared that provided black citizens with equal opportunity, resulting in the election of black candidates to the Selma city council.

Selected Excerpts from RenewtheVRA.org's Mississippi Report

Although the Act was passed in 1965, delays by Mississippi officials in complying with their obligations under Section 5 postponed for several years any meaningful review of voting changes. After the Supreme Court's decision in *Allen*, the state finally submitted the three 1966 laws that were the subject of that case, leading to the first Section 5 objection in the State. It came on May 21, 1969, when DOJ objected to all three of those laws: one changing the method of selecting county superintendents of education in eleven counties from election to appointment; one giving counties the right to elect their boards of supervisors at-large rather than by districts; and one adding burdensome new qualification requirements for independent candidates in general elections. This was the first of 169 objections to voting changes in Mississippi. Nearly two-thirds of those (112) came after Section 5 was reauthorized in 1982.

As mentioned earlier, Mississippi officials refused to comply with their obligations under Section 5 in the wake of the passage of the Voting Rights Act, leading to the Supreme Court's 1969 decision in *Allen*. Two years later, in its next major Section 5 enforcement

decision, *Perkins v. Matthews*, the Supreme Court held that the City of Canton, Mississippi violated Section 5 when it attempted to enforce a change from ward to at-large elections for the city council, a change in polling place locations, and an alteration of the city's voting population through annexation.[3] Unfortunately, these decisions did not end the problem of noncompliance. At times over the years, black voters had to return to the courts to force state and local officials to fulfill the basic requirement of submitting voting changes for Section 5 review. For example, the state failed to submit a number of laws passed over a period of several years adding new state trial court judgeships elected under a numbered post system. In 1986, the federal district court in *Kirksey v. Allain* was required to step in and enjoin further elections for those seats until preclearance was obtained.[4] State officials then submitted the changes to DOJ, which entered an objection to the numbered post requirement later that year.

The Supreme Court revisited the issue of Section 5 non-compliance in 1997 when state officials refused to submit for Section 5 review a number of changes in state law made to conform to the National Voter Registration Act. The Court unanimously held, in the case of *Young v. Fordice*, that the officials had violated Section 5 and could not go forward with the changes until preclearance was obtained.[5]

As recently as November, 2005, a three-judge federal court enjoined the city of McComb from enforcing a state court order it had obtained that removed a black member of that city's Board of Selectmen from his seat by changing the requirements for holding that office. As the three-judge court pointed out, the order clearly altered the pre-existing practice, yet the city had done nothing to preclear it. The court ordered the black selectman restored to his office and enjoined the city from enforcing the change unless preclearance was obtained.[6]

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3 400 U.S. 379 (1971).

4 635 F. Supp. 347 (S.D. Miss. 1986) (three-judge court).

5 520 U.S. 273 (1997).

6 *Myers v. City of McComb*, No. 3:05-cv-00481 (S.D. Miss. Nov. 23, 2005) (three-judge court) (unpublished order).

Thirty-six percent of Mississippi's population is black, the highest percentage of the fifty states. 33 percent of the voting age population is black. But no black person has been elected to a statewide office since Reconstruction. In 2001, the last year covered by its study of black elected officials, the Joint Center for Political and Economic Studies reported that Mississippi had 892 black elected officials. While this is the highest number of any of the fifty states, the Center's report states that this represents less than 19 percent of the state's elected officials. Nearly all of the black officials were elected from black majority districts, and most of those districts were created as a result of the Voting Rights Act.

Selected Excerpts from RenewtheVRA.org's Louisiana Report

The contemporary situation in Louisiana is placed in the broader context of the state's history of voting discrimination. The analysis shows that Louisiana has made progress in enforcing the voting rights of African Americans in the 24 years since the last reauthorization, but that this progress has been gradual and/or remains tenuous, in part, because many state and local officials continue to resist full compliance with the dictates of the VRA and principles of minority inclusion and equality that it embraces. By any measure it is clear, however, that the progress Louisiana has made in protecting minority voting rights is due in large part to the existence and vigorous enforcement of the VRA, and particularly, Section 5. In the absence of the expiring provisions, African Americans in Louisiana would likely experience erosion in the political access and representation gains that the VRA has made possible over the last four decades.

The recent national attention on New Orleans following Hurricane Katrina presents a new opportunity to evaluate the necessity of minority voter protections at the same time that it brings renewed focus to a city that has consistently seen efforts to weaken minority voting rights. In the years since the last renewal of the VRA in the 1982, but long before Hurricanes Katrina and Rita devastated New Orleans and the surrounding areas, African-American voters in that part of the state have relied upon the protections of the Act to turn back repeated efforts to dilute their voting strength. Sections 5 and 2 of the VRA are

again playing crucial, if limited, roles in shaping the legislative response to Katrina's voting related problems by providing important leverage in the courts and DOJ, not only for minority voting rights advocates but also for state officials who wish to protect minority voters in the face of countervailing political pressures. The immediate and potential long-term implications of Hurricane Katrina on Louisiana's African-American electorate provide a useful reminder of why the VRA[7] is essential if Louisiana is to continue its slow climb toward full political equality for its African-American citizens.

Hurricane Katrina may have caused the nation to reevaluate the extent of our progress in overcoming our history of entrenched racial discrimination, in much the same way that the "Bloody Sunday" march that led to the passage of the VRA did more than forty years ago. Although the short and long-term impact of the unprecedented mass displacement of New Orleans' African-American citizens on their access to political power is not yet known, it is appropriate to highlight the substantial obstacles that African-American voters faced in Orleans Parish long before Katrina struck last year prior to assessing any of the new minority voting challenges that Katrina has caused.

Accordingly, the concerns about the future of Orleans Parish as a center of African-American political power following Hurricane Katrina are very well placed in light of the historical record of the state's vote denial and dilution. Katrina displaced more than one million people from southern Louisiana alone.[8] Three hundred thousand of these citizens, the vast majority of whom are African-American, fled New Orleans,[9] where they formed a mobilized voting bloc in the only majority-minority congressional district in the state at

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7 42 U.S.C. § 1973c.

8 Jeremy Alford, *Population Loss Alters Louisiana Politics*, N.Y. TIMES, Oct. 4, 2005, at http://www.nytimes.com/2005/10/04/national/nationalspecial/04census.html?ex=1138683600&en=f097af0aa2b4a630&ei=5070.

9 Benjamin Greenberg, *Voter Disenfranchisement by Attrition*, IN THESE TIMES, Nov. 4, 2005, at http://www.inthesetimes.com/site/main/article/2400/.

the center of African-American political power.[10] The destruction of polling places, displacement of voters and candidates, and general loss of electoral infrastructure initially forced Louisiana officials to postpone the fall 2005 municipal elections in Orleans and Jefferson Parishes.[11] These circumstances present substantial questions about whether, how and by whom African-American communities will be rebuilt, when displaced residents may return, and perhaps as importantly, who gets to make these decisions. For example, will displaced voters be able to register, receive absentee ballots, and vote?[12] While there is considerable uncertainty about the future of Louisiana's African-American communities post-Katrina, the existence of VRA protections have provided some assurance to displaced African Americans that their interests cannot be ignored with impunity.

