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DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. note	to JAB re Attorney General's Voting Rights Act testimony (w/notations). 1p [Item is still under review under the provisions of EO 13233]	n.d.	<i>open ER</i>

RESTRICTIONS

- B-1 National security classified information [(b)(1) of the FOIA].
- B-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- B-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- B-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- B-7a Release could reasonably be expected to interfere with enforcement proceedings [(b)(7)(A) of the FOIA].
- B-7b Release would deprive an individual of the right to a fair trial or impartial adjudication [(b)(7)(B) of the FOIA].
- B-7c Release could reasonably be expected to cause unwarranted invasion or privacy [(b)(7)(C) of the FOIA].
- B-7d Release could reasonably be expected to disclose the identity of a confidential source [(b)(7)(D) of the FOIA].
- B-7e Release would disclose techniques or procedures for law enforcement investigations or prosecutions or would disclose guidelines which could reasonably be expected to risk circumvention of the law [(b)(7)(E) of the FOIA].
- B-7f Release could reasonably be expected to endanger the life or physical safety of any individual [(b)(7)(F) of the FOIA].
- B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

C. Closed in accordance with restrictions contained in donor's deed of gift.

THE WHITE HOUSE
WASHINGTON
January 20, 1982

To Cicconi
1/21

NOTE FOR: EDWIN MEESE III
JAMES A. BAKER III ←
MICHAEL K. DEAVER

SUBJECT: VOTING RIGHTS -- SITUATION AS OF 12:30,
JANUARY 20

FROM: RICHARD G. DARMAN ~ ~ ~

Key points are as follows:

- (1) Administration position. The Administration's position has in no way changed since the Presidential announcement and associated press release.
- (2) Who asked for postponement of testimony? The inescapable facts seem to be that the Department of Justice initiated the request for postponement; Hatch only reluctantly agreed; Justice obtained White House concurrence in the change of date; Justice thought it had Hatch's concurrence in an agreement that responsibility for changing the date would be shared; Justice feels Hatch violated this agreement.
- (3) What bill we are supporting. At the moment, the Administration is not supporting a particular bill -- although our policy is to accept the House bill with appropriate amendment, or a bill that amounts to a straight 10-year extension with appropriate bail-out. Senator Laxalt is attempting to put together an appropriate coalition to introduce the 10-year extension bill. He is not certain that this can be done properly -- but hopes to be able to accomplish this by Monday.
- (4) Public statements on these matters. Dave Gergen, Craig Fuller, Ken Duberstein, and I have worked out the attached statement with Ed Schmults. It is being released at Justice now -- with information on it provided to the press here as well. Duberstein and Justice are informing Hatch of our public posture on this.
- (5) Justice testimony -- and associated questions and answers. Schmults assures me that he will either have this here to Fuller tonight -- or have an explanation why not. When it arrives, I will circulate it. If it does not arrive, I will assure that appropriate action is taken.

In light of all this, I suggest we not meet further on this until tomorrow. If you disagree, please let me know.

cc: Anderson, Dole, Duberstein, Fuller, Fielding, Williamson, Bradley, Gergen, and Garrett

Q & A ON VOTING RIGHTS TESTIMONY POSTPONEMENT

Available to Press at the Justice Department

- Q. Why did the Administration postpone the Attorney General's testimony before Senator Hatch's subcommittee at the last minute?
- A. The Justice Department and Chairman Hatch consulted on the question of when the Administration should testify. The Administration felt it desirable to present its first public testimony before the Senate on the Voting Rights Act after the Congress had returned. The issue is an important one and it was felt that the testimony should be at a time when the Congress is here, especially the Senate, which is now considering extension of the Act. Senator Hatch concurred with the Attorney General, and agreed, further, that the opening of the Hearings themselves should be postponed until the full Senate returns.
- Q: Senator Hatch's subcommittee staff is saying that the administration delayed the testimony so that it could prepare its own legislation. Are you working on your own bill?
- A: We do not intend to transmit legislation to the Congress, but of course we will be working with the Senate to develop legislation that we hope will reflect the President's stated position.
- Q: There are reports that you're changing your position -- are you rethinking the President's position?
- A: Our position remains exactly as stated by the President and that is the position the Attorney General will take next week when he testifies before Senator Hatch's subcommittee.

THE WHITE HOUSE
WASHINGTON

January 25, 1982

MEMORANDUM FOR MIKE UHLMANN

FROM: Jim Cicconi

SUBJECT: Voting Rights Act Testimony

Governor Clements is scheduled to testify on Voting Rights Act February 4, 1982, at 9:30 a.m. Secretary of State David Dean will accompany the Governor, but will not testify. Also, Oscar Moran of LULAC is scheduled to testify, probably right after the Governor.

OFFICE OF GOVERNOR WILLIAM P. CLEMENTS, JR.
JANUARY 22, 1982

FOR IMMEDIATE RELEASE:

Governor William P. Clements, Jr., was joined today by Secretary of State David A. Dean; Oscar Moran, Texas State Director, IULAC; Ed Bernaldez, Texas State Chairman, American G. I. Forum; Jose Garcia, Texas State President, IMAGE; A. C. Sutton, President, Texas Chapter, NAACP; and Diana Clark, President, League of Women Voters of Texas, for the purpose of collectively and unequivocally endorsing extension of the Voting Rights Act.

Governor Clements in noting that both he and each of the organizations support extension of the Voting Rights Act as it is presently constituted, stated that, "should there be offered a reasonable "ball-out" provision acceptable to all the Texas parties, then I will support the provision. I would not support any change or modification which jeopardizes the integrity and intent of the Voting Rights Act."

Governor Clements stated, "I am extremely pleased and encouraged by Texas' widespread support for extension of the Act. It has been good for Texas! Clearly, Texas' coverage by the Act has resulted in necessary changes in state laws to promote minority voter registration and participation in the electoral process along with excellent rates of minority voter registration. These facts demonstrate the progress Texas has made in ensuring all minority citizens are afforded the unqualified right to vote."

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Governor Clements noted that, both he and Secretary Dean intend to continue full cooperation with federal authorities with the goal of reaching a point where all Texans have full confidence that their right to vote is fully protected without need for indefinite federal oversight.

Governor Clements concluded by noting that he will be in Washington, D.C., on February 4, 1982, to testify before the U.S. Senate Judiciary Subcommittee on the Constitution in support of extension of the Voting Rights Act.

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Jim -
Please call me
re this.
Alek

VOTING RIGHTS ACT Qs and As
RECOMMENDED CHANGES

1. Page 1, first question: Suggest language which strengthens the President's position. New language is underlined.

"The major difference is that we actually support extension of the existing Voting Rights Act. The House bill in fact makes major changes in the Act. Our experience has not indicated the need for these changes, and we do not support them.

2. Page 2, first question: Suggest language which strengthens the President's position on effects test. New language is underlined.

"...Congress then enacted an effects test for election law changes in selected jurisdictions in the South, and an intent test for election practices nationwide. We continue to believe that this is the proper approach. It has been tried and found effective. It would seem odd to legislate against existing practices more stringently now, after there has been so much progress, than Congress did in 1965." We therefore oppose extending the effects test to the entire country.

3. Page 3, second question regarding our objections to the effects test. Stronger language is suggested and underlined.

"... The one theme that emerged from these discussions was clear: The Act has been the most successful civil rights legislation ever enacted, and it should be extended unchanged. As the old saying goes, if it isn't broken, don't fix it." We would therefore not support this change in current law.

4. Page 5, second question, concerning the length of extension of the preclearance provisions. New language underlined.

"...The extension we support--10 years--is longer than any previously adopted by Congress." We will not support any bill without a definite termination date for the preclearance provisions.

5. Page five, last question regarding bailout. The language we wish to change is lined-through, and the suggested stronger language is inserted and underlined.

"We do think Congress ~~should-consider~~ must include a reasonable bailout that would permit jurisdictions with good records of compliance to be relieved of the preclearance requirements so long as voting rights were not endangered in any way. ~~We-do-not-have-a-specific-formula-in-mind,-but-think-that-the-question-should-be-considered-by-Congress--~~ The House bill does not contain a reasonable bailout provision, in our judgement. We will be happy to work with the committee in the weeks ahead on this question.

6. Page six, the only question. The following changes are recommended to clarify and strengthen the President's position on bailout:

"As I have noted, I do not want to get into the details of the various bailout proposals beyond stating that the question should be addressed. ~~There-may-be-some-difficulties-with~~ The House bill bailout provision ...uses imprecise terms, such as "constructive efforts", which may result in the question being tied up in the courts for years. That would not be good for any election system, and for that reason we cannot support it.

In conclusion, I want to make clear that the Administration will support any strong voting rights bill approved by the Senate, including either a straight 10 year extension of the current Voting Rights Act, or a 10 year version of the House bill, provided it is modified so that it reflects the principles I have outlined in my testimony.

THE WHITE HOUSE
WASHINGTON

JAB--

FYI:

On the AG's Voting Rights Act testimony yesterday, key headlines were

NY Times: "Senate Panel is Told Reagan Supports Voting Rights Act"

(sub-line): "Reagan Backs Voting Act"

lead paragraph was positive

Washington Post: "Reagan Administration Attacked as Voting Rights Hearings Begin"

lead paragraph was negative.

Conclusion: The Post, and some other papers, will attempt to kill us on this issue as we expected. The surprise, in my view, is how balanced the Times story was. If we can keep getting even this much of a fair shake from the press, we may come out of this OK. Also, it is a good omen for a reasoned debate on the "effects" test after tempers cool. There is room for compromise on that point if we feel it necessary later on.

WHAT *Effects v. Intent is not a straight up-or-down as discussion has made it appear. There is an acceptable middle-ground JC that has not yet been explored. (We can keep that as a reserve option.)*

DEPUTY ATTORNEY GENERAL

WASHINGTON

March 1, 1982

MEMORANDUM FOR: Honorable Edwin Meese III
Counsellor to the President
The White House

FROM: Edward C. Schmults
Deputy Attorney General

SUBJECT: Extension of the Voting
Rights Act

Sometime ago you asked for a memo outlining the reasons why the City of Mobile v. Bolden case did not change the test in Sec. 2 of the Voting Rights Act. The attached memo, along with certain other materials was sent to a number of Senators for their information. Attached is a set for your use.

Attachment

cc: James A. Baker III ✓



STATUTORY AND CASE LAW REGARDING
MULTI-MEMBER ELECTION DISTRICTS

Prior to the decision in City of Mobile v. Bolden, 446 U.S. 55 (1980), Sec. 2 of the Voting Rights Act did not play a major role in cases charging that multi-member electoral districts discriminated on account of race. The United States relied on Sec. 2 to give it authority to sue (see, e.g., United States v. Uvalde Consol. I.S.D., 625 F.2d 547 (5th Cir. 1980), cert. denied, 451 U.S. 1002 (1981), and private plaintiffs coupled Sec. 2 claims with claims of unconstitutional discrimination. But no court has ever relied on Sec. 2 as a ground for relief against multi-member districts. 1/

1/ Of the few appellate court opinions which address claims under Sec. 2 of the Voting Rights Act, only three antedate the Supreme Court's decision in Mobile. One was the Fifth Circuit's decision in Mobile, 571 F.2d 238, 242 n.3 (5th Cir. 1978) (the plaintiffs' Sec. 2 claim "was at best problematic; this court knows of no successful dilution claim expressly founded on [Sec. 2]"). Neither of the others was a dilution case. Toney v. White, 476 F.2d 203, 207, modified and aff'd en banc, 488 F.2d 310 (5th Cir. 1973), involved relief based on an official's purge of blacks from the voter rolls, conduct held to violate both Sec. 2 and the Fifteenth Amendment. United States v. St. Landry Parish School Board, 601 F.2d 859, 865-866 (5th Cir. 1979), pertained to a vote-buying scheme involving black voters. Other decisions in suits based in part upon Sec. 2 did not discuss Sec. 2. Coalition for Education in Dist. 1 v. Board of Elections, 495 F.2d 1090 (2d Cir. 1974) (successful challenge by minority race voters to school board election in New York City); Black Voters v. McDonough, 565 F.2d 1 (1st Cir. 1977) (unsuccessful challenge to at-large system for electing the Boston School Committee); and United States v. East Baton Rouge Parish School Board, 594 F.2d 56 (5th Cir. 1979) (reversing the dismissal of suit attacking the use of multi-member wards).

Four post-Mobile Fifth Circuit cases discuss the application of Sec. 2 to dilution claims. United States v. Uvalde Consol. I.S.D., 625 F.2d 547 (5th Cir. 1980), cert. denied, 451 U.S. 1002 (1981). (United States' authority under Sec. 2 to challenge discriminatory multi-member school board electoral system); McMillan v. Escambia County, 638 F.2d 1239, 1242, n.8, 1243 n.9 (5th Cir. 1981), appeal pending (Sec. 2 and the Fifteenth Amendment do not cover vote dilution); Lodge v. Buxton, 639 F.2d 1358, 1364 n.11 (5th Cir. 1981), prob. juris. noted sub nom. Rogers v. Lodge, 50 U.S.L.W. (U.S. Oct. 5, 1981) (Mobile establishes that Sec. 2 does not provide a remedy for conduct that does not violate the Fifteenth Amendment); Kirksey v. City of Jackson, 663 F.2d 659, 664-665 (5th Cir. 1981) (rejecting assertion that Sec. 2 goes beyond the Fifteenth Amendment and prohibits practices that perpetuate the effects of past discrimination). See also n.6, infra.

Thus, it is clear that the controversy over Mobile does not relate to enforcement of Sec. 2, but instead concerns whether Mobile has radically altered the pre-existing case law under the Fourteenth and Fifteenth Amendments. The Supreme Court's first review of the contention that multi-member districts discriminated against blacks was in Whitcomb v. Chavis, 403 U.S. 124 (1971). There the district court had struck down the legislative multi-member district in Marion County, Indiana, because it found the scheme had a discriminatory effect. ^{2/} However, the Supreme Court reversed, holding that there is no right to proportional representation and noting that there was no suggestion that the multi-member districts in Indiana "were conceived or operated as purposeful devices to further racial or economic discrimination." Id. at 149. The Court discussed at length various ways of proving intentional discrimination, including discrimination in voter registration and exclusion from party slates. Thus, Whitcomb (a) rejected the effects test; (b) applied the purpose test; and (c) gave some guidance as to the proof necessary to sustain a constitutional challenge to at-large elections.

The only other pre-Mobile Supreme Court decision directly on the subject is White v. Regester, 412 U.S. 755 (1973), in which the Court upheld a finding that multi-member districts in Bexar and Dallas Counties, Texas, unconstitutionally discriminated on account of race and national origin. While the case has been pointed to as embracing an effects test, the Court explicitly began its analysis by emphasizing that "it is not enough that the racial group allegedly discriminated against has not had legislative seats in proportion to its voting potential." 412 U.S. at 765-766. As to Dallas County, the Court held that the district court findings of a history of official discrimination against blacks, the use of electoral devices which enhanced the opportunity for racial discrimination, the discriminatory exclusion of blacks from party states, and the use of anti-black campaign tactics demonstrated a violation of the rule of Whitcomb v. Chavis. 412 U.S. at 766-767. As to Bexar County the Court again found "the totality of the circumstances" supported the district court's view "that the multi-member district, as designed and operated in Bexar County, invidiously excluded Mexican-Americans from effective participation in political life." 412 U.S. at 769. It is true that the opinion of Justice White, for the Court, refers on several

^{2/} Specifically, the district court "thought [poor Negroes] unconstitutionally underrepresented because the proportion of legislators with residences in the ghetto elected from 1960 to 1968 was less than the proportion of the population, less than the proportion of legislators elected from Washington Township, a less populous district, and less than the ghetto would likely have elected had the county consisted of single-member districts." 403 U.S. at 148-149.

occasions to "the impact" of the practices, but nowhere does the opinion intimate that impact alone was enough. Rather, the Court examined impact as one of several pieces of circumstantial evidence of "invidious discrimination." 3/

Thus, although Washington v. Davis, 426 U.S. 229 (1976) is often cited as the genesis of the purpose test in racial discrimination cases brought under the Constitution, Washington simply is a continuation of a settled line of Supreme Court decisions. Indeed, Washington relies not only upon cases involving purposeful discrimination in schools and jury selection, but also on Wright v. Rockefeller, 376 U.S. 52 (1964), in which the Supreme Court had applied a purpose standard to a claim of racial discrimination in drawing legislative district lines. While Washington expressly disapproved certain other cases which appeared to have relied solely on an effects test, it did not disapprove Whitcomb, White, or lower court cases which had followed them, for the simple reason that those cases did not embody an effects test.

The decisionmaking in the lower courts followed a similar course. The leading cases were decided in the Fifth Circuit. From 1973 to 1978 the controlling Fifth Circuit case was Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973) (en banc), aff'd sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976). 4/ Zimmer did not address Section 2. That case did, however, set out a series of evidentiary factors for determining whether a multi-member district is unconstitutionally discriminatory under the rule of Whitcomb and White. While that opinion does exhibit some confusion as to whether purpose or effect or both are at issue (see, e.g., 485 F.2d at 1304 and n.16), the court stressed that "it is not enough to prove a mere disparity between the number of minority residents and the number of minority representatives." 485 F.2d at 1305. The court characterized the issue as whether the evidence shows unconstitutional "dilution" of the vote of minority members, thus sidestepping any debate about whether a purpose test or an effects test applies. 5/

3/ Justice White, himself, agreed in his dissenting opinion in Mobile that White v. Regester was a case in which indirect evidence supported an "inference of purposeful discrimination." 446 U.S. at 103. He simply disagreed with the Mobile plurality's assessment of the evidence regarding purpose in Mobile.

4/ The affirmance was without consideration of the constitutional issue.

5/ The court borrowed most of the "Zimmer" factors from Whitcomb and White. The court said:

* * * where a minority can demonstrate a lack of access to the process of slating candidates, the unresponsiveness of

When the Zimmer rule was challenged by Mobile and other jurisdictions with multi-member districts, the Fifth Circuit thoroughly discussed the Zimmer factors in light of Washington v. Davis. In a companion case to Mobile the Fifth Circuit explained that:

* * * Washington v. Davis * * * requires a showing of intentional discrimination in racially based voting dilution claims founded on the fourteenth amendment. We conclude also that the case law requires the same showing in fifteenth amendment dilution claims. Moreover, we demonstrate that the dilution cases of this circuit are consistent with our holding in this case. In particular, we read Zimmer as impliedly recognizing the essentiality of intent in dilution cases by establishing certain categories of circumstantial evidence of intentional discrimination.