No fewer than a half dozen DOJ Section 5 objections made since 1982 were based, at least in part, on efforts by Louisiana officials to minimize African-American voting strength in Orleans Parish. The objections prevented dilution for elected legislative and various judicial seats. The persistence of the attempts to dilute minority voting strength in Orleans Parish, which has been the most concentrated area of African-American population in the state, is best illustrated through the decennial redistrictings for the Louisana House of Representatives. In 1982, DOJ explained Louisiana's failure to meet its obligations under Section 5 as follows:

> Overall the plan has the net effect of reducing the number of House districts with Black majorities. In Orleans Parish, for instance, the number of such districts is reduced from eleven to seven. While this reduction may be justified to some extent by the general loss of parish population in comparison to overall statewide population gain, the loss of so many black majority districts in that parish has not been satisfactorily explained, especially since the black percentage of the

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10 Alford, *supra* note 64, Kristen Clarke-Avery & M. David Gelfand, *Voting Rights Challenges in a Post-Katrina World*, FINDLAW, Oct. 11, 2005, at http://writ.news.findlaw.com/commentary/20051011_gelfand.html.

11 Mark Waller, *Fall Elections in Jefferson, N.O. Postponed*, NOLA.COM, Sept. 14, 2005, at http://www.nola.com/newslogs/tporleans/index.ssf?/mtlogs/nola_tporleans/archives/2005_09_14.html#079542.

12 LA. REV. STAT. ANN. § 18:562 (West 2005). *See also* Clarke-Avery & Gelfand, *supra* note.

population in Orleans Parish has increased from 45 to 55 percent over the past ten years.

Of particular concern in this regard is the uptown New Orleans area of the parish, where the configuration of the proposed Districts 90 and 91 appears to result in needless dilution of minority voting strength. While we understand that incumbency considerations may explain in part why District 90 spans three parish wards, including noncontiguous portions of ward 12, our analysis shows that there are other means of addressing that concern without adversely impacting minority voting strength in the area.

Another problem in New Orleans involves the Ninth Ward. Under the proposed plan, a black majority district in this ward is eliminated for no apparent justifiable reason, leaving only one majority black House district out of the five emanating from that 61 percent black ward.[13]

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13 Letter from Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Charles Emile Bruneau, Jr., Louisiana House of Representatives (June 1, 1982). In the very same objection letter, Reynolds also objected to dilution in East Baton Rouge, East Feliciana, West Feliciana, and St. Helena Parishes, and noted that the legislature had adopted the dilutive plan despite the existence of non-dilutive alternative plans that would have adhered more closely to the State's other redistricting criteria, such as compactness and least change.

The post-1990 round of redistricting was tainted by similar section 5 violations. In the Section 5 objection letter that was provided to the state, DOJ "examined the 1991 House redistricting choices in light of a pattern of racially polarized voting that appears to characterize elections at all levels in the state."[14] DOJ found that while most of the statewide plan comported with Section 5 requirements, "In seven areas, however, the proposed configuration of district boundary lines appears to minimize black voting strength, given the particular demography in those areas…"[15] Once again Orleans Parish was specifically identified. DOJ observed that:

> In general, it appears that in each of these areas the state does not propose to give effect of overall black voting strength, even though it seems that boundary line logically could be drawn to recognize black population concentrations in each area in a manner that would more effectively provide to black voters the opportunity to participate in the political process and to elect candidates of their choice…
>
> In addition, our analysis indicates that the state has not applied its own [redistricting] criteria, but it does appear that the decision to deviate from the criteria in each instance tended to result in the plan's not providing black voters with a district in which they can elect a candidate of their choice.[16]

The record shows that the need for Section 5 coverage of Louisiana has not declined since its last reauthorization in 1982. In fact, the average number of objections per year actually *increased* after 1982. By examining Louisiana's conduct in connection with its House of Representative redistricting plans from 1965 through the present, one can trace an unbroken pattern of voting discrimination. The record shows that President Johnson's

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14 Letter from John Dunne to Jimmy N. Dimos, Speaker of the House of Representatives (July 15, 1991). The Louisiana State Senate also sought to reduce African-American voting strength in its 1991 redistricting plan, cracking apart African-American majorities in the northeastern part of the state and around Lafayette, while preserving majority-white districts for every white incumbent. Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ., to Samuel B. Nunez, President of the Senate of the State of Louisiana (June 28, 1991). Assistant Attorney General John R. Dunne found that the Lafayette-area plan was "intended, at least in part, to suppress the African-American proportion to a level considered acceptable to a white incumbent." *Id.* at 2.

15 *Id.*

16 *Id.*

1965 challenge — to change the attitudes and structures from which voting discrimination arises — has not been met. Intransigent officials throughout the state, and at its highest levels of power, are commonplace and have persisted in discriminatory behavior through decades in order to dilute the African-American vote. The post-1982 renewal experience in Louisiana reveals that these officials cling tenaciously to old strategies of dilution even while they develop new ones, resist transparency, conceal public information, and attempt to shut African-American citizens out of decision-making processes. With the roots of discrimination still so firmly in place in Louisiana, Section 5 is as necessary now as it was in 1965, 1970, 1975, and in 1982 to avoid dramatic, unnecessary and, unfortunately, inevitable retrogression in African-American political opportunity in Louisiana.

Selected Excerpts from RenewtheVRA.org's Florida Report

Like the 1992 reapportionment process that preceded it, the 2002 reapportionment process in Florida was characterized by controversy, allegations of partisan gerrymandering and minority vote dilution, litigation and an objection by the Department of Justice under Section 5 of the Voting Rights Act. This time, the Department of Justice interposed an objection to the 2002 redistricting plan for the Florida House of Representatives, stating that the plan reduced "the ability of Collier County Hispanic voters to elect their candidate of choice [and] the drop in Hispanic population in the proposed district will make it impossible for these Hispanic voters to continue to do so."

As a result of the DOJ's Section 5 objection to the 2002 reapportionment plan, the Hispanic minority-majority district was preserved in Collier County and its existence is attributable solely to the Department of Justice's Section 5 review. Once again, the Section 5 process was essential to put the brakes on a controversial reapportionment process that was met with extreme suspicion in Florida's minority communities.

In addition to objecting to both of Florida's reapportionment plans since 1982, the Department of Justice has also twice interposed objections to election legislation that adversely affects minority voters.