Nevett v. Sides, 571 F.2d 209, 215 (1978), cert. denied, 446 U.S. 951 (1980). Based on these standards the Fifth Circuit held that the district court's findings in Mobile "compel the inference that the system has been maintained with the purpose of diluting the black vote, thus supplying the element of intent necessary to establish a violation of the fourteenth amendment." Bolden v. City of Mobile, 571 F.2d 238, 245 (5th Cir. 1978). 6/

Thus, when Mobile reached the Supreme Court both the Fifth Circuit and prior Supreme Court cases accepted the proposition that discriminatory intent is a necessary element of a claim that multi-member districts violate the Constitution. The plurality

5/ (continued)

legislators to their particularized interests, a tenuous state policy underlying the preference for multi-member or at-large districting, or that the existence of past discrimination in general precludes the effective participation in the election system, a strong case is made. Such proof is enhanced by a showing of the existence of large districts, majority vote requirements, anti-single shot voting provisions and the lack of provision for at-large candidates running from particular geographical subdistri of dilution is established upon proof of the existence of an aggregate of these factors. The Supreme Court's recent pronouncement in White v. Regester, supra, demonstrates, however, that all these factors need not be proved in order to obtain relief.

opinion of Justice Stewart in Bolden did not reject Whitcomb or White; indeed, it did not fully reject Zimmer. Rather, the plurality relied heavily on Whitcomb and White and argued that those decisions were consistent with Washington v. Davis. See, e.g., 446 U.S. at 65-69. As to Zimmer, Justice Stewart thought that it reflected a misunderstanding that discriminatory effect alone violated the Fourteenth Amendment (*id.* at 71), but nonetheless agreed that "the presence of the indicia relied on in Zimmer may afford some evidence of a discriminatory purpose." *Id.* at 73. However, Justice Stewart thought that the lower courts had treated the Zimmer criteria mechanically, failing to follow the approach of governing precedents ^{7/} to determining whether there was discriminatory intent. Further, the lower courts had failed to specify whose intent was at issue. However, it is important to note that Justice Stewart did not conclude that Mobile's multi-member system was nondiscriminatory, ^{8/} but merely sent the case back to the lower courts to reevaluate it pursuant to proper standards.

Mobile is not, therefore, a sharp departure from the case law of the past twenty years. It is an application of a consistent line of cases holding that, indirect evidence may make out a showing that, because of purposeful discrimination, the adoption or maintenance of a multi-member district is unconstitutional. The issues in Mobile were what kind of indirect evidence and whose intent. We recognize that the Mobile case places a burden of proof on the plaintiff, but so did its predecessor cases. The burden is a manageable one, which does not require "smoking gun" evidence, but does require a sensitive and careful sorting of circumstantial evidence. In the Mobile case on remand the United States has argued that the evidence meets the standards articulated by Justice Stewart's plurality opinion.

^{6/} The court noted that it knew "of no successful dilution claim expressly founded on" Sec. 2 of the Voting Rights Act. 571 F.2d at 242 n.3.

^{7/} For example, Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977), had provided detailed guidance as to factors lower courts should consider in deciding whether governmental action had been taken with discriminatory intent.

^{8/} He said "[w]hether it may be possible ultimately to prove that Mobile's present governmental and electoral system has been retained for a racially discriminatory purpose, we are in no position now to say." 446 U.S. at 75, n.21.

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JUNE 17, 1970 11, 1970

The Washington Post

AN INDEPENDENT NEWSPAPER

The Mobile Decision

IT IS CLEAR that the Supreme Court dealt a sharp blow to black political aspirations in the South last week when it refused to break up the system that almost guarantees Mobile, Ala., an all-white local government. But it is not at all clear that what the justices did was, from the legal point of view, wrong or even that their decision represented a serious setback to civil rights.

Stripped of its nuances, the issue the court had to resolve was whether Mobile should be forced to abandon the form of local government it has had since 1911 because that particular arrangement makes the election of black officials almost impossible. The answer—that Mobile can stay the way it is—refutes the legal theory that civil rights lawyers had hoped would force a shift from at-large elections to ward or district elections in cities all over the country.

In this case, the theory asserted that the existence of the commission system of government in Mobile unconstitutionally dilutes the votes of blacks. Because the commission system mandates at-large elections and because Mobile is still given to racial bloc voting, no black has ever been elected to the city government and none is likely to be in the foreseeable future. If the city, which is 85 percent black, were broken into wards, the election of some blacks would be almost assured.

The trouble with this thesis, in the view of several members of the court, is that it rests on the assumption that the constitutionality of any law depends upon the effects it has on minority groups. They think laws should be judged on the intent with which

they were written. This argument—whether it is of recent intent—has been going on among the justices for years, primarily because neither standard is really satisfactory. Some clearly innocent laws have unintended discriminatory effects on some minorities. Accurately discovering the intent with which legislators acted is extremely difficult.

Judge by its intent the commission system in Mobile clearly discriminates against blacks. They are not only kept out of office but are also deprived of any real participation in local government and, because their votes do not in this sense count, of direct government less than satisfactorily responsive to their needs. But judged by the intent of those who were around in 1911, the commission system does not discriminate against anyone. Blacks didn't vote in Mobile then. Besides, the system was adopted in Alabama and elsewhere as a reform of corrupt ward politics.

By opting for intent, or something close to it, a majority of the court has cut down dozens, perhaps hundreds, of legal challenges that would have been made against existing systems of government for single-member legislative districts. It has also avoided the logical terminal point of those challenges: that election district lines must be drawn to give proportional representation to minorities.

These two actions unset whatever damage may have been done to black hopes of using the legal system to open up all-white local governments. Not all problems of discrimination can (or should) be settled in the courts, and this is one left just as well in the political arena.

WHY SECTION 2 OF THE VOTING
RIGHTS ACT SHOULD BE RETAINED
UNCHANGED

Section 2 of the Voting Rights Act of 1965 provides:

"No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color [or membership in a language minority]."

This provision, which is an important part of what has been uniformly described as the most successful civil rights law ever enacted, is applicable nationwide. Unlike §5 of the Act, §2 is a permanent provision which does not expire in August, so no action is necessary to continue its protections. President Reagan, in endorsing extension of the preclearance provisions of §5, has also urged retention of §2 without any change.

The bill recently passed by the House, however, does not continue §2 unchanged, but rather amends that provision by striking out the phrase "to deny or abridge" and substituting the phrase "in a manner which results in denial or abridgement of". There are several reasons why this change is unacceptable.

1. Like other civil rights protections, such as the Fourteenth Amendment's equal protection guarantee, §2 in its historic form requires proof that the challenged voting law or procedure was designed to discriminate on account of race. This "intent test" follows logically and inexorably from the nature of the evil that §2 was designed to combat. Both the Fifteenth Amendment and §2, which implements the constitutional protection, establish this Nation's judgment that official actions in the area of voting ought not be taken on the basis of race. As the Supreme Court recently made clear in City of Mobile v. Bolden, 446 U.S. 55 (1980), decisions that are proved to have been made on that prohibited basis -- i.e., with the intent to affect voting rights because of race -- must fall.

The House bill would alter §2 dramatically by incorporating in that provision a so-called "effects test". Under the House bill, the inquiry would focus not on whether the challenged action was taken with discriminatory purpose, but rather on whether the "results" of an election adversely affect a protected group.

By measuring the statutory validity of a voting practice or procedure against election "results," the House-passed version of §2 would in essence establish a "right" in racial and language minorities to electoral representation proportional to their population in the community. Any election law or procedure that did not lead to election results which mirrored the population make-up of the particular jurisdiction could be struck down as being impermissibly "dilutive" or "retrogressive" -- based on court decisions under §5 of the current Act (which does include an "effects" test). Historic and common political systems incorporating at-large elections and multi-member districts would be vulnerable to attack. So, too, would redistricting and reapportionment plans, unless drawn to achieve election results reflecting the racial balance of the jurisdiction. The reach of amended §2 would not be limited to statewide legislative elections, but would apply as well to local elections, such as those to school boards and to city and county governments.

As Justice Stewart correctly noted in his opinion in City of Mobile v. Bolden, incorporation of an effects test in §2 would establish essentially a quota system for electoral politics by creating a right to proportional racial representation on elected governmental bodies. Such a result is fundamentally inconsistent with this Nation's history of popular sovereignty.

2. Proponents of the House bill attempt to counter this argument by citing a "savings clause" in §2, which provides that "the fact that members of a minority group have not been elected in numbers equal to the group's proportion of the population shall not, in and of itself, constitute a violation" (emphasis supplied). By its terms, however, this provision removes from the §2 prohibition only those election systems that are neatly tailored to provide protected groups an opportunity to achieve proportional electoral success (i.e., single-member districts drawn to maximize minority voting strength). In circumstances where the racial group failed to take advantage of the political opportunity provided by such an election system (by refraining, for example, from running any candidates for office), the resulting disproportionate electoral representation would not, in such a situation, be fatal under the House bill, since that single consequence is not, "in and of itself," sufficient to make

out a violation. If, on the other hand, the challenged electoral system is not structured to permit proportional representation, (such as the common at-large and multi-member district election systems), the so-called savings clause is to no avail. The "results" test in §2 of the House bill would effectively mandate in such circumstances an electoral restructuring (even on a massive scale) so as to allow achievement of proportional representation if the particular racial or language group so desires.