One of these objections interposed by the Department of Justice to Florida election procedures was directed at three of thirty-seven changes proposed by Florida to the administration of absentee ballots in 1998. The changes were a part of a large Voter Fraud Act that made sweeping changes to Florida electoral systems in response to widespread voter fraud in the City of Miami. The three provisions to which DOJ objected placed heavy emphasis on literacy skills, ability to provide a Social Security number and a witness' signature. In reviewing these changes, DOJ had actual data showing that they disproportionately impacted minority voters. DOJ's analysis "revealed that during the limited time the State chose to implement the non-cleared absentee voting requirements… the votes of minority electors would have been more likely than white voters to be considered 'illegal' and thus not counted." Further, "minority voters were more likely to fail to meet one of the State's new requirements than were white voters." For example, in Hillsborough County, twice as many black absentee voters as white absentee voters failed to meet one of the State's new requirements. Without DOJ's Section 5 review of this statewide change to Florida election law, it is likely that access to the franchise for many vulnerable minority voters would have been jeopardized.

Selected Excerpts from RenewtheVRA.org's Georgia Report

In Georgia, there have been ninety-two Section 5 objections lodged since 1982. In many cases, the objected-to changes had been illegally implemented for years, or even decades, without Section 5 preclearance. This repeated failure to submit dilutive voting changes for Section 5 review is a strong indicator of a pattern of racially discriminatory conduct by local officials. Of the ninety-two objections, the areas covered included: at-large elections; majority vote requirement; numbered posts; at-large in combination with residency districts; majority vote requirement in combination with numbered posts and staggered terms; and redistricting.

For example, in September 2002, DOJ objected to a redistricting plan for the city of Albany (Dougherty County) that reduced the black population in one ward from 51 percent to 31 percent specifically created to forestall the creation of an additional

majority-black district. Census data indicated that blacks made up 60.2 percent of the voting age population in Albany in 2000 and 57.3 percent of the registered voters in the city at the time of the submission of the plan. In August of 1982, DOJ objected to the city of Brunswick's attempt to consolidate with Glynn County. At that time, the city was majority African-American and there was the possibility that they would elect a majority of the council members. DOJ found that the consolidation would have diluted the strength of African-American voters so that they would likely only be able to elect candidates of their choice for one of the seven seats in the consolidated jurisdiction. Additionally, in October 1992, DOJ objected to a polling place change for Johnson County in which the polling place for the Wrightsville precinct would be moved from the county courthouse to an American Legion Hall, which had a well-known reputation in the county for racial hostility and exclusion. Finally, a telling statistic is that objections to statewide redistricting plans have been raised in each of the redistricting cycles since 1982.

Selected Excerpts from RenewtheVRA.org's Texas Report

Since 1982, one hundred and seven Section 5 objections to preclearance have been interposed. According to the report's findings, racially discriminatory election changes have increased since 1982 and repeat offenses are common. For example, of the 72 counties experiencing challenges to elections changes, 28 have demonstrated a pattern of repeat offenses. Given the number of objections to preclearance interposed and what could therefore have been potential lawsuits, the expediency and effectiveness of Section 5 in averting expensive litigation is self-evident. Of the one hundred and ninety-six objections since 1975, fifty-nine have been related to the districting or redistricting plans proposed at various levels of government, including seven statewide redistricting plans. There have also been 12 DOJ objections interposed with regard to changes in voting procedure at the local level.

Additionally, forty-seven objections have been related to the method of elections, e.g., single member districts vs. at-large districts. For example, DOJ, in an August 12, 2002 objection letter to Freeport, TX (Brazoria County), which in 1992 had switched from an at-large voting system to single member districts, stated:

> Under the subsequent single-member district method of election, minority voters have demonstrated the ability to elect candidates of choice in at least two districts, wards A and D. The city now proposes to reinstitute the at-large method of election. Our analysis shows that the change will have a retrogressive effect on the ability of minority voters to elect a candidate of their choice.

Selected Excerpts from RenewtheVRA.org's Virginia Report

There have been numerous Section 5 objections in every decade since the last reauthorization of the VRA in 1982. They have been made in a wide range of areas including redistricting, voting procedures, and election schedules or structure of elected bodies.

For example, in the area of redistricting, in September 2001 and again in May 2003, Northampton County proposed collapsing six districts for the Board of Supervisors into three larger districts—three of the six benchmark districts were majority minority districts that regularly elected candidates of their choice. DOJ objected in September 2001 because the plan would have diluted minority-majorities; in May 2003, Northampton proposed a new six district plan that still had the same retrogressive effect of reducing all majority-minority districts. DOJ objected and provided a model, non-retrogressive plan, which has yet to be followed by the county.

Additionally, in July 1991, DOJ objected to the redistricting plan of the Virginia House of Delegates. They found the proposed configuration minimized black voting strength in Charles City County, James City County, and the Richmond/ Henrico County areas. Large concentrations of African Americans were placed in majority white districts. DOJ concluded that protection of incumbents, which was the commonwealth's defense, could not be done at the expense of minorities.

Several examples of non-compliance with the VRA have been in the area of voting procedure. For example, in October 1999, the Darvills Precinct for Dinwiddie County was forced to move the location of a polling center because the old location had burned down. Precinct voting was moved to the Cut Bank Hunt Club, a privately owned club with a large African-American membership. One hundred and five citizens submitted signatures to have the polling location moved to the Mansons United Methodist Church, three miles away, in order to have the polling location be in a "more central location." Subsequently, the Mansons Church withdrew its name, and a public hearing was held to find a new, centrally located location. On August 4, 1999, the board approved changing the polling place to the Bott Memorial Presbyterian Church, located on the extreme east end of the precinct. 1999 census data showed that a significant portion of the African-American population lived on the western end of the precinct. DOJ objected based on findings that the poll location was moved for discriminatory reasons.

A common myth about the VRA is that it is impossible to qualify for the "bailout provisions" that would remove the jurisdiction from Section 5 coverage. Although substantial discrimination still exists in Virginia, nine jurisdictions have bailed out since 1982. This illustrates that jurisdictions can meet the requirements under federal law and that many of those that have done so have been successful in bailing out of Section 5 preclearance coverage under the current formula.

Selected Excerpts from RenewtheVRA.org's South Carolina Report

Since 1982, the Department of Justice has objected to Section 5 preclearance on seventy-three occasions. The objected-to discriminatory practices have covered a wide variety of changes that affected nearly every aspect of black citizens' participation in South Carolina's electoral processes, including redistricting, annexations, voter assistance, changing county boundaries, eliminating offices, reducing the number of seats on a public body, majority vote requirements, changing to at-large elections, using numbered posts or residency requirements, staggering terms, scheduling of elections, changing from nonpartisan to partisan elections and limiting the ability of African-American citizens to

run for office. Objected-to practices have also covered all levels of government: General Assembly, counties, county boards of election, school districts, cities, and municipalities.

Additionally, racially polarized voting remains a widespread problem in South Carolina. For example, in *Colleton County Council v. McConnell*, an expert witness offered undisputed testimony that South Carolinians are still much 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, further stating that racial polarization is highest in black-white elections. The Colleton County Council Court concluded that, "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."[17]

Sumter County Council had a long history of attempts to limit the ability of African-American citizens to fully participate in the political processes, including redistricting. In 1984, Sumter County sought a declaratory judgment from the District Court of the District of Columbia to preclear at-large elections in the Sumter County Council. The Court denied preclearance because only one African-American had been elected under the at-large system and a "fairly drawn single-member district plan for the Sumter County Council is more likely to allow black citizens to elect candidates of their choice in three of seven districts."[18] The council followed single member districts after that time; yet again in 2001, they faced an objection over their redistricting plan because the DOJ found a pattern of racial polarized voting that would likely lead to a situation where "the black candidate of choice would lose or at best win by an extremely narrow margin."