3. Proponents of the amendment also claim that intent is virtually impossible to prove. This argument is simply false. The Supreme Court has made clear that intent in this area, like any other, may be proved by both direct and circumstantial evidence. A so-called "smoking gun" (in terms of actual expressions of discriminatory intent by members of the legislature) is simply not necessary. Plaintiffs can rely on the historical background of official actions, departures from normal practice, and other indirect evidence in proving intent. In this regard, the Voting Rights Act as currently written stands on the same footing as most other federal constitutional and statutory provisions in the civil rights area. Proof of wrongful intent as an element of the legislative offense is the rule -- not the exception. Adherence to that traditional standard in the present context is all the more compelling when one recalls that §2 is intended to be coextensive with the Fifteenth Amendment, which safeguards the right to vote only against purposeful or intentional discrimination on account of race or color.

Moreover, violations of §2 should not be made too easy to prove, since they provide a basis for the most intrusive interference imaginable by federal courts into state and local processes. The district court judge in the Mobile case, for example, acting solely on the basis of perceived discriminatory "effects", struck down the city's three-member, at large commission system of government, which had existed in Mobile for 70 years. In its place the federal judge ordered a mayoral system with a nine-member council elected from single-member districts. It would be difficult to conceive of a more drastic alteration of local governmental affairs, and under our federal system such an intrusion should not be too readily permitted.

4. Section 2 in its present form has been a successful tool in combatting racial discrimination in voting. The House in its hearings on extension of the Voting Rights Act failed to make the case to support a change in the existing "intent" standard. Significantly, no testimony was offered as to election practices in non-covered jurisdictions to

indicate a need to introduce a nationwide "results" test in §2. The House Report itself conceded that "no specific evidence of voting discrimination in areas outside those presently covered was presented." When Congress decided in 1965 to depart from the "intent" standard embedded in the Fifteenth Amendment and to adopt an "effects" test for §5 as a remedial measure for specifically identified covered jurisdictions, it based that legislation on a comprehensive congressional record of abuses of minority voting rights in those covered jurisdictions. In addition it applied the effects test only on a temporary basis and only to election law changes. The House bill seeks some seventeen years later to impose a similar "effects" standard nationwide on the strength of a record that is silent on the subject of voting abuses in non-covered jurisdictions. The House bill would also apply the effects test on a permanent basis and to existing election systems and practices as well as changes. Such an effort is not only constitutionally suspect, but also contrary to the most fundamental tenants of the legislative process on which the laws of this country are based.

The Right to Vote Must Not Be a Right to Win

To the Editor:

Frank R. Parker's Op-Ed article of Feb. 5, "Eaving Voting Rights," is a sample of the sophistry by which the "effects" test in the new Voting Rights Act will be defended.

Contrary to Mr. Parker's suggestion, determination of intent is not a matter of psychoanalysis, nor is it particularly difficult. Juries decide every day of the week whether a killing was premeditated or done in some other state of mind, and they do so without telepathy or smoking guns.

Indeed, the very idea of "discrimination" is that of an act done by the will of a rational being. A person can no more inadvertently discriminate than he can inadvertently rob.

And Mr. Parker's disavowals notwithstanding, the forbidd "discriminatory effects" does lead down the slippery slope to electoral quotas. Effects tests have certainly done so in employment, despite the promises of proponents of the Civil Rights Act.

To say that disproportional representation is not "in and of itself" a violation is a transparently weak safeguard, since any further factor, however insubstantial and unrelated to anyone's intent to discriminate, is now admissible as the decisive factor.

The right to vote is indeed our "crown jewel." It is the right not to be interfered with in the exercise of the franchise, and it has no reference to election results. If no one stops you from voting, your right is intact, even if your candidate, or the candidate representing your racial group, regularly loses.

This is the merest common sense, as reaffirmed in *Mobile v. Bolden*. The change Mr. Parker advocates would turn the right to participate in an election into a presumptive right to win, and it would wholly pervert the democratic process.

MICHAEL I. WIN
Professor of Philosophy, City College
New York, Feb. 6, 1982

To the Editor:

Frank Parker's article is typical of the demagogic debate which has accompanied the attempt to amend Section 2 of the Voting Rights Act. The City of Mobile case has not, as Parker contends, "drastically altered" the intent standard of the current Section 2.

A successful claim under the 15th Amendment has always been conditioned upon a showing of discriminatory intent. Justice Stewart cited a venerable line of cases in support of this contention; these cases routinely invalidated voting practices or procedures that were racially neutral on their face but could be traced to a "discriminatory intent."

In no case did this entail the necessity of finding a "smoking gun" or the psychological analysis of legislators' intention. The amendment that says it is necessary to do so has been created out of whole cloth by those who seek to create a radical new standard for the Voting Rights Act.

The great concern — and one which I share — is that the proposed amendment of the Voting Rights Act will lead to the requirement of proportional representation based on race. The language of the amendment seeks to dispel this fear, but its assurances ring hollow: lack of proportionality "in and of itself" does not constitute a violation.

In most recent years, emphasis has shifted from the issue of equal access to the ballot for racial minorities to that of equal results. The issue is no longer typically conceived of in terms of the right to vote but in terms of the right to an effective vote.

The old assumption that equal access to the ballot would ineluctably lead to political power for minorities has given way to the proposition that the political process must produce something more than equal access. The new demand is that the political process, regardless of equal access, must be made to yield equal results.

But if results become the new standard by which equal access to the political process is tested (as the amendment of Section 2 explicitly demands), then proportionality is inevitable. The argument, in its simplest form, presumes that a political process "equally open" to minorities will produce proportional results. When faced with a lack of proportional results, it is merely assumed that the political process is not "equally open."

All sides agree that the Voting Rights Act has been remarkably successful and that the imposition of the standard of racial proportionality would undo much of that success. The burden of proof rests upon those who would drastically alter the standards of intent to demonstrate more persuasively than they have that the amendment of Section 2 will not create the very thing that everyone wishes to avoid.

EDWARD J. ERLER
Research Triangle Park, N.C., Feb. 10, 1982
The writer is a scholar in residence at the National Humanities Center.

The Voting Rights Act Works As Is

By editorial comment ("Voting Rights: Be Strong," Jan. 26), The Post urged endorsement of the House-passed amendment to Section 2 of the Voting Rights Act, which changes the standard for determining a violation from the current "intent" test to one that requires only a showing of discriminatory "effect." Remarkably, the case made for this position was that the House bill merely seeks to reinstate the standard in use before the Supreme Court decision in *City of Mobile v. Bolden*.

In the 1980 *Mobile* decision, the Supreme Court considered Section 2 of the Voting Rights Act for the first time and concluded that proof of discriminatory "intent" is necessary to establish violations of that provision. Contrary to The Post's editorial, this decision signaled no change in the law.

The act itself is unambiguous on this point. As Justice Potter Stewart observed in *Mobile*, Section 2 was enacted to enforce the guaranty of the Fifteenth Amendment, and that constitutional provision has always required proof of discriminatory intent. Had Congress intended to include in Section 2 an "effects" test, it certainly knew how; in 1965, and again in 1970 and 1975, Congress explicitly included an "effects" test in Section 5 of the Voting Rights Act (applicable only to selected jurisdictions), but chose not to put the same standard in Section 2 (applicable nationwide).

Nor have the courts suggested otherwise. The Post points to two decisions (*Whitcomb v. Chavis* and *White v. Regester*) in support of its claim that an "effects" test did in fact exist in

Section 2 before the *Mobile* decision. Neither case, however, even involved Section 2 of the Voting Rights Act; rather, they both concerned claims brought under the Equal Protection Clause of the Fourteenth Amendment. Moreover, even on the Fourteenth Amendment question, both *Whitcomb* and *White* tacitly recognized that proof of discriminatory intent is a necessary element of the constitutional offense. Justice Stewart's opinion in *Mobile* makes this clear, and The Post's editorial suggestion to the contrary is simply legally incorrect.

Also unsound is The Post's assertion that discriminatory intent is "virtually impossible" to prove. Several Supreme Court decisions have made it abundantly clear that a "smoking gun" in the form of incriminatory statements or documents has never been required. Intent in this area, as in any other, may be proved by circumstantial and indirect evidence. Notably, the equal protection clause of the Fourteenth Amendment, responsible for so many historic civil rights advances, has a similar test.

There is a general consensus in this country that the temporary provisions of the Voting Rights Act should be extended for an additional period of time. Congress should not, however, introduce uncertainty and confusion into what has been the most successful piece of civil rights legislation ever enacted by making so dramatic a change in its permanent provisions. Section 2 therefore should be retained without change.

WILLIAM BRADFORD REYNOLDS
Assistant Attorney General
(Civil Rights Division)

Washington

REVIEW & OUTLOOK

Voting Wrongs

New amendments to the Voting Rights Act of 1965 are up for Senate hearings this week and we wonder if the subcommittee on the Constitution will notice that they have a strange little quirk: In the name of protecting the right to vote they expand federal power to outlaw local elections. The contradiction escaped notice in the House, which already has passed the amendments.

This seems to be a case of Congress not knowing where to stop. The act, originally designed to overcome systematic denial of access to the polls in certain Southern states, has largely accomplished its purpose. In Mississippi, for example, 67% of the eligible blacks are registered, a tenfold increase from 1965. But in 1975 the law was expanded beyond the South and extended to "language minorities" as well. Today, because of "trigger mechanisms" that invoke the law where rights violations are suspected, all voting districts in nine states and some in 13 others are required to "preclear" with the Justice Department any proposed changes in election procedures. Thirty states are required to provide bilingual election material and assistance.