Selected Excerpts from RenewtheVRA.org's New York Report

In New York, fourteen separate objections to preclearance under Section 5 of the VRA have been lodged since 1982. For example, in May 1994, DOJ found that the New York

17 *Colleton County Council*, 201 F.Supp.2d 618, 641 (D.S.C. 2002).

18 *County Council of Sumter County*, SC v. U.S., 596 F.Supp 35,37 (DDC 1984).

City Board of Elections' failure to translate candidates' names and machine operating instructions into Chinese because, as the board of elections had argued, there was not enough space on the voting machines for Chinese characters, was a violation of Section 5. In its letter, DOJ stated:

> Our analysis shows that a candidate's name is one of the most important items of information sought by a voter before casting his or her ballot for a particular candidate. . . For voters who need Chinese-language materials, the translation of candidates' names is important because Roman characters are completely different from Chinese characters. Consequently, it would be extremely difficult, if not impossible, for these voters to understand names written in English.

In June, 1992, an objection was filed arguing that the New York State Assembly's redistricting plan discriminated against Latino voters. DOJ found that New York knowingly fractured the Latino community with the intent and effect of reducing the community's ability to elect candidates of choice. In fact, DOJ found that the state was aware of that the consequences of their redistricting plan would minimize Hispanic voting strength. The objection helped Adriano Espaillat win election to the State Assembly in 1996, becoming the first Dominican ever elected to the NY Legislature.

Selected Excerpts from RenewtheVRA.org's South Dakota Report

South Dakota includes three counties covered by the Section 5 preclearance requirements: Todd, Shannon, and Washabaugh counties. South Dakota has submitted only one letter to the DOJ requesting review of proposed election procedures. DOJ objected to South Dakota's proposed changes regarding voter registration and driver's license applications; voter purging every four years; and changes in mail-in voter registration dates, citing a lack of evidence that they were not discriminatory in purpose against Native American voters.

Selected Excerpts from RenewtheVRA.org's Alaska Report

In Alaska, report findings indicate that Section 5 has prevented egregious vote dilution attempts and needs to be retained. A 1990 redistricting plan was harshly criticized on the

grounds that it diluted Native votes, disregarded differences between native groups, and had allegedly been prepared in secret. More pointedly, a coalition of Native interests accused the governor of being "anti-Native." The coalition of Native groups appealed to DOJ, imploring them not to preclear the plan and identified the retrogressive components of the proposed plan. DOJ stepped into the battle and sent a letter to the state requesting more information, subsequently, the trial court ultimately threw out the plan as unconstitutional.

Selected Excerpts from RenewtheVRA.org's North Carolina Report

North Carolina has experienced the benefits of Section 5's protections of minority voting rights. Section 5 has been used to protect against proposed dilutive proposals including staggered terms, residency requirements, annexation of predominately white areas, majority vote and runoff requirements, unfair drawing of districts, and the maintenance of at-large voting. Residency requirements-systems under which the entire county or city votes for each seat but the candidate is required to reside in a particular area–have been especially common proposals aimed at weakening black voter strength in North Carolina. Such requirements limit minority voters' ability to use single-shot voting to elect candidates of their choice. In just the six-year period from 1982 through 1987, Section 5 enabled the Attorney General to interpose objections to residency districts in Beaufort, Bertie, Camden, Edgecombe, Guilford, Martin, Onslow, and Pitt counties.

Section 203 of the Voting Rights Act:

Selected Excerpts from RenewtheVRA.org's Florida Report

The language minority protections are extremely important for Florida. The defining feature of the latter part of the twentieth century for Florida was the enormous increase in the state's new citizen population..

Many Florida jurisdictions have repeatedly ignored the language assistance needs of their constituents and disenfranchised language minorities in violation of Section 203. The U.S. Commission on Civil Rights (USCCR) found in its post-2000 study that "large

numbers of English-speaking Florida voters were denied this assistance at polling places all around Florida." The USCCR report also found that in central Florida, "Spanish-speaking voters did not receive bilingual assistance and some of these counties were subject to section 203 of the Voting Rights Act. This failure to provide proper language support led to widespread voter disenfranchisement of possible several thousand Spanish-speaking voters."

Another example of a significant Section 203 problem lies in Osceola County. Since 1980, the Hispanic population in Osceola County has increased from 2 percent of the total population to 29.4 percent of the total population. In 2002, DOJ filed suit against county officials, alleging that poll workers made hostile remarks to Spanish-speaking voters to discourage them from voting; poll workers failed to effectively communicate with Spanish-speaking voters; the County failed to staff polling places with bilingual poll workers; and failed to translate written materials. DOJ and the county resolved the case by a Consent Decree, requiring the county to undertake a number of remedial actions.

Given that almost one-third of the Hispanic population of Florida reported during the 2000 Census that they could not speak English "at all," or that they could not speak English well, coupled with the ongoing discriminatory climate, reauthorization of Section 203 is critical for Florida to ensure the voting rights of language minorities.

Selected Excerpts from RenewtheVRA.org's Texas Report

The provisions of Section 203 and 4(f)(4) performs an indispensable role ensuring the equitable access of Spanish-speaking Texans in participating in the democratic process. These provisions are particularly critical because the population of Texas is marked by a high number of individuals with limited English proficiency that is correlated to a significant education gap. The Census Bureau estimates that of the Spanish-speaking Latino population over the age of 5, approximately 29.3 percent speaks English "not well", "not at all" or speaks an alternative language. Although Latinos comprise of 44.7 percent of the overall student population, 60.8 percent of all school dropouts in grades 7-12 are Latino. Statistics on the Spanish-speaking Latino population indicate that because

of their deficiency in English language skills they are less likely to participate in the American electoral process.

While their language skills keep United States citizens of Mexican origin on the sidelines of our political process, they continue to grow to make up a larger proportion of our population nationwide, and particularly within Texas. As such, it becomes necessary to confront the issue of Latino political participation by providing Spanish language voting material and assistance until the gaps in educational attainment can be closed.

The Mexican American Legal Defense and Educational Fund (MALDEF) surveyed all 254 counties in Texas, requesting 31 pieces of voting related materials or election data relevant to the administration of Spanish language voting materials and assistance . Of the 254 requests – 73.6 percent failed to respond at any level to the inquiry. Only 67 counties responded, and of those, 47 were found to be "fundamentally non-compliant" with Section 203, resulting in their inability to provide Spanish-speaking voters with the fundamental materials required for them to cast their ballots. Only one Texas county was able to provide the vast majority of election materials requested.

Additionally, in August 2005, DOJ filed a claim against Ector County, Texas on grounds that the county had failed to provide a sufficient number of bilingual poll workers for its Spanish speaking population, and had failed to effectively publicize the availability of bilingual voting materials and services. The county admitted to wrongdoing and agreed to a consent decree and "required the immediate implementation of a Spanish language program for minority constituents, as well as the use of federal observers during election periods to monitor and ensure their compliance."

Disappointing trends in Latino political participation may be a reflection of the shortage and sometimes altogether absence of voting materials that cater to citizens who are not fluent in English and are native Spanish speakers. The growing Latino electorate in Texas necessitates reauthorization of Section 203 in keeping with providing for this ever-growing demographic.

Selected Excerpts from RenewtheVRA.org's New York Report

Language assistance has been a crucial component of New York elections since the passage of the Voting Rights Act. In fact, Section 4(e) of the Act was specifically aimed at preventing discriminatory practices against Puerto Ricans in New York City. Today, the importance of Section 203 cannot be over emphasized. Recent research conducted on six Section 203 covered New York counties points to the salutary effects of providing language assistance for both Latino and Asian American voters: namely the positive correlation that exists between providing Section 203 language assistance and increased voter registration. One such study for New York concludes that after controlling for other factors that affect registration (e.g., education levels, nativity, residential mobility, etc.), the use of ballots and registration materials in the covered language was significantly correlated to increased registration levels at both the city and county level and for both Spanish and Chinese speaking voters.

Despite its critical importance to ensuring participation of language minorities in the electoral system, the language assistance provisions of the VRA have never been fully implemented in New York City – and the problems with compliance have been especially detrimental to the Asian-American community. In 2006, the Asian American Legal Defense & Education Fund (AALDEF) filed one of the few Section 203 challenges in New York, on behalf of Chinese-language and Korean-language voters, in *Chinatown Voter Education Alliance v. Ravitz*,[19] currently pending in federal district court.

A glaring example of this widespread problem occurred in Queens County for the general election of 2000. In that election, the Democratic candidates for Congress, state senate and assembly, justices of the supreme court and judges for civil court were listed under erroneously translated party headings and misidentified as Republicans. Likewise, the Republican candidates were listed under the mistranslated heading as Democrats.

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19 06 Civ 913 (NRB), S.D.N.Y. 2006 (Reice Buchwald, J.). The case includes claims under Section 203 of the VRA and under Section 208 of the VRA (the assistor provision of the Act). The Complaint in this matter is attached as Appendix G.

Notifying the board of elections of this major error by 9:45 A.M., election officials from the central board would not arrive to correct the mistake until 4:00 P.M., 5:30 P.M., and in one case, 6:55 P.M. In addition, paper ballots for justices of the supreme court required translation for the phrase “vote for any three” which was erroneously translated as “vote for any five.”

For the 2002 primary and general elections, of the more than 3,000 voters surveyed, 27 percent of Chinese voters and 30 percent of Korean voters reported having difficulty reading the ballot because of the small typeset used by the Board of Elections. Magnifying sheets issued by the Board of Elections ostensibly to solve this problem were not available in all sites and in Queens, one inspector was reported hiding the device to avoid its use. Transliteration of candidates’ names surfaced as a problem again: “Mary O’Connor’ was transliterated as “Mary O’Party;” and the Korean transliteration of John Liu’s name was not what he submitted to the board or what he used in Korean media.

The unavailability of written materials in the appropriate Asian languages, or the deliberate efforts to avoid displaying them, has been consistently documented. For example, during the elections of 2002, survey results documented that 37 percent of Chinese voters and 43 percent of Korean voters needed the assistance of translated materials. Instead, written voter materials in Chinese and Korean were routinely unavailable or missing. In 2003, 49 percent of the Chinese voters surveyed, and 47 percent of the Korean voters surveyed require the assistance of translated written materials. Yet no ballots were translated for Chinese voters in PS 250 in Williamsburg, despite its designation as a targeted site by the board of elections. Voters were observed having difficulty voting as a result. Translated voter registration forms and affidavit ballot envelopes were frequently missing and once again, the requisite materials were found, unopened, in their original containers. Polling inspectors routinely would refuse to display the available materials, insisting that they were only required to do so if requested by a voter – with some remarking that they needed to keep their tables “clean” and others remarking that their manual required them to keep their tables free of “clutter.”

The shortage of available interpreters is another constant problem in New York City, as is the efforts of some poll workers to impede the work of the interpreters who are available. In 2002, the reports noted that 33 percent percent of Chinese voters surveyed and 46 percent of Korean voters reported needing assistance of interpreters. Interpreters were in short supply in Queens and in Manhattan. In the 2003 elections, 36 percent of Chinese voters and 42 percent of Korean voters reported that they required the assistance of interpreters. Once again, the supply of interpreters could not meet the need. The monitoring revealed that, overall, one out of three interpreters assigned to the polling sites did not show up to work. And in 2004, slightly more than 7,200 Asian American voters were surveyed in New York City and reported that for Chinese voters in New York, Kings, and Queens counties, 37 percent needed an interpreter and 36 percent needed translated written materials to effectuate their right to vote.

The problems in complying with the language assistance guarantees of the VRA in New York City were not limited to Asian-American voters, however. After the 2000 general elections the New York State Attorney General investigated "serious" allegations regarding the failure of the City Board of Elections to provide appropriate language assistance to Latino voters. His office also investigated allegations that Latino voters were harassed, intimidated and intentionally misinformed about voter registration laws and procedures in the city. Documenting future complaints and evaluating "flaws in election administration that may affect voters on the basis of race or ethnicity" were among the recommendations made as a result. Major problems in securing oral assistance in Spanish at the polls continued to plague New York City elections. In 2001 the Board was short 3,371 poll inspectors – 15 percent of the total need. Yet it was short 33 percent of the total number of Spanish interpreters it needed for that election. Even considering the longevity of the Latino population in the City – especially its Puerto Rican community – the prevalence of Spanish language use at home and corresponding lower proficiency in English is clearly a continuing phenomenon in New York City.[20]

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20 New York City data reported in this paragraph comes from the 2000 Census as analyzed by the Queens College Department of Sociology. Nina Bernstein, "Proficiency in English Decreases

For Latinos nationally, the percentage of persons who speak English less than "very well" and who report that Spanish is spoken in their homes is 40.6 percent. In New York City, 51 percent of Latinos who speak Spanish at home report lower proficiency levels in English. It is important to note here that the measure of speaking English less than "very well" is the measure used by the Census Bureau, along with other indicia, to certify Section 203 coverage. Family literacy centers in New York City – indeed, all places where adults can try to learn English – are in very short supply with demand far exceeding supply. And as noted above, the inability to fully comply with Section 203 requirements for Latino voters resulted in the assignment of federal observers in a number of elections since the 1992 amendments to Section 203.

Of the multiple times federal observers were present, the following elections were identified specifically because of concerns over Latino voters and bilingual assistance: September 2001 (Kings and New York Counties); October 2001 (Bronx County); and September 2004 (Queens County).