Around 35,000 proposed election law changes have been submitted to the Justice Department since 1965. Of those, Justice refused to allow 811, the bulk of which involved alleged reductions in "minority" voting power through districting changes and use of at-large as opposed to district representation. In some cases, Justice has blocked elections; New York City, for example, has yet to hold its 1981 City Council elections because of a redistricting dispute with Washington.

In only about a tenth of these cases did Justice find any "intent" to discriminate; in the rest, under the act's strict "preclearance" test, it merely found that the proposed changes would have a discriminatory "effect." This "effects" test currently applies only to those states and localities which had a history of intentional discrimination or disproportionate voting patterns.

The Supreme Court has ruled that in other parts of the country the government must first prove "intent" to discriminate before it can apply the provisions of the act. Moreover, in upholding Mobile, Alabama's at-large

voting system in 1980, the Court said that some existing election practices may result in low representation of minorities among elected officials but that doesn't itself constitute "purposeful" discrimination. "The 15th Amendment," it added, "does not entail the right to have Negro candidates elected."

The House amendments to Section 2 of the Voting Rights Act would depart dramatically from the Court's logic. The federal government would no longer have to prove "intent" to discriminate in elections. It could merely cite voting practice "results" in alleging discrimination. The amendments would obligate the Justice Department to review elections in every state and municipality in the nation and to look not only at proposed changes in procedures but also at every existing election law. The biggest target would likely be the at-large system of voting used in two-thirds of the moderate-size municipalities in the U.S.

Now, the at-large system isn't perfect, but it does have certain merits and, indeed, has often been adopted in reform movements. For one thing, it makes it impossible for incumbents to hang onto their seats through redistricting.

We learned a long time ago that when you allow the Feds to assess "results," they end up doing it by essentially racist methods, dividing the community into the various races and ethnic groups the law happens to cover and trying to provide each with a representative. Somehow this doesn't strike us as the way we should be moving if we are trying to remove the vestiges of racism in American society. Moreover, we don't find it comforting that the result so far of many disputes between the Feds and the local authorities often has been to suspend elections, disfranchising voters and allowing the incumbents to stay in power.

The amendments the Senate will vote on soon should be scrubbed in favor of a return to the intent test and a planned phase-out of the Voting Rights Act altogether as it becomes increasingly evident that no one is being kept from the polls because of his race, creed or color. Otherwise, we will end up with more, not less, racial and ethnic polarization.

SUMMARY ON COMPROMISE AMENDMENT

Background

As you are aware, the most controversial provision of the House-passed Voting Rights Act bill concerns a proposed change in Section 2. Section 2 contains a general prohibition against discriminatory voting practices. It is permanent legislation and applies nationwide. In the 1980 case of Mobile v Bolden, the Supreme Court held that Section 2 prohibits only intentional discrimination. The House bill would amend Section 2 to prohibit any voting practice having a discriminatory "result".

Much of the intent/results controversy has evolved around whether the Mobile case changed the law. Prior to Mobile, the courts used an "aggregate of factors" or "totality of circumstances" test in voting rights cases. The leading cases articulating this standard are the Supreme Court case of White v Regester, and the Fifth Circuit opinion of Zimmer v McKeithen. According to Zimmer and White, the standard to be applied was whether, based on an "aggregate of factors" the "political processes ... were not equally open to the members of the minority group in question". And the "factors" looked at by the courts in this line of cases included indicia of intentional discrimination, as well as the "result" of the challenged voting practice.

Proponents of the "result" standard in Section 2 have argued that the White/Zimmer "aggregate of factors" test was a "results" test, which the subsequent Mobile case drastically changed. Thus they have argued that by placing a results standard in Section 2, the courts will return to use of the White/Zimmer test. Intent advocates, on the other hand, have pointed to language in the Mobile decision indicating that White was essentially an "intent" case. Thus they have argued that the White/Zimmer approach was simply an articulation of various objective "factors" which could be relied upon to circumstantially prove discriminatory intent.

Key Provisions of the Compromise Amendment

Because neither side of the intent/results controversy has expressed disagreement with the pre-Mobile case law, we have simply codified that case law in our compromise amendment. Specifically, the compromise would add a new subsection to Section 2 explicitly stating that a violation of that section is established when, based on an "aggregate of factors", it is shown that the "political processes leading to nomination and election are not equally open to participation by a minority group". The subsection then provides a nonexclusive list of factors to be considered by the courts, the same factors articulated in White and Zimmer. These factors are:

1. Whether there is a history of official voting discrimination in the jurisdiction;
2. Whether elected officials are unresponsive to the needs of the minority group;

3. Whether there is a tenuous policy underlying the jurisdictions' use of the challenged voting practice;
4. The extent to which the jurisdiction uses large election districts, majority vote requirements, anti-single shot provisions, or other practices which enhance the opportunity for discrimination;
5. Whether members of the minority group have been denied access to the process of slating candidates;
6. Whether voting in the jurisdiction is racially polarized;
7. Whether the minority group suffers from the effects of invidious discrimination in such areas as education, economics, employments, health, and politics; and
8. The extent to which members of minority groups have been elected to office, but with the caveat that the subsection does not require proportional representation.

The Compromise Amendment is Neither an Intent Test nor a Results Test

In our opinion, the pre-Mobile case law, and thus our compromise amendment codifying this case law, represents neither an "intent" standard nor a "results" approach. Nowhere in the pre-Mobile case law did the courts state that a plaintiff must prove that the challenged voting practice was motivated by an intent to discriminate. But similarly, nowhere did the courts state that they were applying a "results" test.¹ Rather, the touchstone of these cases, and of our compromise amendment, is whether certain key factors have coalesced to deny members of a particular minority group access to the political process. Neither election results, nor proof of discriminatory purpose is determinative. Access is the key.

Politically, we think the compromise will be attractive. The civil rights groups have repeatedly stated that a return to the pre-Mobile case law is all they want, and in drafting the amendment, we have made every effort not to deviate from the case law. Further, the amendment carefully

¹ Under the traditional "effects" or "results" test applied, for instance, under Title VII of the Civil Rights Act of 1964, the focus of inquiry is whether statistically, the challenged practice has had a disparate impact on a particular minority group. The pre-Mobile courts consistently emphasized that such statistical disparities, i.e., in the voting context, the lack of proportional representation, was not determinative, but rather only one factor, among many, to be considered.

avoids any possible interpretation that it could require proportional representation, or that it would impose an "effects" test similar to that employed under Title VII. The first sentence makes clear, as did the White and Zimmer opinions, that the issue to be decided is equal access to the political process, and that this determination is to be based on an aggregate of factors, not simply election results. Similarly, the extent to which minorities have been elected to office is listed as only one factor to be considered, and it is accompanied by an express disclaimer that the subsection does not mandate proportional representation.

SB:pab

Section 2 of the Voting Rights Act

(House amendments indicated in italics and brackets)

TITLE I—VOTING RIGHTS

SEC. 2 No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision [to deny or abridge] *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, or in contravention of the guarantees set forth in section 4(f) (2). The fact that members of a minority group have not been elected in numbers equal to the group's proportion of the population shall not, in and of itself, constitute a violation of this section.*

* * * * *

SEC. 4.¹ (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the [seventeen] *nineteen* years preceding the filing of the action for the purpose or with the

¹ The amendments made by subsection (a) of the first section of this Act shall take effect on the date of enactment of the Act.

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² The amendment made by an August 6, 1984.

since in some areas, the percentage of adults living on Indian lands who are not fluent in English may range as high as 60 to 70 percent.

Claims that providing language assistance in the electoral process promotes cultural segregation were described as "sadly, woefully, and overwhelmingly in error."⁸⁹ Testimony clearly showed that contrary to such claims, such assistance has the effect of bringing into the integral and integrated workings of communities, with substantial language minority populations, "a sense of comradeship, and participatory democracy."⁹⁰

Further belying such claims is the high degree of participation by Mexican American citizens in the political process within the State of New Mexico. New Mexico, with an Hispanic population of 36.6 percent, has provided bilingual voter assistance almost continuously since it became a state. As a consequence, New Mexico is the only (mainland) state in which Hispanics hold statewide offices—in fact, they hold 40 percent of such positions; it also has the largest number of Hispanics elected to office—35 percent of its State Senators, 28 percent of its State Representatives, and 30 percent of its County Commissioners are Hispanics.⁹¹ No other state approaches this degree of integration of Mexican-American citizens into its political system. One witness concluded that such political integration "moves us toward a more united and harmonious country."⁹²

It is on the basis of all of this evidence that the Committee believes it necessary to extend the Section 203 provisions at this time.

Language assistance is provided to address the vestiges of voting discrimination against language minority citizens and is an integral part of providing the protections which the Act has sought to extend to all minorities.

AMENDMENTS TO SECTION 2 OF THE ACT

As discussed throughout this report, there are numerous voting practices and procedures which result in discrimination. In the covered jurisdictions, post-1965 discriminatory voting changes are prohibited by Section 5. But, many voting and election practices currently in effect are outside the scope of the Act's preclearance provision, either because they were in existence before 1965 or because they arise in jurisdictions not covered by Section 5.