New York City continues to be the city with the largest number of Puerto Rican residents. A sizeable force of more than 789,000, Puerto Ricans are the city's largest ethnic group and the largest national origin group among the City's 2.2 million Latino residents. The conditions that led to their ability to gain access to New York's political process, through Spanish-language assistance, including their strong ties to the Spanish language, the circular migration between Puerto Rico and New York City, and the juridical foundation of the unique relationship between the United States and Puerto Rico, has not undergone any appreciable change, thus making their need for language assistance in elections today as viable as it was in the 1960s and 1970s.

Section 203 compliance problems are not limited to the four covered counties in New York City. Westchester, Suffolk and Nassau counties are required to provide Spanish

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Over a Decade," The New York Times, January 2005. National data is derived from the Census Bureau: Roberto R. Ramirez, We the People: Hispanics in the United States. Census 2000 Special Reports, issued December 2004.

language assistance to Latino voters. On-site compliance monitoring in 2005 by Cornell University students revealed that in Nassau and Suffolk counties, there were failures in providing voter registration materials in Spanish. This research also evidenced less than full compliance in providing personnel capable of handling requests in Spanish. Compliance problems with Section 203 generally led to litigation against Suffolk and Westchester counties filed by the Department of Justice in 2004 and 2005, respectively.

Each of the suits resulted in settlements that improved the language assistance programs in each of the two covered counties. In *United States v. Suffolk County*[21] Suffolk County eventually agreed to a Consent Decree to create an improved Spanish-language assistance plan that would increase the number of Spanish-speaking election officials, increase the availability of Spanish-language written materials, improve the training of poll workers, and end the hostile treatment directed at Latino voters. The Consent Decree also allowed the Department of Justice to deploy federal observers in future elections. In *United States v. Westchester County, New York,*[22] the allegations similarly addressed the failure to provide adequate Spanish-language assistance to Latino voters including the county's failure to post Spanish-language information at targeted polling sites under both Section 203 and the Help America Vote Act. A Consent Decree was entered in 2005 that improved the county's language assistance program considerably. An additional Section 203 case was filed by the Department of Justice in Suffolk County against the Brentwood School District. *United States v. Brentwood Union Free District*.[23] The school district's failure to provide adequate oral and written language assistance in Spanish, including the failure to properly train personnel and the inability to curb hostilities against Latino voters, was the subject of a comprehensive Consent Decree that runs through January 2007.

Selected Excerpts from RenewtheVRA.org's Alaska Report

21 No. 04-2698 (E.D.N.Y. 2004).

22 No. 05-0650 (S.D.N.Y. 2005).

23 See www.uddoj.gov/crt/voting/litigation/caselist.htm (last viewed on February 27, 2006).

Since its inclusion in the VRA in 1975, Alaska appears to have not complied with its obligation to provide bilingual voting assistance. While it provides intermittent oral assistance, it does not provide any written materials for the thousands of Alaska Natives. There are 20 different languages still spoken in Alaska: Aleut, Alutiiq, Iñupiaq, Central Yup'ik, Siberian Yup'ik, Tsimshian, Haida, Tlingit, Eyak, Ahtna, Dena'ina, Deg Hit'an, Holikachuk, Upper Kuskokwim, Koyukon, Tanana, Tanacross, Upper Tanana, Gwich'in, and Han. Siberian Yup'ik and Central Yup'ik are particularly important because they are still the primary language of many of the villages and the first language that children learn at home.

At least some part of the state has been continuously covered by Section 203 since 1975, yet many residents of rural Alaska indicate that there is no or only intermittent language assistance. In interviews conducted with Alaska Natives in October 2005, several residents located within one of the fourteen 203 covered jurisdictions in Alaska indicated that assistance was not available in their Native language. A ninety-one year-old woman, an Elder from Beaver, Alaska, was raised speaking Gwich'in. According to her, "Everybody when I was a child growing up […] talk Gwich'in, nobody talk English." Now, however, she says the poll workers in Beaver only speak English. Similarly, Lillie Tritt, a seventy-four year-old from Venetie, said that no poll workers in her nearby village of Venetie speak Gwich'in. Sidney Huntington, a ninety year-old from Galena, indicated that the poll workers in Galena do not speak the Native language. Nick Jackson, an Elder from Gulkana, and Elmer Marshall from the Native Village of Tazlina, both of which are in the Valdez-Cordova Census Area, indicated that there was no one in Gakona, Glennallen, or Copper Center (the three nearest polling places to their villages) who spoke their Native language. Susanna Horn of St. Michael said the election supervisor in her polling place "doesn't know any Eskimo words" even though he is a Yup'ik Eskimo.

Surveys distributed to tribes throughout Alaska also showed that there is only intermittent language assistance readily available. Some local speakers of the Native language provide assistance to friends and family members who need help understanding the

ballot, which they call “self help.” Some non-governmental organizations provide assistance in Native languages. The state, on the other hand, asserts that it does have oral assistance available at each polling place. No jurisdiction, however, reported posting any information at polling stations notifying the public that language assistance was available. Rather, they claim that information on language assistance is publicly available and well-known.

The state of Alaska offers intermittent oral language assistance and no written assistance for Alaska Natives under the language provisions of the VRA. It does, however, provide written election materials for the 2 percent of the Alaska population that is Filipino. Thus, it is arguably out of compliance with the VRA for the Native population and has been since the mandate was imposed on the state thirty years ago. As Congress contemplates reauthorization of the language provisions, it should take this non-compliance and the ongoing need for some assistance demonstrated here into account. Unfortunately, even today, the great majority of the new Alaska Native voters will have difficulty comprehending the English ballot. They will nonethless be subject to an English-only election, where no written materials, despite VRA’s mandate, will be provided. Therefore, the language provisions should be renewed and Alaska should continue as a covered jurisdiction.

Selected Excerpts from RenewtheVRA.org’s South Dakota Report

The eighteen counties of South Dakota covered by Section 203 of the VRA have a proportion of American Indian language speakers beyond the required 5 percent of the voting age population. Significant numbers of American Indians require assistance at the polling place with translation of ballots, voter assistance, and the publication of election materials in Lakota and Dakota. The renewal of the Voting Rights Act minority language provision is compelling, in view of the strong percentages of Lakota and Dakota language speakers in those counties covered and the extremely high rates of English illiteracy in covered jurisdictions of South Dakota.

Sections 6-9 of the Voting Rights Act:

Sections 6 through 9 of the VRA contain the federal examiner and observer provisions of the Act, which allow federal employees to observe polling place and vote counting activities in Section 5 jurisdictions. Although these provisions are permanent, the primary way these provisions are utilized is through the Section 5 preclearance formula, which is set to expire in August 2007.

Observers essentially serve as witnesses for what occurs in the polling place and during the counting of the vote. They document potential violations and are in contact on Election Day with Department of Justice attorneys, who can contact local election officials in the event of potential violations. After Election Day, if discriminatory actions are not ameliorated, the Department of Justice may file a civil action.