Under the Voting Rights Act, whether a discriminatory practice or procedure is of recent origin affects only the mechanism that triggers relief, i.e., litigation or preclearance. The lawfulness of such a practice should not vary depending upon when it was adopted, i.e. whether it is a change. Yet, while some discriminatory practices and procedures have been successfully challenged under Section 2 of the Voting Rights Act, the Supreme Court's interpretation of Section 2 in *City of Mobile v.*

⁸⁹ The Honorable Barbara Jordan, former Member, U.S. House of Representatives (June 18 Hearing).

⁹⁰ Id.

⁹¹ Testimony of the Honorable Roberto Mondragon, Lieutenant Governor of New Mexico (Hearing of May 13).

⁹² Testimony of the Honorable Robert Abrams, Attorney General of the State of New York (Hearing of June 18).

*Bolden*⁹³ has created confusion as to the proof necessary to establish a violation under that section.⁹⁴

Prior to *Bolden*, a violation of Section 2 could be established by direct or indirect evidence concerning the context, nature and result of the practice at issue. In *Bolden*, Justice Stewart, writing for the plurality, construed Section 2 of the Act as merely restating the prohibitions of the Fifteenth Amendment. The Court held that a challenged practice would not be unlawful under that section unless motivated by discriminatory intent. The Committee does not agree with this construction of Section 2 and believes that the intent of the section should be clarified.

Section 2 of H.R. 3112 will amend Section 2 of the Act to make clear that proof of discriminatory purpose or intent is not required in cases brought under that provision. Many of these discriminatory laws have been in effect since the turn of the century.⁹⁵ Efforts to find a "smoking gun"⁹⁶ to establish racial discriminatory purpose or intent are not only futile,⁹⁷ but irrelevant to the consideration whether discriminatory has resulted from such election practices.

The purpose of the amendment to section 2 is to restate Congress' earlier intent that violations of the Voting Rights Act, including Section 2, could be established by showing the discriminatory effect⁹⁸ of the challenged practice. In the 1965 Hearings, Attorney General Katzenbach testified that the section would reach any kind of practice . . . if its purpose or effect was to deny or abridge the right to vote on account of race or color."⁹⁹ [emphasis added] As the Department of Justice concluded in its *amicus* brief in *Lodge v. Buzton*,¹⁰⁰ applying a "purpose" standard under Section 2 while applying a "purpose or effect" standard under the other sections of the Act would frustrate the basic policies of the Act.

By amending Section 2 of the Act Congress intends to restore the pre-*Bolden* understanding of the proper legal standard which focuses on the result and consequences of an allegedly discriminatory voting

⁹³ 446 U.S. 55 (1980).

⁹⁴ Compare *McMillan v. Escambia County, Florida*, 638 F.2d 1239 (5th Cir. 1981), with *Lodge v. Buzton*, 639 F.2d 1358 (5th Cir. 1981), *Cross v. Baxter*, 639 F.2d 1383 (5th Cir. 1981), and *Thomasville Branch NAACP v. Thomas County, Georgia*, 639 F.2d 1384 (5th Cir. 1981).

⁹⁵ Hearings, June 24, 1981, C. Vann Woodward, J. Morgan Kousser.

⁹⁶ Id., J. Morgan Kousser, James Blacksher; *Lodge v. Buzton*, 639 F.2d 1358 (5th Cir. 1981).

⁹⁷ The Supreme Court and commentators have noted that legislative motivation is often impossible to ascertain, reliance upon this standard is futile, and its application may lead to undesirable and unwanted results. See *Palmer v. Thompson*, 403 U.S. 217, 225 (1971) ("It is difficult or impossible for any court to determine the 'sole' or 'dominant' motivation behind the choices of a group of legislators. Furthermore, there is an element of futility in a judicial attempt to invalidate a law because of the bad motives of its supporters. If the law is struck down for this reason . . . it would presumably be valid as soon as the legislature or relevant governing body repassed it for different reasons."); *United States v. O'Brien*, 391 U.S. 367, 383-84 (1968) ("Inquiries into congressional motives or purposes are a hazardous matter . . . What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guesswork."); Note, *Discriminatory Purpose and Disproportionate Impact: An Assessment After Feeney*, 79 Col. L. Rev. 1370, n. 24 (1979); P. Brest, *Palmer Thompson: An Approach to the Problem of Unconstitutional Legislative Motive*, 1971 Sup. Ct. Rev. 95; J. H. Ely, *Legislative and Administrative Motivation in Constitutional Law*, 79 Yale L.J. 1205, 1212-17 (1970).

⁹⁸ See Committee Hearings, 1981, Memorandum From: Hiroshi Motomura, To: Sally Determan.

⁹⁹ Hearing on S. 1564 before the Committee on the Judiciary, United States Senate, 80th Cong., 1st Sess., pp. 191-92 (1965).

¹⁰⁰ 639 F.2d, 1358 (5th Cir. 1981).

or electoral practice rather than the intent or motivation behind it.¹⁰¹ Section 2 prohibits any voting qualification, prerequisite, standard, practice or procedure which is discriminatory against racial and language minority group persons or which has been used in a discriminatory manner to deny such persons an equal opportunity to participate in the electoral process. This is intended to include not only voter registration requirements and procedures, but also methods of election and electoral structures, practices and procedures which discriminate.¹⁰² Discriminatory election structures can minimize and cancel out minority voting strength as much as prohibiting minorities from registering and voting. Numerous empirical studies based on data collected from many communities have found a strong link between at-large elections and lack of minority representation.¹⁰³ Not all at-large election systems would be prohibited under this amendment, however, but only those which are imposed or applied in a manner which accomplishes a discriminatory result.

The proposed amendment does not create a right of proportional representation. Thus, the fact that members of a racial or language minority group have not been elected in numbers equal to the group's proportion of the population does not, in itself, constitute a violation of the section although such proof, along with other objective factors, would be highly relevant. Neither does it create a right to proportional representation as a remedy.

This is not a new standard. In determining the relevancy of the evidence the court should look to the context of the challenged standard, practice or procedure. The proposed amendment avoids highly subjective factors such as responsiveness of elected officials to the minority community. Use of this criterion creates inconsistencies among court decisions on the same or similar facts and confusion about the law among government officials and voters. An aggregate of objective factors should be considered such as a history of discrimination affecting the right to vote, racially polarized voting which impedes the election opportunities of minority group members, discriminatory elements of the electoral system such as at-large elections, a majority vote requirement, a prohibition on single-shot voting, and numbered posts which enhance the opportunity for discrimination, and discriminatory slating or the failure of minorities to win party nomination.¹⁰⁴ All of these factors need not be proved to establish a Section 2 violation.

The amended section would continue to apply to different types of election problems. It would be illegal for an at-large election scheme for a particular state or local body to permit a bloc voting majority over a substantial period of time consistently to defeat minority candidates or candidates identified with the interests of a racial or language minority. A districting plan which suffers from

¹⁰¹ The alternative standard of proving that a voting practice or procedure is unlawful if a discriminatory purpose was a motivating factor would still be available to plaintiffs in such cases. As the Supreme Court held in *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977), plaintiffs would not be required to prove that a discriminatory purpose was the sole, dominant, or even the primary purpose for the challenged practice or procedure, but only that it has been a motivating factor in the decision.

¹⁰² See *Allen v. State Board of Elections*, 393 U.S. 544, 569 (1969).

¹⁰³ See discussion in previous section entitled *Discriminatory Methods of Election*.

¹⁰⁴ These objective standards rely on *White v. Regester*, 412 U.S. 755 (1973) but is not controlling since it established a constitutional violation.

these defects or in other ways denies equal access to the political process would also be illegal.

The amendments are not limited to districting or at-large voting. They would also prohibit other practices which would result in unequal access to the political process.¹⁰⁵

Section 2, as amended, is an exercise of the broad remedial power of Congress to enforce the rights conferred by the Fourteenth and Fifteenth Amendments. In *South Carolina v. Katzenbach*, 383 U.S. 301, 325-26 (1966), the Supreme Court held that under these provisions "Congress has full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting." Pursuant to its authority to enforce the Fourteenth and Fifteenth Amendments, Congress has the power to enact legislation which goes beyond the specific prohibitions of the Fourteenth and Fifteenth Amendments themselves so long as the legislation is appropriate to fulfill the purposes of those constitutional provisions. *Fullilove v. Klutznick*, — U.S. — (1980); *City of Rome v. United States*, 446 U.S. 156, 173-78 (1980); *South Carolina v. Katzenbach*, *supra*. This includes the power to prohibit voting and electoral practices and procedures which have a racially discriminatory effect. *City of Rome v. United States*, *supra*; *Fullilove v. Klutznick*, *supra*.

The need for this legislation has been amply demonstrated. This legislation is designed to secure the right to vote of minority citizens without discrimination, and to eliminate "the risk of purposeful discrimination." *City of Rome v. United States*, 446 U.S. 156, 177 (1980). Discriminatory purpose is frequently masked and concealed, and officials have become more subtle and more careful in hiding their motivations when they are racially based.¹⁰⁶ Therefore, prohibiting voting and electoral practices which have a discriminatory result is an appropriate and reasonable method of attacking purposeful discrimination, regardless of whether the practices prohibited are discriminatory only in result. Cf. *City of Rome v. United States*, *supra*, at 176-78; *Oregon v. Mitchell*, 400 U.S. 112, 132-33 (opinion of Black, J.); *id.* at 144-47 (opinion of Douglas, J.); *id.* at 216-17 (opinion of Harlan, J.); *id.* at 231-36 (opinion of Brennan, White, and Marshall, J.J.); *id.* at 282-84 (opinion of Stewart, J., joined by Burger, C.J., and Blackman, J.). Voting practices which have a discriminatory result also frequently perpetuate the effects of past purposeful discrimination, and continue the denial to minorities of equal access to the political processes which was commenced in an era in which minorities were purposefully excluded from opportunities to register and vote.¹⁰⁷ These Section 2 Amendments also provide an appropriate and reasonable remedy for overcoming the effects of this past purposeful discrimination against minorities. Cf. *City of Rome*, *supra*; *Oregon v. Mitchell*, *supra*.

¹⁰⁶ For example, a violation would be proved by showing that election officials made absentee ballots available to white citizens without a corresponding opportunity being given to minority citizens similarly situated. As another example, purging of voter registration rolls would violate Section 2 if plaintiffs show a result which demonstrably disadvantages minority voters. Only purges having a discriminatory result are prohibited. The majority vote requirement would also be prohibited under the standards applicable to other discriminatory vote dilutions.

¹⁰⁷ See, e.g., *McMillan v. Escambia County, Florida*, 638 F.2d 1239, 1246 n.15 (5th Cir. 1981); *Robinson v. 12 Loft Realty, Inc.*, 610 F.2d 1032, 1043 (2d Cir. 1978).

¹⁰⁸ See, e.g., *Kirksey v. Board of Supervisors of Hinds County, Mississippi*, 554 F.2d 139 (5th Cir. 1977) (*en banc*), cert. denied, 434 U.S. 968 (1977).

It is intended that citizens have a private cause of action to enforce their rights under Section 2. This is not intended to be an exclusive remedy for voting rights violations, since such violations may also be challenged by citizens under 42 U.S.C. §§ 1971, 1983 and other voting rights statutes. If they prevail they are entitled to attorneys' fees under 42 U.S.C. §§ 1973l(e) and 1988.

AMENDMENTS TO SECTION 4 (2) OF THE ACT

Over the past century, The Congress repeatedly has enacted legislation in an attempt to secure the guarantees of the Fifteenth amendment. The Enforcement Acts authorized the executive branch to enfranchise newly emancipated black; the results were dramatic. Under the Hayes-Tilden Compromise the Federal government acquiesced to pressures of states' promises to diligently enforce the Civil War Amendments. Upon repeal of the Enforcement Acts disfranchisement of blacks was swift and complete, and until the Voting Rights Act of 1965, enforcement of the fifteenth amendment was left to the judicial branch.

The legislative history for the 1965 Act makes clear the inability of one branch of government to effectively enforce that right, despite congressional acts streamlining the judicial process for voting rights litigation.¹⁰⁸

Pursuant to Section 2 of the Fifteenth Amendment Congress passed the Voting Rights Act of 1965. The Act gave the executive branch a greater role in enforcing the right to vote and strengthened judicial remedies in voting rights litigation.

Disturbed at the lack of progress in minority participation within the political process in the covered jurisdictions, Congress in 1975 began to explore alternative remedies. Proponents of these different remedies argued that the Voting Rights Act, as written, provided no incentive for the covered jurisdictions to do other than retain existing voting procedures and methods of election. The record showed that frequently the changes which did occur continued the effects of past discriminatory voting practices. After exploring these proposals, Congress chose not to adopt changes in the Act's remedies at that time.

After listening once again to the litany of discriminatory practices and procedures which continue to dominate these covered jurisdictions, the Committee determined that some modification of the Act was necessary to end the apparent inertia which exists in these jurisdictions.

The Committee believes these proposed changes to the bailout provision, set forth in H.R. 3112, as amended, will provide the necessary incentives to the covered jurisdictions to comply with laws protecting the voting rights of minorities, and to make changes in their existing voting practices and methods of election so that by eliminating all discriminatory practices in the elections process increased minority participation will finally be realized. This is a reasonable bailout which will permit jurisdictions with a genuine record of nondiscrimination in voting to achieve exemption from the requirements of Section 5.

A major change in current law is that counties within fully covered states will be allowed to file for bailout independently from the State.

¹⁰⁸ 16 Stat. 140.

The amendment does retain the concept that the greater governmental entity is responsible for the actions of the units of government within its territory, so that the State is barred from bailout unless all of its counties/parishes can also meet the bailout standards; likewise, any county bailout would be barred unless units within its territory could meet the standard.

Because of the continuing record of voting rights violations which has been presented to the Congress in 1970, 1975 and at this time, and further documented in numerous studies and reports, the jurisdiction is required to present a compelling record that it has met the amended bailout standards.

The amended bailout provisions become effective on August 6, 1982. From August 6, 1982 to August 5, 1984, the jurisdictions will be required to comply with the current bailout provision. This 2 year delay will allow the Department of Justice to continue to effectively enforce Section 5 and also make necessary preparations and decisions about resources to respond to these bailout suits.

ALTERNATIVE PROPOSALS

In addition to H.R. 3112, as reported to the House, other proposals to amend the Voting Rights Act of 1965 are addressed in the Committee record. Some of these proposals were contained in legislation before the Subcommittee on Civil and Constitutional Rights.

Judicially Ordered Preclearance

Under current law, once a jurisdiction is brought under the coverage of the special provisions of the Act (according to the 1965, 1970, or 1975 triggers) the jurisdiction must automatically submit or preclear all of its proposed electoral changes, either to the Attorney General or to the District Court for the District of Columbia; most changes are precleared with the Justice Department. This process is commonly referred to as the automatic, administrative preclearance procedure or more simply, preclearance. In addition, current law provides that administrative preclearance may be required for a period of time, as part of a judicially imposed remedy, in areas not automatically subject to the special provisions of the Act.

A proposal to replace existing procedure with a judicially imposed preclearance process was discussed in the hearings.¹⁰⁹ Under this proposal, administrative preclearance would be imposed by a court anywhere in the country, if it made a judicial finding that a pattern and practice of voting rights abuses existed in a specific jurisdiction.

The hearing record demonstrates most emphatically that the effect of this approach would be to signify a return to the pre-1965 litigative approach, which the legislative history of the 1965 Act showed to be most ineffective in protecting the voting rights of minorities.¹¹⁰ This proposal would mean that for each of the currently covered jurisdictions, which number over 900, a lawsuit would have to be initiated to require the jurisdiction to submit. Given the overwhelming evidence of a continuing pattern and practice of voting discrimination against

¹⁰⁹ On May 6, H.R. 3473 was introduced by Representative Hyde to further clarify the changes proposed in his earlier bill, H.R. 3473, thus, superceded H.R. 3198.

¹¹⁰ See 1965 House Hearings.

ORRIN G. HATCH
UTAH

411 RUSSELL SENATE OFFICE BUILDING
TELEPHONE: (202) 224-5251

HATCH HOT LINE 1-800-862-4300
(UTAH TOLL FREE)

United States Senate

WASHINGTON, D.C. 20510

March 15, 1982

COMMITTEES:
JUDICIARY
LABOR AND HUMAN
RESOURCES
SMALL BUSINESS
BUDGET
OFFICE OF TECHNOLOGY
ASSESSMENT

Dear Colleague:

With hearings recently completed on the Voting Rights Act in the Subcommittee on the Constitution which I chair, I would like to take the liberty of summarizing the key issue that has emerged in the debate. That is the issue of whether or not to change the standard for identifying 15th Amendment violations from an "intent" to a "results" standard.

While there have been significant differences of opinion among witnesses on the merits of these standards, I believe that there has been virtually total agreement that the issue is a highly significant one. Personally, I believe that the issue involves one of the most substantial constitutional issues to come before Congress in many years. In effect, the issue is: How is Congress going to define the concepts of "civil rights" and discrimination"?

Section 2 of the Voting Rights Act codifies the 15th Amendment to the Constitution and applies to the entire country--
The 15th Amendment to the Constitution forbids public policies which deny or abridge voting rights "on account" of race or color. Section 2 has always been one of the least controversial provisions of the Voting Rights Act because it codified that principle. Application of the 15th Amendment (and section 2), of course, is not limited to those jurisdictions "covered" by the Voting Rights Act; they apply to the entire country.

Section 2 and the 15th Amendment have always required some showing of intentional or purposeful discrimination in order to establish a violation-- The Supreme Court stated in the 1980 case of *Mobile v. Bolden* that no decision of the Court had ever "questioned the necessity of showing purposeful discrimination in order to show a 15th Amendment violation." Similarly, they noted that the 14th Amendment's Equal Protection Clause has always required that claims of racial discrimination "must ultimately be traced to a racially discriminatory purpose." There is no Supreme Court decision under either the 15th Amendment or Section 2 that has ever allowed discrimination to be proved by an "effects" or "results" standard.

It is unconstitutional for Congress to overturn a constitutional interpretation of the Supreme Court by simple statute-- The Supreme Court having interpreted the parameters of the 15th Amendment in Mobile, Congress lacks authority to enact legislation (presumably under the authority of the 15th Amendment) that interprets the amendment in a different manner. This is precisely the constitutional controversy involved in efforts by some in Congress to overturn the Roe v. Wade abortion decision by simple statute.