Access to the reports and/or recommendations of the federal observers is not available to the public. However, a review of the number of observers deployed in the states from 1982 onward provides strong evidence suggesting that the potential for discrimination continues to permeate Section 5 covered jurisdictions on Election Day.

Since the VRA's inception, almost 25,000 observers have been deployed in approximately 1,100 elections. Between 1982 and 2000, about 565 federal observers were deployed each year. While observer coverage in the early 1980s was almost exclusively designed to protect the rights of black voters in the South, in more recent years, there has been roughly a 50/50 split between election coverage for black voters and language minorities.

Selected Excerpts from RenewtheVRA.org's South Carolina Report

Federal observers have been assigned to 37 elections in South Carolina since 1966. Of those 37 elections, 23 occurred after 1982.

Most of the communities to which observers have been sent have repeatedly requested assistance under the Act to protect the ability of African-American voters fully to participate in the electoral process. Those include Bamberg County (1984, 1985);

Calhoun County (1984, 1988); Chester; (twice in 1990, twice in 1991, 1993 and 1996); Dorchester (1990, 1996 and 2001); Marion (1984 and 1996); and Williamsburg (1984, 1988 and twice in 1996).

Selected Excerpts from RenewtheVRA.org's Georgia Report

Federal observers have been assigned to 87 elections from 1966 to 2004. Of those 87 elections, 57 occurred after 1982. Eleven of the twenty-eight counties that had elections covered by federal observers post-1982 had not previously been covered; nine had elections covered both before and after 1982; and eight had elections covered only before 1982.

Selected Excerpts from RenewtheVRA.org's New York Report

Federal observers have been assigned to 41 elections from 1966 to 2004, all of which were assigned after 1982. Eight hundred and fourteen observers were deployed in the 41 elections to which the Attorney General dispatched federal observers. Although data on the deployment of federal observers does not include findings or final observations made by the Department of Justice, on limited occasions the reasons underlying federal observer deployment are described in advance. A review of such information shows the rise in Department of Justice concerns about Section 203 compliance since the early 1980s.

Of the multiple times federal observers were present, the following elections were identified specifically because of concerns over Latino voters and bilingual assistance: September 2001 (Kings and New York Counties); October 2001 (Bronx County); September 2004 (Queens County).

Deployment of Observers in Additional States

Alabama

Federal observers were assigned to 174 elections between 1966 and 2004; 67 of those elections occurred after 1982.

Arizona

Federal observers were assigned to 40 elections between 1966 and 2004; all 40 of those elections occurred after 1982.

California

Federal observers were assigned to 9 elections between 1966 and 2004; seven of those elections occurred after 1982.

Louisiana

Federal observers were assigned to 67 elections between 1966 and 2004; 15 of those elections occurred after 1982.

Mississippi

Federal observers were assigned to 548 elections between 1966 and 2004; 250 of those elections occurred after 1982.

North Carolina

Federal observers were assigned to 6 elections between 1966 and 2004; all six of those elections occurred after 1982.

Texas

Federal observers were assigned to 22 elections between 1966 and 2004; 10 of those elections occurred after 1982.

Section 2 and Constitutional Voting Rights Litigation:

While the standards of proof are different in Section 2 and constitutional litigation than they are in Section 5 litigation, the evidence of voter discrimination presented in Section 2 and constitutional cases is valuable in assessing voting rights in the states and the persistence of discrimination in many of the areas covered by the Voting Rights Act's temporary provisions.

Selected Excerpts from RenewtheVRA.org's Louisiana Report

Section 2 of the VRA has played an important role in protecting African-American voters in Orleans. After the last reauthorization of the VRA in 1982, there was a major Section 2 case filed in federal court in Louisiana, *Major v. Treen,*[24] challenging the 1981

24 Major v. Green, 574 F. Supp. 325 (E.D. La. 1983)

reapportionment of congressional districts. Plaintiffs, a class certified as all African-American registered voters in the state, alleged that the reapportionment plan ("Act 20") was designed and had the effect of diluting minority voting strength by dispersing an African-American population majority in a parish into two congressional districts. They filed claims under the Thirteenth, Fourteenth and Fifteenth Amendments to the federal constitution, as well as Section 2 of VRA.

According to the testimony in that case, based on the results of the 1980 census, Orleans Parish had a slight decline in overall population, but a marked increase in African-American population from the 1970s to 1980, such that African-Americans were 55 percent of the total population, 48.9 percent of voting age population and 44.9 percent of registered voters.[25] Moreover, the African-American population was highly concentrated.

Governor Treen submitted three districting proposals -- none of which contemplated a majority African-American district. In fact, Treen publicly expressed his opposition to the concept of a majority black district, stating that "districting schemes motivated by racial considerations, however benign, smacked of racism, and in any case were not constitutionally required."[26] Conversely, the state Senate staff prepared more than 50 plans and was directed to formulate a plan containing an Orleans Parish-dominated district, which would necessarily have a black majority population.[27] The state legislature passed one of the two plans with one African-American majority district in Orleans Parish and seven white majority districts. However, Governor Treen threatened to veto the plan and a number of legislators changed their position in response to the threatened veto.

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25 Major v. Treen, 574 F. Supp. 325, 330 (E.D. La. 1983).

26 Major v. Treen, 574 F. Supp. 325, 331. (E.D. La. 1983).

27 Only two plans out of the 50 made it out of the committee – both with one majority African-American and seven majority white districts. One plan had one majority African-American district with 54% African-Americans and 43% African-American registered voters. The Louisiana Black Caucus supported this plan. The other plan had one majority African-American district with 50.2% African-Americans and 44% African-American registered voters.

The court found that Treen's opposition to the plan initially approved by the legislature was predicated in significant part on its delineation of a majority African-American district centered in Orleans Parish.[28] The Governor then proposed another plan, again with all eight white majority districts, which the Senate rejected. African-American legislators were then excluded from subsequent legislative sessions to develop a plan, which ultimately concluded with the participants determining that the African-American minority interest in obtaining a predominantly African-American district would have to be sacrificed in order to satisfy both the governor and the Jefferson Parish legislators. The resulting Act 20, accepted by Governor Treen and signed into law, left African-American population concentrations within Orleans Parish wards disrupted, whereas white concentrations remained intact.

The court accepted the plaintiffs' expert testimony showing racially polarized voting and that such voting played a significant role in the electoral process. It also found that "Louisiana's history of racial discrimination, both *de jure* and *de facto*, continue[ed] to have an adverse effect on the ability of its black residents to participate fully in the electoral process."[29]

The court granted the plaintiffs' declaratory judgment that Act 20 violated Section 2 of VRA by diluting black voting strength; enjoined the state of Louisiana from conducting elections with Act 20 districts; and gave the legislature the opportunity to redraw the districts. The resulting district led to the election of Louisiana's first African-American Congressman since reconstruction.