The "intent" standard is the proper standard for identifying civil rights violations-- The 15th Amendment prohibits denial or abridgement of voting rights "on account of" race or color. This has always been interpreted to mean "because of" race or color. As the Supreme Court observed in a 1977 decision, "A law neutral on its face and serving ends otherwise within the power of government to pursue is not invalid simply because it may affect a greater proportion of one race than another." Washington v. Davis. The "intent" standard reflects what has always been the understanding of discrimination-- the wrongful treatment of an individual "because of" or "on account of" his or her race or skin color.

The "results" standard is a radically different standard for identifying discrimination-- The "results" standard would sharply alter the traditional conception of discrimination by focusing primarily upon the results of an allegedly discriminatory action rather than upon the processes leading up to that action. It would radically transform the goal of the Voting Rights Act from equal access to the electoral process into equal outcome in that process.

The "results" test would establish a standard of proportional representation by race as the standard for identifying discrimination-- The only logical impact of the new "results" test will be to establish proportional representation by race as the standard for identifying racial discrimination (see Attachment). There is no other possible meaning to the concept of discriminatory "results". The new standard is premised upon the idea that racial disparities between population and representation are invariably explained by discrimination.

The so-called proportional representation disclaimer in section 2 is a smokescreen-- The disclaimer language states that evidence of the lack of proportional representation shall not "in and of itself" establish a violation. This is extremely misleading. What this means is that lack of proportional representation plus one additional scintilla of evidence will establish a violation. What would constitute an additional scintilla? Among such factors, referred to in the House report and elsewhere, are the existence of an at-large election system, re-registration laws, evidence of racially polarized voting, majority vote requirements, anti-single shot vote re-

quirements, impediments to independent candidacies, disparities in registration rates among racial groups, a history of discrimination, a history of lack of proportional representation, the past existence of dual school systems, a history of English-only ballots, evidence of maldistribution of services in racially-identifiable neighborhoods, staggered election terms, residency requirements, numbers of minority election personnel, etc. etc.

The theory of the "results" test is that each of these so-called "objective factors of discrimination" explains the lack of proportional representation. Virtually any community in the country lacking proportional representation is going to have one or more of these factors which would complete a violation. In addition, any further electoral or voting procedure or law that could be arguably considered a "barrier" to minority voting participation, e.g. purging non-voters off of registration lists periodically, could serve as the basis for the additional scintilla of evidence required by the so-called disclaimer provision.

The major target of proponents of the "results" test is the at-large system of election throughout the country-- More than 12,000 jurisdictions throughout the country have adopted at-large systems of elections. These are opposed by some in the civil rights community because they do not maximize the possibility of proportional representation. If the "results" test is approved in section 2, any community with an at-large system of election (lacking proportional representation for minority groups) will be in severe jeopardy. The at-large system of election, both in the North and the South, is the major target of the civil rights community through the revised section 2 (although by no means the only target).

The "results" test will ensure that Federal courts will become far more deeply involved in dismantling local governmental structures which do not maximize the possibilities of proportional representation by race-- As the Supreme Court observed in Mobile, "The dissenting opinion ("results" test) would discard fixed principles in favor of a judicial inventiveness that would go far toward making this Court a super-legislature." In the Mobile decision itself, the Court reversed an order by the lower court requiring the dismantling of the local structure of government in Mobile (at-large system) despite a failure to prove purposeful discrimination and despite clear evidence that the at-large system in Mobile served important, non-racially related purposes.

The "results" test would substitute the rule of an individual judge for a rule of law-- Perhaps the most serious defect of the "results" test is that it completely undermines a clear rule of law fixed by the "intent" test and substitutes a new rule that cannot possibly offer the slightest bit of guidance to a community as far as how to conduct its affairs, short of assuring proportional representation by race. There is absolutely no guidance beyond this standard as far as what voting and election laws and procedures are permissible and what are not.

The "intent" test is not impossible to prove and it does not require mind-reading or 'smoking guns' of evidence-- It is interesting that the claim should be made that "intent" is impossible to prove when it has always been the standard for constitutional civil rights violations, e.g. equal protection clause, school busing, 13th Amendment, 14th Amendment, 15th Amendment. It is also interesting when it is recognized that "intent" is proven every day of the week in criminal trials, without the need for express confessions or 'smoking guns'. Indeed, it is even more difficult to prove in criminal cases because it must be proven there "beyond a reasonable doubt" rather than simply "by a preponderance of the evidence" as in civil rights cases. Intent has always been proven, not solely through circumstantial evidence, but through circumstantial evidence as well, i.e. through the totality of the circumstances. As the Supreme Court observed in 1978, "Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence as may be available." Arlington Heights v. Metropolitan Authority. Major voting rights cases have been won by plaintiffs under the "intent" standard before and after Mobile.

I am aware that there is a great deal of political pressure upon Members of this body to support the House version of the Voting Rights Act without changes. I would respectfully suggest, however, that if this measure becomes law, most of the Members of this body will have communities that will become the target of litigation by so-called "public interest" law firms. I have prepared some information on a few of these communities which will be vulnerable under the proposed amendments to the Act and will be glad to share this information with any interested Members or their staff.

It is rare that an issue comes along of the constitutional and practical significance of the proposed changes to the Voting Rights Act. I would ask each of you, whether or not you have already joined as a co-sponsor of this measure, to consider these issues very carefully. They are not simple issues but they are of critical importance.

Please do not hesitate to contact me or Mr. Stephen Markman of my Judiciary Committee staff (x48191) if we can be of further assistance to you in explaining the significance of these (or any other) changes in the Voting Rights Act.

Sincerely,



Orrin G. Hatch
United States Senate

Purpose: _____

IN THE SENATE OF THE UNITED STATES— _____ Cong., _____ Sess.

S. 1992 _____

H.R. _____ (or Treaty _____) _____
SHORT TITLE

(title) To amend the Voting Rights Act of 1965 to extend the effect
of certain provisions, and for other purposes.

- () Referred to the Committee on _____
and ordered to be printed
- () Ordered to lie on the table and to be printed

INTENDED to be proposed by Mr. DOLE _____

Viz: Strike all after the enacting clause and insert in lieu thereof
1 the following:

2 SEC. 1. That this Act may be cited as the "Voting Rights Act
3 Amendments of 1981".

4 SEC. 2. Section 4(a) of the Voting Rights Act of 1965 is amended
5 by:

6 (1) striking out "seventeen" each time it appears and inserting
7 in lieu thereof "twenty-seven"; and

8 (2) striking out "ten" each time it appears and inserting in lieu
9 thereof "seventeen".

10 SEC. 3. Section 2 of the Voting Rights Act of 1965 is amended by -

11 (1) inserting "(a)" after "2.", and

12 (2) by adding at the end thereof a new subsection as follows:

13 "(b) (1) A violation of this section is established when, based on an
14 aggregate of factors, it is shown that such voting qualification or pre-
15 requisite to voting, or standard, practice, or procedure has been imposed
16 or applied in such a manner that the political processes leading to nomination
17 and election in the state or political subdivision are not equally open to
18 participation by a minority group protected by subsection (a). "Factors"
19 to be considered by the court in determining whether a violation has been
established shall include, but not be limited to:

20 (A) Whether there is a history of official discrimination in the State
21 or political subdivision which touched the right of the members of the
22 minority group to register, vote, or otherwise participate in the

1 democratic process;

2 (B) Whether there is a lack of responsiveness on the part of elected
3 officials in the state or political subdivision to the needs of the members
4 of the minority group;

5 (C) Whether there is a tenuous policy underlying the state's or
6 political subdivision's use of such voting qualification or prerequisite to
7 voting, or standard, practice, or procedure;

8 (D) The extent to which the state or political subdivision uses or
9 has used large election districts, majority vote requirements, anti-single
10 shot provisions, or other voting practices or procedures which may enhance
11 the opportunity for discrimination against the minority group;

12 (E) Whether the members of the minority group in the state or political
13 subdivision have been denied access to the process of slating candidates;

14 (F) Whether voting in the elections of the state or political sub-
15 division is racially polarized;

16 (G) Whether the members of the minority group in the state or political
17 subdivision suffer from the effects of invidious discrimination in such
18 areas as education, employment, economics, health, and politics; and

19 (H) The extent to which members of the minority group have been,
20 elected to office in the state or political subdivision, provided that,
21 nothing in this subsection shall be construed to require that members
22 of the minority group must be elected in numbers equal to their propor-
23 tion in the population."

24

25 SEC. 4. Section 203(b) of the Voting Rights Act of 1965 is amended
26 by striking out "August 6, 1985" and inserting in lieu thereof "August 6,
27 1992".

28

29

30

KANSAS CITIES WITH AT-LARGE ELECTIONS AND LOW MINORITY REPRESENTATION

City	No. On City Council	Population			No. Minorities Elected												% Minority Elected:	
		1970* Non-White	1980 Non-White	1980 Black	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1970-1980		
Garden City	5	2%	28%	1%	0	0	0	0	0	0	0	0	0	0	0	0	0%	
Junction City	5	16%	35%	22%	0	0	0	0	0	0	0	2	1	1	1	10%		
Kansas City, Ks.	3	21%	33%	25%	0	0	0	0	0	0	0	0	0	0	0	0%		
Liberal	5	5%	25%	5%	1	0	0	0	0	0	0	0	0	0	0	2%		
Wichita	5	3%	19%	11%	1	1	0	0	0	0	0	0	0	0	0	4%		

* 1970 Census did not include Hispanics as nonwhite. 1980 Census did. Thus, cities with large Hispanic population show large increase in nonwhite population between 1970 and 1980.