Selected Excerpts from RenewtheVRA.org's Alabama Report

In *Dillard v. Crenshaw County*,[30] the court affirmed that racial discrimination was widespread throughout the Alabama electoral system, noting the prevalence of at-large

28 Major v. Treen, 574 F. Supp. 325, 334 (Ed. La. 1983)

29 Major v. Treen, 574 F. Supp. 325, 339-40 (Ed. La. 1983).

30 640 F. Supp. 1347, 1356-60 (M.D. AL 1986).

elections and a high degree of racially polarized voting. The federal district court found that a desire to dilute black voting strength provided the impetus for statewide election laws that Alabama passed in the 1950s and 1960s.

The court concluded: "From the late 1800's through the present, the state has consistently erected barriers to keep black persons from full and equal participation in the social, economic, and political life of the state." Based on these findings, the district court expanded the *Dillard v. Crenshaw* litigation to include a defendant class of 17 county commissions, 28 county school boards, and 144 municipalities who were then employing at-large election systems tainted by the racially motivated general laws.

Selected Excerpts from RenewtheVRA.org's Florida Report

In *Nipper v. Smith*,[31] the court held that:

> Despite the removal of overt badges of segregation, the district court nonetheless found that "black citizens in Florida still suffer in some ways from the effects of Florida's history of purposeful discrimination," particularly in terms of socio-economic disparities, such as family income and high school graduation rates. *Id.* at 1536. Black citizens in the region covered by the Fourth Circuit are more likely to be unemployed and to fall below the poverty line. In addition, the limited evidence presented at trial (reflected in a consensus among the experts) suggested that, although little disparity exists in voter registration, black voter turnout appears to be slightly lower than white turnout. And the "rolloff" effect—which measures the number of voters who sign in at the polls but fail to cast a vote for a particular election on the ballot—is greater among black voters than white voter.

The court in this case also found that "the record reveals that sufficient racial bloc voting exists in Fourth Circuit and Duval County Court elections, such that the white majority usually defeats the minority's candidate of choice."

Selected Excerpts from RenewtheVRA.org's Georgia Report

31 39 F.3d 1494 (11th Cir. 1994) (en banc).

Common Cause of Georgia v. Billups[32] is one of the more extraordinary and recent Section 2/constitutional cases that demonstrate continued racial discrimination in the states. In 2005, the Georgia legislature enacted Act No. 53, amending the State's election code to impose a photographic identification requirement for all persons voting in person in the State of Georgia. Under the statute, valid photographic I.D.s would cost between $20 and $35. The legislation was submitted for DOJ administrative review and it was precleared.

Private plaintiffs, including the Georgia Legislative Black Caucus, then filed suit in federal court for the Northern District of Georgia. The court issued a preliminary injunction, finding that the plaintiffs were likely to prevail on their claim that the photo I.D. requirement violated the Equal Protection Clause, was discriminatory, and constituted an unconstitutional poll tax.

Selected Excerpts from RenewtheVRA.org's New York Report

In New York, Section 2 cases have illustrated the continued discrimination experienced by language minority voters in the face of Section 203 noncompliance. In *Ashe v. Board of Elections of the City of NY*[33], a successful Section 2 challenge that was settled, the plaintiffs challenged the Board's failure to: train Poll Inspectors; process affidavit ballots correctly; assign Poll Coordinators; provide language assistance in Spanish and Chinese in the completion of voter registration forms; inspect and certify operable voting machines; and ensure that repairs of inoperable machines in Black and Latino communities were completed expeditiously. The settlement included increased training requirements for poll inspectors, translators and other personnel, requirements for the designation of poll coordinators and information clerks, signage requirements; outreach

32 (N.D. GA, 4:05-cv-00201-HLM; 11th Cir. 05-15784).

33 88 Civ. 1566 (E.D.N.Y. 1988)

to Black and Latino communities; modifications to the voter registration forms; and requirements for the use of certified voting machines.[34]

Selected Excerpts from RenewtheVRA.org's South Carolina Report

United States v. Charleston County,[35] involved a Section 2 challenge to Charleston County's at-large election method for its County Council County Election Commission. The Court found for the plaintiff, noting evidence presented in the trial court that voting in Charleston County Council elections was severely racially polarized. One of the expert witnesses, Theodore Arrington, PhD, found racially polarized voting in 94 percent of county Council elections between 1984 and 2000. Furthermore, expert witnesses presented evidence that a 1989 County referendum to switch the county's election system to single member districts was marked with significant racial bloc voting: at least 98 percent of minority voters approved the switch to single-member districts, whereas at least 75 percent of white voters wanted to retain at-large elections.

Selected Excerpts from RenewtheVRA.org's South Dakota Report

A number of the voting changes that South Dakota enacted after it became covered by Section 5 in 1975, but which it refused to submit for preclearance, had the potential for diluting American Indian voting strength, including and especially the state's 2001 legislative redistricting plan. In 2001, South Dakota enacted a law dividing the state into thirty-five legislative districts, each of which elected one senator and two members of the state house of representatives. In the 2001 plan, the boundaries of District 27, which included Shannon and Todd Counties, were altered so that Indians made up 90 percent of the district, while the district was one of the most overpopulated in the state. As was apparent, American Indians were "packed," or over-concentrated, in the new District 27. Had American Indians been "unpacked," they could have made up a majority in an additional, neighboring house district. Despite enacting these changes in voting, the state refused to submit the 2001 plan to the Justice Department for preclearance. In *Shirt v.*

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34 Ashe v. Board of Elections, 88 Civ. 1566 (CPS).

35 365 F.3d 341 (D.S.C. 2004).

Hazleton,[36] Alfred Bone Shirt and three other Indian residents from Districts 26 and 27, with the assistance of the ACLU, sued the state in December 2001 for its failure to submit its redistricting plan for preclearance. The plaintiffs also claimed that the plan unnecessarily packed American Indian voters in violation of Section 2 and deprived them of an equal opportunity to elect candidates of their choice. In 2004, the court invalidated the state's 2001 legislative plan because it discriminated against American Indian voters by packing American Indians into a single district in order to remove their ability to elect a candidate of choice to the state legislature. In its opinion, the court also found that there was "substantial evidence that South Dakota official excluded Indians from voting and holding office."

Conclusion:

On behalf of the Leadership Conference on Civil Rights and its coalition partners, I want to thank the Committee for the opportunity to testify today on the need to reauthorize and restore the Voting Rights Act, and in particular, the important temporary provisions that I have been discussing. As this Committee knows, these provisions are essential to ensure meaningful and fair representation as well as equal voting rights for all Americans. We are honored to be able to share with the Committee these state reports that have been prepared to document for Congress the persistence of discrimination in covered jurisdictions and the continuing relevance of these temporary provisions in preventing discrimination. I look forward to discussing with the Committee in more detail the methodology and preparation of these reports. I appreciate the Committee's desire to include this information in the legislative record and look forward to ongoing discussions about reauthorizing and strengthening the Voting Rights Act.

36 336 F. Supp.2d 976 (D.S.D. Sep 15, 2004).